Employee involvement in companies under the European Company Statute (ECS)

Case study: Strabag SE

Profile of the company and the nature of social dialogue
The negotiation process of employee involvement
The representation body (SE works council)
Board level representation
General evaluation
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**Research project:** Employee involvement in companies under the European Company Statute
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General information on the company and the SE

Strabag is a multinational building and construction company with annual revenues of about EUR 13 billion.\(^1\) It operates in three areas: building construction and civil engineering; road construction; and tunnelling and services. Strabag’s principal entity is Strabag, which is active in all sectors of the construction industry. Other important brands are Züblin, DYWIDAG, Heilit+Wörner and Möbius.

Strabag is highly focused on European markets, particularly the Austrian/German market as well as Central and Eastern Europe (CEE). In 2009, Germany (41%) and Austria (15%) accounted for around 56% of the total turnover of the company’s construction activities and another 30% was created in Central and Eastern Europe. Against this, the rest of Europe (8%) and the world (6%) only contributed small shares to the total output in 2009. Strabag SE is the market leader in Austria, Germany, Hungary, Romania and Slovakia and is number two or three in the Czech Republic and Poland.

This output is reflected in the structure of the workforce. Strabag operates in more than 500 locations worldwide (including all subsidiaries and affiliated companies). In 2009, Strabag SE had 75,500 employees, of which more than 80% worked in Europe. Since the SE’s registration in 2004, the company’s workforce has displayed steady growth, from 33,300 in 2004 to 53,000 in 2006 to 61,000 in 2007 and 73,000 in 2008. This staff increase is partly the result of major acquisitions in Germany in 2005.

In 2009, the regional composition of the workforce was as follows. In Germany, Strabag employed around 25,000 workers, followed by 10,100 in Austria as the second largest national workforce. The strong position in CEE countries in particular results from 5,300 employees in Poland, 4,700 in the Czech Republic and 4,000 in Hungary. The Strabag SE also employed quite large workforces in Slovakia (2,500), Romania (1,500) and Croatia (1,000).

The Strabag SE was officially registered in the company register of Klagenfurt in Austria on 12 October 2004 as one of the first European Companies and was the first one based in Austria. However, the conversion of the Strabag AG Holding into a SE only came into force in May 2006 due to legal problems and procedures. The reason for this was that no correct negotiation and agreement on employee involvement was carried out before the establishment of the SE. This registration without any agreement or consultation on employee involvement created protests amongst workers’ representation bodies, national trade unions and the European Federation of Construction Unions and resulted in court action.\(^2\) The Strabag SE only became effective after the company agreed to carry out negotiations according to the regulation on employee involvement in the SE, which were successfully completed in May 2006.

There were various motives and objectives behind the SE registration. A major motive of the Strabag management, which was communicated by the CEO to the EWC in 2004, was the aim to became the first SE in Europe – initially, the date the SE Directive came into force (8 October 2004) was also the date Strabag planned to register the SE.


However, according to different sources, this marketing action was not the only driving force and motive of the conversion of the holding company into an SE. More important motives were the aim to support the development of a European identity for the company, the reduction of costs through the reduction of the number of subsidiaries and the facilitation of mergers. Other reasons included a solid and uniform group structure; simplification of pan-European activities; improved efficiency and competitiveness; EU-wide legal acceptance; facilitating the attraction of capital for cross-border projects; and the simplification of cross-border mergers and transfer of the company’s seat.

Structure and practice of social dialogue
Mainly due to the coexistence of large business units but also due to the decentralised operations structure at construction sites as well as other factors (e.g. a high share of temporary and/or agency workers), employee representation in the building industry is generally rather difficult. At the same time, employee representation in the CEE countries in general and in private industry in particular is characterised by fragmentation and weak structures at sectoral as well as company level. In contrast to this, both employee representation and social dialogue in the two major Strabag countries (Austria and Germany) are based on strong company representation structures as well as trade union organisations, particularly in blue-collar work.

Table 1 illustrates these differences in workplace representation, trade union and collective bargaining coverage and board-level representation of employees.

Table 1: Aspects of social dialogue and labour relations in major Strabag countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Blue- and white-collar works councils, central works council</th>
<th>Nearly 100% Sector level</th>
<th>32% Union for white-collar and blue-collar workers</th>
<th>Widespread in companies with over 300 employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Works councils, group works council</td>
<td>Around 60% Sector level</td>
<td>20% One major industrial union</td>
<td>Widespread in companies with over 500 employees</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Trade union committees or works council</td>
<td>44% Company level</td>
<td>22% One major industrial union</td>
<td>Board-level representation is possible in companies with more than 50 employees</td>
</tr>
<tr>
<td>Hungary</td>
<td>Works council and trade union committees</td>
<td>36% Company level</td>
<td>17% Union pluralism</td>
<td>In companies with a two-tier system and more than 200 employees</td>
</tr>
<tr>
<td>Poland</td>
<td>Trade union committees and works councils</td>
<td>14% Company level</td>
<td>15% Union pluralism</td>
<td>No representation on the boards of private companies</td>
</tr>
</tbody>
</table>

Source: L. Fulton, Worker representation in Europe, Labour Research Department and ETUI, 2009 (online publication).

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3 See in particular Klambauer, M., Case study report on Strabag SE, Brussels, ETUI, 2008.

4 This was also mentioned in the 2004 annual report as the main objective (Geschäftsbericht 2004, available online at http://www.strabag.com).

5 Klambacher, M., Case study report on Strabag SE, Brussels, ETUI, 2008, pp. 5–6.
An EWC has existed since 1996 pursuant to Article 13 of the EWC Directive. The EWC agreement was renewed in 2001. Before the SE registration, the EWC consisted of 13 members from seven countries (four Austrians, four Germans and one member each from Belgium, the Czech Republic, Hungary, the Netherlands and Slovakia). The EWC agreement provides for an annual meeting and lays down information and consultation rights. However, from the point of view of senior employee representatives, the EWC was purely an information body.

The negotiation process of employee involvement

Identification of major problems and challenges regarding the negotiations on employee involvement

Due to the problems briefly mentioned above, the process of negotiating an agreement on employee involvement in the Strabag SE was difficult and was also not pursuant to the SE Directive and therefore resulted in legal action.

In August 2004, the Bauholding Strabag AG’s management drew up a written agreement on employee involvement and submitted it for signature to the chair of the EWC. According to this draft, the existing EWC agreement should serve unaltered as the new agreement between employees’ representation and the new Strabag SE. Furthermore, the participation provisions in force for the Strabag AG should also be applicable to the SE. This was not in line with the SE legislation concerning transnational employee involvement for a number of reasons. In particular, it is not possible for an EWC to function as a legal substitute for a special negotiating body (SNB) pursuant to the SE Directive. Because of this and a number of other reasons, the standard requirements for SE registration were not met.

In this complicated situation, the European Federation of Building and Wood Workers (EFBWW) was involved in the process for advice and support and a trade union taskforce was established, led by the two Austrian unions GPA (Union of Salaried Private Sector Employees) and GBH (Austrian Trade Union for Building and Woodworking) in collaboration with the Austrian Chamber of Labour (Arbeiterkammer).

Though the trade unions and the Chamber of Labour notified the court in Austria about the critical state of affairs, the Strabag SE was registered in October 2004. This then resulted in a joint complaint by the Chamber of Labour and German as well as Belgian trade unions. Furthermore, the German union IG BAU contacted the EU Commission about the issue, which then asked Strabag for an official statement concerning the complaint.

At the same time and against the background of Strabag’s major acquisition activities in Germany in 2005, the Strabag management and the trade unions agreed that the complaint at the higher court would be put on hold if an SNB was established.

The negotiation process

The Strabag SNB was set up by the management. All relevant locations were invited to delegate employees’ representatives. The seats in the SNB were allocated in accordance with the SE Directive and based on countries’ shares of total Strabag employment as of 2005.

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The constituting meeting of the SNB took place in November 2005 and negotiations were completed within the six-month deadline in May 2006. All delegates attended the constituting meeting. In addition to the SNB members, the legal expert from Austria, two representatives of the Austrian trade unions (GPA, GBH) and one representative of the EFBWW also attended the meeting. The SNB members elected the chairman of the Austrian group works council as chair.

Important features of the negotiation process on employee involvement in the Strabag SE were as follows.

- An EFBWW representative took part in the constituting meeting of the SNB.
- The initial text was drawn up by the SNB in the context of a seminar for all SNB members which was managed by the EFBWW in cooperation with the Austrian Chamber of Labour and the Austrian trade unions. The seminar was co-financed by the EU Commission (Budget Line ‘Information, Consultation and Participation of Representatives of Undertakings’).
- The preparation of the negotiations was supported by a legal expert financed jointly by the trade unions involved.
- The initial proposal for the agreement was elaborated by the legal expert in collaboration with legal experts from the Austrian Chamber of Labour and the GPA trade union. It was discussed paragraph by paragraph by the entire SNB, thereby identifying major interest differences and potential legal problems.
- The negotiations were then led by a core team from the SNB, consisting of two Austrian and two German employee representatives. Apart from the legal expert who elaborated the proposal, the German SNB members were also advised by a legal expert who was mandated and therefore had an official seat on the SNB.
- The initial proposal agreed by the SNB was submitted to the management prior to the first round of negotiations.

The proposal drawn up by the SNB contained provisions on the general character of the agreement on employee involvement, composition and competences as well as procedural rules for the SE works council, contents and other issues regarding information and consultation procedures as well as a suggestion regarding board-level representation. The latter point in particular has been an important issue since the SNB members already anticipated some opposition from the management regarding the international composition of employee representation in the Strabag supervisory board.

Since the Austrian SNB members expected that the management would not agree to the possibility of a German trade union member on the board, the SNB developed an alternative proposal. According to this, Austrian members would continue to nominate supervisory board members and be supported by the other SE works council members.

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Table 2: Composition of the Strabag SNB

<table>
<thead>
<tr>
<th>Countries</th>
<th>AT</th>
<th>DE</th>
<th>HU</th>
<th>CZ</th>
<th>SK</th>
<th>PL</th>
<th>BE</th>
<th>SL</th>
<th>NL</th>
<th>IT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seats</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0*</td>
<td>0**</td>
</tr>
</tbody>
</table>

* Represented by a Belgian colleague.
** Represented by Austrian colleagues.

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For more details, see Klambacher, M., *Case study report on Strabag SE*, Brussels, ETUI, 2008, pp. 11–15.
The issue of non-Austrian employee representation was the only major point of dissent in the negotiations between the SNB and the Strabag management. In general, the final signed agreement (see below) was very similar to the SNB’s initial proposal. Regarding supervisory board participation, as suggested by the SNB, the agreement was that Austrian members of the SE works council, in collaboration with the other SE works council members, would delegate employee representatives to the supervisory board by a ‘binding nomination’ (‘bindende Nominierung’). This agreement was to be valid until a transnational merger within the SE or by 31 October 2009 at the latest. After one of these events, the delegation and nomination system should be renegotiated with the SE works council rather than the standard rules coming into force automatically (as the SNB draft had initially suggested).

The agreement on employee involvement

Table 3 illustrates the major provisions of the SE agreement on employee involvement at Strabag as concluded in May 2006 and in November 2009 (revised agreement).

Table 3: The Strabag agreement on employee involvement

<table>
<thead>
<tr>
<th>Topics</th>
<th>Major provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage</td>
<td>Agreement covers all companies of the group in all EFTA countries and in all EU accession countries.</td>
</tr>
<tr>
<td>SE works council</td>
<td>Four year mandate period.</td>
</tr>
<tr>
<td></td>
<td>Composed according to the number of employees in different operating countries.</td>
</tr>
<tr>
<td></td>
<td>Everyday business is implemented by a select committee which also sets the dates of the meetings and suggests the agenda of meetings. The select committee consists of the chair of the SE works council, the two deputy chairs and a maximum of two additional SE works council members. The composition of the select committee should also reflect the national composition of the Strabag SE. Experts may be invited. Two annual meetings. Coverage of expenses (communication, translation, travel, etc.) by the company. Costs for external expertise and experts are also covered if they are necessary for the proper work of the SE works council. Participation in actual, preparatory or follow-up meetings is considered working time. Possibility to initiate renegotiations of the agreement by super-qualified majority.</td>
</tr>
<tr>
<td>Employee participation</td>
<td>One-third of the supervisory board members are employee representatives.</td>
</tr>
<tr>
<td></td>
<td>Employee representatives in the supervisory board to be appointed by the SE works council.</td>
</tr>
<tr>
<td></td>
<td>Same rights and duties as other supervisory board members.</td>
</tr>
<tr>
<td></td>
<td>Confidentiality clause.</td>
</tr>
<tr>
<td>Termination / renegotiation</td>
<td>Agreement remains unchanged in case of a change from a two-tier to a one-tier corporate structure.</td>
</tr>
<tr>
<td></td>
<td>Agreement shall be renegotiated in case of transnational mergers/restructuring resulting in some parts of the group no longer being part of Strabag.</td>
</tr>
<tr>
<td></td>
<td>Agreement expires on 31 October 2009.</td>
</tr>
</tbody>
</table>
The agreement contains both a definition of information and consultation rights as well as a concept regarding ‘exceptional circumstances’:

In order to be informed and consulted, the SE works council needs continuous and comprehensive information to enable it to take part in shaping open decisions. For this purpose, information and consultation of the SE works council must be timely so that the position it develops can be incorporated into the management decision-making process. Contents of information and consultation are defined in the agreement as follows:

- structure of Strabag SE;
- economic and financial situation;
- likely development of the business, production and sales;
- employment situation and likely developments;
- investments;
- substantial changes concerning organisation;
- introduction of new working methods and production processes;
- plans for rationalisation;
- issues of health and safety at the workplace;
- environmental issues;
- relocations and transfer of businesses;
- acquisitions, mergers, de-mergers, downsizing or closures of sites or important parts thereof;
- collective redundancies;
- any other issues of economic, social, health or cultural interest to the employees.

If extraordinary circumstances arise, the SE works council is to be informed as soon as possible. Extraordinary circumstances are defined as changes that have ‘erhebliche Auswirkungen auf die Interessen der Arbeitnehmer haben, insbesondere bei Zukäufen, Verlegungen, Verlagerungen, Schließung von Unternehmen oder Betrieben oder bei Massenentlassungen (…).’

In such cases the SE works council has the right to meet the bodies of Strabag SE that have decision-making power regarding the issues concerned and to make its position known. If the responsible bodies of Strabag SE decide to act in a way that is not in accordance with the views of the SE works council, the latter has the right to another meeting in order to come to an agreement.
The representation body (SE works council)

Characteristics of the representation body (RB)
As a result of the agreement, the Strabag SE works council was constituted in 2006 and replaced the EWC. At the constituting meeting, the chair of the Austrian group council was elected as chair and two German SNB members were elected as deputy chairs.

In the context of the acquisition of DT-Immobilien in 2006 with around 6,000 employees in Germany, the structure of the Strabag workforce has changed significantly and therefore the SE agreement on employee involvement was adjusted in 2009. As a result, the number of German members in the SE works council was increased while Austria lost one seat. The SE works council currently has 18 members from 13 different European counties (see Table 4).

The SE works council elects a steering committee, which consists of two SE works council representatives, the chairperson and the two vice-chairpersons. Currently, the steering committee has five members from Austria (chairman), Germany, Hungary and the Czech Republic (the latter two countries employ a significant share of the workforce).

Table 4: Composition of the Strabag SE works council

<table>
<thead>
<tr>
<th>Countries</th>
<th>AT</th>
<th>DE</th>
<th>HU</th>
<th>CZ</th>
<th>SK</th>
<th>PL</th>
<th>SL</th>
<th>BE/NL</th>
<th>HR</th>
<th>RO</th>
<th>BG</th>
<th>CH</th>
<th>SR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seats</td>
<td>2</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Steering committee</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Strabag SE.

It should be noted here that the SE works council has significantly improved both the competences as well as the resources of transnational information and consultation practice.

Information and consultation rights at transnational level have been expanded by the SE works council in comparison to the EWC. The SE work council’s rights and competencies are described and specified in far more detail and in a more binding fashion in this agreement than in that of the EWC. For example, the EWC agreement does not provide for the delegation of supervisory board members, provides fewer members and stipulates fewer meetings. In contrast to the EWC agreement, the SE works council explicitly provides for the legitimacy and funding of external expert opinions. The chair of the SNB refers to the EWC as ‘purely an information body’, while the SE works council also has consultation rights.

The experiences of the work in the representation body

While the Strabag EWC was an institution that mainly functioned for information and exchange purposes from the point of view of senior members, employee involvement has been strengthened by the establishment of the SE works council according to the agreement. In particular, the consultation role of the new institution has been stressed by company representatives in this context.

Until mid-2010, the main issues addressed by the SE works council were as follows:

- health and safety at work issues, in particular common standards and general improvements in fields where problems still exist;
- socially responsible solutions in the field of HR development and labour relations;
demographic change and its impact on skilled labour supply and demand as well as the integration of older workers;

- strengthening the apprenticeship training throughout the different Strabag country groups and in all corporate departments.

From the point of view of the employee representatives, the work of the SE works council and the steering committee is facilitated by a positive relationship between members and trade union organisations in Austria and Germany as well as with most other countries represented in the SE works council. However, challenges still exist, such as in Poland, which today employs the highest share of the Strabag workforce after Austria and Germany. At the same time, the structure and situation of employee representation and interest organisation at the company level are regarded as rather weak and not yet stable, which of course influences the representation of the country in the SE works council.

**Board-level representation**

The structure of Strabag SE’s corporate group has changed significantly in recent years, particularly since 2004. Before the SE registration, FIMAG was the parent company of the wholly owned subsidiaries Bauholding Strabag AG, A-Way Holding und Finanz AG and other service companies. Bauholding Strabag AG was the controlling shareholder of companies and raw material providers in Germany (Strabag AG Cologne), the Benelux countries, Austria and elsewhere. The SE registration in 2004 concerns Bauholding Strabag AG, which was converted into Bauholding Strabag SE.

In 2005, Bauholding Strabag SE changed its name to Strabag SE. In 2006, the former parent company, FIMAG, merged with Strabag SE. Strabag SE became the parent company of the group.

Strabag has been a listed company since 2003 and the company headquarters are in Spittal an der Drau in Austria.

The Strabag SE has a two-tier corporate governance structure. When the SE agreement was signed in 2006, the management board had six members and the supervisory board had 12 members, four of which (one-third) were delegates from the SE works council and pursuant to the Austrian Labour Constitution Act – ArbVG. By 2007, the management board had been extended by two more members from Germany and the supervisory board had been reduced to eight members, three of them workers’ representatives.

Since the reorganisation in 2009 that followed the acquisition of DT-Immobilien, the rule has been established that the employer side is represented on the Strabag board by six seats and the employees by five seats. The latter are nominated by the SE works council. Currently there is one employee representative on the Strabag board from Austria, two from Germany as well as one each from Hungary and the Czech Republic.

There have been four board meetings up to August 2010, where the employee representatives took part in the composition mentioned above. Each meeting is prepared and evaluated by the SE works council.
General evaluation

The Strabag case clearly illustrates the somewhat contradictory character of the Europeanisation of both corporate culture and company policy as well as employee involvement:

- the Europeanisation of the corporate culture while trying to maintain the dominant national (Austrian) character of the company at the same time;
- organising a unified and joint approach on employee involvement and employee participation.

During the last four years, Strabag has made remarkable progress with regard to both of the above points:

- the SE works council has developed a mode of communication, coordination and joint approach that is regarded as positive and effective;
- with the reorganisation in December 2009, the employee group in the Strabag supervisory board is now characterised by a mix of nationalities that is representative of the whole Strabag company.

The case of Strabag also illustrates the potential role of the SE in the context of the Europeanisation of corporate policies and culture as well as employee involvement and participation.

While at the beginning there were attempts to maintain a strong national influence on corporate affairs as well as labour relations, a remarkable development took place, particularly since 2009. The reorganisation of the employee interest representation in December 2009 and the new structure and composition of employee representation on the Strabag board should be stressed here.

Although these developments and the experiences linked to it are quite recent and it is too early to carry out a more in-depth assessment, it should be stressed in regard to the employee interest representation at transnational level that the representation body as well as information and consultation have clearly been strengthened as a result of the establishment of the SE and the SE works council. This is true both in terms of resources as well as competences as compared to the Strabag EWC. As such, the employee side is reflecting a process of internationalisation that has already shaped the management side and has changed the entire corporate structure of the company.

Sources and interview partners
This case study is mainly based on written and printed material already available on Strabag and the Strabag SE (in particular, the case study on the early phase and the negotiation process carried out on behalf of the SE-Europe Network of the ETUI), information provided by the Strabag SE works council and German as well as Austrian trade unions. Apart from an interview with the chairman of the Strabag SE works council in August 2010 at the Strabag headquarters in Spittal an der Drau in Austria, no further face-to-face interviews were possible in the context of the case study research.