

**JOINT OPINION
FOR THE TRANSPOSAL OF COUNCIL DIRECTIVE 2001/86/EEC OF
8 OCTOBER 2001 SUPPLEMENTING THE STATUTE FOR A EUROPEAN
COMPANY WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES**

2 March 2005

Drawn up between

CONFINDUSTRIA, ABI, ANIA, CONFCOMMERCIO, CONFSERVIZI

and

CGIL, CISL, UIL

Introduction

The purpose of Directive 2001/86/EEC is to promote the involvement of employees in companies set up as European companies in accordance with Council Regulation (EEC) No 2157/2001.

The parties to this Opinion intend to propose to the Government and the Italian legislator, in compliance with the obligations under the terms of the Treaty and the Directive, the joint position of the social partners with regard to the implementation of the provisions of the Directive and the formulation of the legal text transposing the same, applying the consultation-based method and in line with collective autonomy.

The signatories to this Opinion recommend to the Government and Parliament that they adopt appropriate legislative instruments to allow arrangements for the involvement of employees in European companies which are in line with the objectives of the Directive.

With regard to the conformity of the legislative instruments in force with Directive 2001/86 the parties consider that the adoption of any initiatives must be preceded by consultation of the parties themselves.

Article 1
Objective

1. This Opinion governs the involvement of employees in the affairs of European public limited-liability companies (Societas Europaea, hereinafter referred to as "SE"), as referred to in Regulation (EC) No 2157/2001, and incorporates the requirements of Directive 2001/86/EEC.
2. To this end, arrangements for the involvement of employees shall be established in every SE in accordance with the negotiating procedure referred to in Articles 3-6 or, under the circumstances specified in Article 7, in accordance with the Annex.

Article 2
Definitions

1. For the purposes of this Opinion:

- (a) "SE" means any company established in accordance with Regulation (EC) No 2157/2001;
- (b) "participating companies" means the companies directly participating in the establishing of an SE;
- (c) "subsidiary" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2-7) of Legislative Decree No. 74, where it is defined as "*controlled*";
- (d) "concerned subsidiary or establishment" means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation;
- (e) "employees' representatives" means the employees' representatives provided for by national law and the interconfederal agreements of 20 December 1993 and 27 July 1994 and subsequent amendments or national collective reference contracts in the event that that the interconfederal agreements are not applied;
- (f) "representative body" means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE;
- (g) "special negotiating body" means the body established in accordance with Article 3 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;
- (h) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;
- (i) "information" means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE;

- (j) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE;
- (k) "participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:
 1. the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
 2. the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

Article 3

Creation of a special negotiating body

1. Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.

2. For this purpose, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created in accordance with the following provisions:

(a) in electing or appointing members of the special negotiating body, it must be ensured:

(1) that these members are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together. Whenever possible, these members should include at least one representing each participating company which has employees. These measures must not give rise to an increase in the overall number of members;

(2) that in the case of an SE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE, in so far as:

- the number of such additional members does not exceed 20 % of the number of members designated by virtue of point (1), and
- the composition of the special negotiating body does not entail a double representation of the employees concerned;

(3) if, in the case described in 2) above, the number of such companies is higher than the number of additional seats available pursuant to the first subparagraph, these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ;

- (b) during the first phase of application the members of the special negotiating body shall be elected or appointed from the trade union representation (RSU/RSA) by the trade union representation itself in conjunction with the trade union organisations signatory to the collective agreements in force. Such members may include trade union representatives irrespective of whether or not they are workers in a participating company or a concerned subsidiary or establishment;
- (c) if in any establishment or undertaking there is, through circumstances beyond the control of the workers, no existing form of trade union representation, the trade union organisations signatory to the national collective labour contract applied in the participating companies shall decide how the workers of that establishment or undertaking are to participate in the election or appointment of the members of the special negotiating body.

3. The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE. To this end, the competent organs of the participating companies shall inform the special negotiating body of the plan and the actual process of establishing the SE, up to its registration.

4. Without prejudice to paragraphs 7, 8 and 9, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States,

a) in the case of an SE to be established by way of merger, if participation covers at least 25% of the overall number of employees of the participating cooperatives, or

b) in the case of an SE to be established by the setting up of a holding or of a subsidiary, if participation covers at least 50% of the overall number of employees of the participating companies.

5. "Reduction of participation rights" means a proportion of members of the organs of the SE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating companies.

6. For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

7. The special negotiating body may decide by the majority specified below not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SE has employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 4. Where such a decision has been taken, none of the provisions of the Annex shall apply.

8. The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

9. In the case of an SE established by way of transformation, paragraph 7 shall not apply if there is participation in the cooperative to be transformed.

10. The special negotiating body shall be reconvened at the written request of at least 10% of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Annex shall apply.

11. Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner. In particular, unless it is otherwise stipulated, the participating companies shall bear the costs referred to in Annex II(1)(1).

12. The parties shall request the legislator to adopt measures to support the operational activities of the special negotiating body, as well as training activities intended for the members and experts of the body itself and of the competent bodies of the participating companies.

Article 4 *Content of the agreement*

1. The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.

2. Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 between the competent organs of the participating companies and the special negotiating body shall specify:

- (a) the scope of the agreement;
- (b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;
- (c) the functions and the procedure for the information and consultation of the representative body;
- (d) the frequency of meetings of the representative body;
- (e) the financial and material resources to be allocated to the representative body. In particular, unless it is otherwise stipulated, the SE shall bear the costs referred to in Annex II(1)(l);
- (f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
- (g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees' representation body and/or the employees' representatives will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees' representation body and/or the employees' representatives, and their rights;
- (h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

3. The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Annex.

4. Without prejudice to Article 13(3)(a), in the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE.

Article 5 *Duration of negotiations*

1. Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.

2. The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year from the establishment of the special negotiating body.

Article 6
Legislation applicable to the negotiation procedure

The legislation applicable to the negotiation procedure shall be the legislation of the Member State in which the registered office of the SE is to be situated. For an SE registered in Italy the location of the registered office must also be that of its administrative centre.

Article 7
Standard rules

1. The standard rules set out in the Annex shall apply from the date of the registration of the SE in the commercial register where either:

a) the parties decide during the negotiations to use these rules to define the forms of employee involvement in the SE to be set up;

b) by the deadline laid down in Article 5, no agreement has been concluded, and:

- the competent organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE, and

- the special negotiating body has not taken the decision, provided for in Article 3(7), not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SE has employees.

2. The standard rules set out in part 3 of the Annex shall apply only:

(a) in the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a company transformed into an SE;

(b) in the case of an SE established by merger:

1) if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25 % of the total number of employees in all the participating companies taken together, or

2) if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25 % of the total number of employees in all the participating companies taken together and if the special negotiating body so decides;

(c) in the case of an SE established by setting up a holding company or establishing a subsidiary:

1) if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50 % of the total number of employees in all the participating companies taken together; or

2) if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 50 % of the total number of employees in all the participating companies taken together and if the special negotiating body so decides.

3. If there was more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms must be established in the SE. The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to this paragraph.

Article 8

Reservation and confidentiality

1. The members of the special negotiating body or the representative body, and experts who assist them, shall not be authorised to disclose to third parties any information which has been given to them in confidence and has been qualified as such by the competent organs of the SE and the participating companies. This obligation shall continue to apply for a period of three years after the expiry of their terms of office. The same shall apply to employees' representatives in the context of an information and consultation procedure.

2. Without prejudice to the need to abide by the obligations of confidentiality as set out in legal instruments, the supervisory or administrative organ of an SE or of a participating company established in Italy is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SE (or, as the case may be, the participating company) or its subsidiaries and establishments or would be prejudicial to them.

3. The parties shall request the legislator to include within the rules of this article those SEs which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions.

4. In applying paragraphs 1, 2 and 3, Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SE or participating company demands confidentiality or does not give information. Such procedures may include arrangements designed to protect the confidentiality of the information in question.

Article 9

Operation of the representative body and procedure for the information and consultation of employees

The competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations. The same shall apply to cooperation between the supervisory or administrative organ of

the SE and the employees' representatives in conjunction with the procedure for the information and consultation of employees.

Article 10

Protection of employees' representatives

1. The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the legislation, agreements and collective contracts in force in their Member State of employment.
2. For the representatives referred to in par.1 such protection and guarantees also covers the right to paid leave to attend meetings and the reimbursement of travel and subsistence costs during a period of absence necessary for the performance of their duties, to the extent established by the parties which draw up the national collective labour contract applied.
3. The parties shall define, in the contract referred to in Art. 4, all the operational details regarding employee representation in SEs, their subsidiaries or establishments or in participating companies.

Article 11

Misuse of procedures

The parties shall request the legislator to shall take prompt and appropriate measures with a view to preventing the misuse of an SE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

Article 12

Sanctions

The social partners shall request the legislator to make provision for appropriate sanctions to be enforced in the event of failure by the SE to comply with the law on the transposal of Directive 2001/86. Such sanctions shall be effective, proportionate and dissuasive.

Article 13

Link between this Opinion and other provisions

1. Where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Legislative Decree No. 74 of 2 April 2002, the provisions of the latter instrument shall not apply to it or to its subsidiaries.

However, where the special negotiating body decides in accordance with Article 3(7) not to open negotiations or to terminate negotiations already opened, the provisions of Legislative Decree No. 74 of 2 April 2002 shall apply.

2. Provisions on the participation of employees in company bodies provided for by legislation and collective agreements in force, or by articles of association or company statutes other than those set out in this joint Opinion, shall not apply to companies established in accordance with Regulation (EC) No 2157/2001 and covered by this Opinion.

3. This Opinion shall not prejudice:

- (a) the existing rights to involvement of employees provided for by legislation and collective agreements in force, or by articles of association or company statutes other than those set out in this joint Opinion as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;
- (b) the provisions on participation in the bodies laid down by legislation and collective agreements in force, or by articles of association or company statutes other than those set out in this joint Opinion applicable to the subsidiaries of the SE.

Article 13

Transitional and final provisions

A technical office comprising members nominated by the social partners shall be set up within the Ministry for Labour for the purposes of overseeing and monitoring implementation of the Directive.

ANNEX

STANDARD RULES

(referred to in Article 7)

Part 1: Composition of the body representative of the employees

In order to achieve the objective described in Article 1, and in the cases referred to in Article 7, a representative body shall be set up in accordance with the following rules:

(a) The representative body shall be composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees, plus the trade unions party to the national reference collective contracts.

(b) The election or appointment of members of the representative body shall be carried out in accordance with national legislation and the interconfederal agreements of 20 December 1993 and 27 July 1994 and subsequent amendments or the national reference collective contracts if these interconfederal agreements are not applied.

(c) if changes occur in the organisational structure of the SE:

- 1) resulting from the allocation of one or more new local units situated in a Member State which was not previously involved in the SE, the employees of such units

must, in accordance with the terms of the relevant national provisions, appoint or elect a representative to the employees' representative body;

2) resulting from the closure of one or more local units present in a Member State, the employees' representatives of the local units in a Member State shall forfeit their role and the composition of the body itself will consequently be redefined;

3) resulting from changes in the distribution of employment within the SE, and its subsidiaries and establishments, equivalent to at least 10% of total manpower levels across the SE as a whole, the representation of employees working in individual Member States shall be amended as a function of the changes which have occurred.

d) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at least three members.

e) The representative body shall adopt its rules of procedure.

f) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

g) The competent organ of the SE shall be informed of the composition of the representative body.

h) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 4 and 7 or to continue to apply the standard rules adopted in accordance with this Annex. Articles 3(4-12), 4, 5 and 6 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 4, in which case the term "special negotiating body" shall be replaced by "representative body". Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

ANNEX

STANDARD RULES (referred to in Article 7)

Part II: Standard rules for information and consultation

The competence and powers of the representative body set up in an SE shall be governed by the following rules:

(a) The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State;

(b) Without prejudice to meetings held pursuant to point (e), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects. The local managements shall be informed accordingly;

(c) The competent organ of the SE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders;

(d) The meeting referred to in point (b) shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies;

(e) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed promptly. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests;

(f) Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement. In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate;

(g) The meetings referred to above shall not affect the prerogatives of the competent organ;

(h) Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with paragraph (f), shall be entitled to meet without the representatives of the competent organ being present;

(i) Without prejudice to Article 8, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures;

(j) The representative body or the select committee may be assisted by experts of its choice;

(k) Insofar as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages;

(l) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner and to undertake any relevant training. In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities, the cost of one expert and the accommodation and travelling expenses of members of the representative body and the select committee.

ANNEX

STANDARD RULES (referred to in Article 7)

Part III: Standard rules for participation

Employee participation in an SE shall be governed by the following provisions:

- a) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. Paragraph (b) shall apply *mutatis mutandis* to that end;
- b) In other cases where an SE is established, the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE;
- c) If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation;
- d) The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of the members of the Member State in question, in particular Italy, where that is appropriate;
- e) The parties shall request the legislator to determine the allocation of the seats on the basis of collective negotiation;
- f) Every member who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the administrative body shall be a full member of that body with the same rights and obligations as the members representing the shareholders, including the right to vote.

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