



*Brussels, 26 May 2010*

**Conference on the Statute for a**  
**European Company (SE)**

**a European trade union perspective**

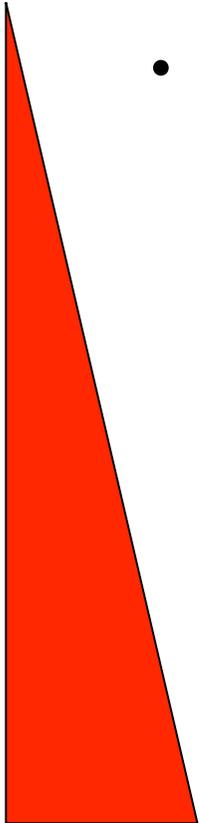
**Catelene Passchier, ETUC**

# The EU internal market is a means, not an end in itself



- Article 3 (3) subpar.3 TFEU: The Union shall work for (..) a highly competitive social market economy, aiming at full employment and social progress”
- *"The type of labour needed by European companies -- skilled, mobile, committed, responsible, and capable of using technical innovations and of identifying with the objective of increasing competitiveness and quality -- cannot be expected simply to obey the employers' instructions. Workers must be closely and permanently involved in decision-making at all levels of the company."*

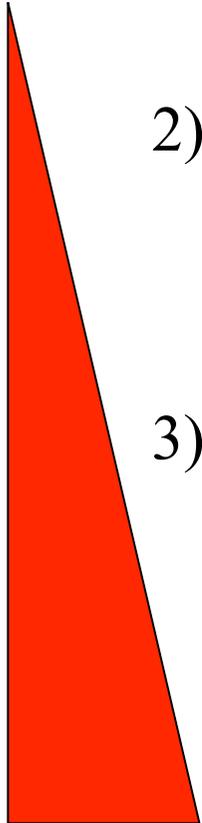
(Final report `High-level expert group on workers' involvement` (Davignon group), 1997).





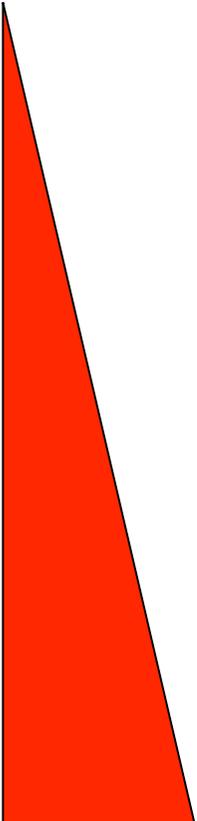
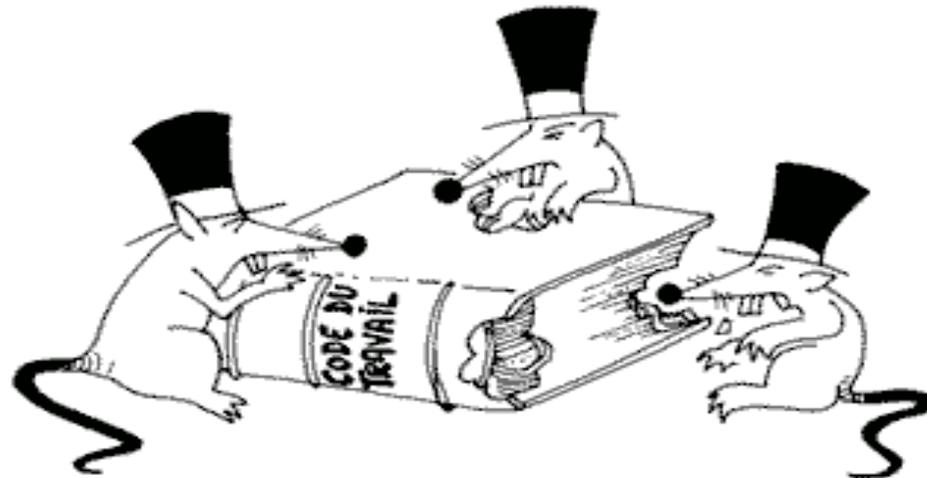
## 5 reflections on employee involvement and the creation of an SE

- 1) SE regulation and SE Directive belong together, and cannot be discussed separately, especially not when discussing employee involvement.  
No re-opening of the SE Directive via the backdoor!
- 2) The economic crisis has learnt us that companies should not only be about shareholders value. Employee involvement helps improving corporate governance and focusing on the sustainability of the enterprise.
- 3) Simple is not always beautiful. The SE is not intended to have a maximum quantity of SE's in Europe, but to develop a model for a **European** company with good governance, taking into account traditions in MS's.





**Internal market development *versus*  
national labour law-  
company law/corporate governance –  
industrial relations ???**



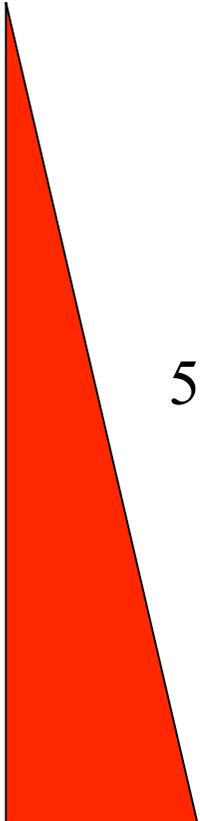


#### 4) Prejudice is a bad adviser:

- employee involvement is not a burden but an asset;
- where the company had no board level representation before, it does not have to introduce it;
- negotiations do not delay the process (seldom more than 6 months!!) but provide tailor-made solutions, and create commitment and ‘ownership’;
- the real ‘complexity’ in the EU is diversity of national systems

The report is biased and lacks sound evidence underpinning its conclusions, esp. regarding employee involvement as a key ‘negative driver’.

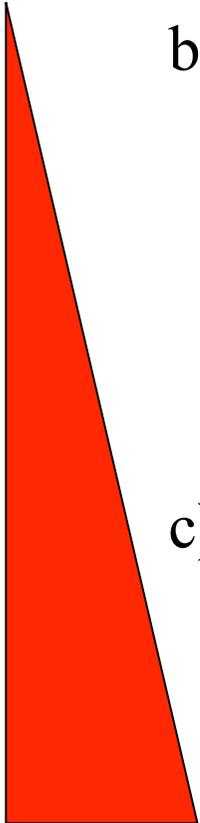
#### 5) The ‘flagship’ should not become a **pirate**, allowing for ‘regime hopping’. Why no research done into big amount of shelf-SE’s (esp. in CZ), and law firms selling ready-made SE’s (for ex. DE)?





# Recommendations

- a) Clarify, not simplify !  
The Commission must better communicate the purposes and benefits of the SE, showcase ‘normal SE’s’ and their functioning, and address (legal) misconceptions.
- b) The very existence of shelf-SE’s should be investigated and put into question, instead of allowing them to register without negotiations.
  - Activating a shelf-SE should be considered a ‘structural change’ requiring negotiations on employee involvement.
  - A European SE register should be created, and SE’s obliged to report such structural changes.
- c) Do not allow the SE to separate the registered office and head-office, as this is an incentive for circumventing employee involvement via ‘letterbox-companies’





- d) The SE should **not** be aligned with the cross border merger Directive, which has a different purpose, allows for avoiding negotiations on employee involvement and doesn't deal with information and consultation rights.
- e) ETUC prefers a Directive on the cross border transfer of the company seat.
- f) The EP (March 2009, on SPE) called on EU social partners to discuss possibilities to '*streamline, create or reinforce the provisions for employee's participation in the internal market*'
- >>>
- a single European minimum standard for workers' involvement throughout European company law ??



Thank you !

**[www.etuc.org/a/7286](http://www.etuc.org/a/7286)**

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