

Transposition of Societas Europaea (SE) Legislation in Greece

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1. Legal Framework in Greece

The transposition of Societas Europaea legislation in Greece took place in 2005–2006 by virtue of Law 3412 of 2005, entitled ‘Framework of Provisions for the Formation and Operation of SEs’, which was adopted by the Greek Parliament, edited on 2 November 2005 by President Carolos G. Papoulias and co-signed by the Minister of the Economy and Finance G. Alogoskoufis, the Minister of Development D. Sioufas, the Minister of Employment and Social Protection P. Panagiotopoulos and the Minister of Justice A. Papaligouras. It was published in the Government Gazette (fascicule one, issue 276) on 4 November 2005. In accordance with the provisions of Article 30(1) of the above law the transposition came into force on 4 May 2005, the date that the Presidential Decree entitled ‘Concerning the Role of Employees in the European Company’ was published in the Government Gazette (fascicule one, issue 92). The Presidential Decree was edited by the President and co-signed by the ministers of the Economy and Finance, Development, Employment and Social Protection on 27 April 2006.

2. Reasons for the Transposition of the SE Legislation into Greece

2.1. Greece is a country seeking foreign capital investment and the establishment of foreign, especially multinational, enterprises in order to boost growth. Law 3412/2005, by virtue of which the transposition of the SE legislation took place, taking advantage of the provision of Article 2(5) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (SE), and deviating from the general provisions of Article 2(1–4) of the Regulation, has laid down, in combination with Article 3 of this law, that a company which does not have its head office in the EU may participate in the formation of an SE if it is formed according to the law of the member state in which it has its registered office and on condition that it maintains a real and continuous relationship with the economy of a member state. This provision gives tacit but clear expression to the attempts of governments to attract enterprises with their central offices outside the EU – for example, in China, Japan, Russia, the Arab countries, and so on – but which would like to have a real and continuous relationship with the EU market, to form a public limited liability company in accordance with the legislation of the member state in which they will establish their registered office and turn it into an SE. This policy of attracting foreign investment to EU member states is legitimate and beneficial for the investing company, the economy of the member state where the registered office will be located and the EU as a whole.¹

2.2. The precedent of the successful implementation of Directive 94/45/EC on European Works Councils in Greece and in other member states with rather small populations and low economic activity reinforces the acceptance of the SE provisions into Greek legislation, even though its area of application differs from that of the Regulation and the Directive concerning the SE.

3. Special Provisions of Greek Law 3412/2005 concerning the SE

3.1. Article 2(1) of Law 3412/2005 states that the SE is a legal entity, that is, a non-natural person, subject to rights and obligations; it is formed according to the provisions of Regulation 2157/2001 in combination with the provisions of Greek Law 3412/2005.

Article 2(2) states that the legal personality of the SE is acquired from the date of its entry in the Registry. Greek Law 3412/2005, Article 1, defines as ‘Registry’ the ‘Registry of public limited liability companies under the Supervisory Authority’, which is the Ministry of Development.

¹ Eleni Patra (2006) ‘Problems that Arise for Managers and Employees’ Representatives from the Regulation of Industrial Relations in the European Company (Societas Europaea – SE)’, paper presented at the Conference on Societas Europaea, Center of Industrial Relations and Negotiations (CIRN), Athens University of Economics and Business (AUEB), Athens, 12–14 July 2006. Latest revision on 20.1.2007; to be published in a special Conference Issue.

Law 3412/2005, Article 7, states that an SE formed in Greece is registered in a distinct part of the Registry. The same law (Article 8) states that the procedure of publication of actions and information concerning the SE is handled according to the provisions of the current law and of Law 2190/1920 on public limited liability companies,² which deals with Registry issues.

3.2. The provisions of Law 3412/2005 concerning the protection of minority shareholders of SEs are of special interest and are dealt with by Law 3412/2005, Articles 12, 18 and 25, as follows.

According to Article 12, in the case of SE formation by merger, minority shareholders who opposed the merger have the right to ask the company to buy out their shares, if they can provide good grounds.

According to Article 18, in the case of the formation of a holding SE by a public limited liability company registered in Greece, minority shareholders who rejected the formation of the SE holding company have the right to ask the company to buy out their shares.

3.3. Greek Law 3412/2005, Article 28(5), provides the authorization for the transposition of the SE legislation in Greece in the form of a Presidential Decree that was to be issued within the following three months.

4. Special Provisions of Presidential Decree 91/2006 on SEs

Presidential Decree 91 of 2006 ‘On the Role of Employees in the European Company’ was edited by the President on 27 April 2006 and published in the Government Gazette (fascicule one, issue 92) on 4 May 2006, three months later than the established deadline. The deadline was not considered strict, but rather indicative in nature. The Presidential Decree was delayed due to the time required for its preparation.

The Presidential Decree includes provisions referring to the role³ of the employees, the ‘adaptation⁴ of the Greek law to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute of the European company with regard to the role of employees’ (Article 1), and the Standard Rules from the Annex of the Directive.

The most important provisions of the Presidential Decree are those referring to the formation, composition and operation of the Special Negotiating Body (SNB) representing employees, and information, consultation and participation.

4.1. Formation, Composition and Operation of the Special Negotiating Body (SNB)

Article 3 of the Presidential Decree, ‘Creation of a Special Negotiating Body’, echoes or repeats Council Directive 2001/86/EC, Article 3,⁵ with the following differences and/or additions/clarifications:

- Article 3(2,a,i) states that ‘the members of the SNB are elected in proportion to the number of employees of the participating companies in each member state’, and not ‘elected or appointed’, as the Greek text of the Directive states.
- Furthermore, Article 3(2,b) clarifies the Directive with the following statements: ‘The members of the SNB and their alternates, who represent the employees in participating companies in Greece, are elected in the following order: (i) by the trade unions of the employees in the companies;⁶ (ii) if no such organisations exist, by the designated works councils elected and operating under Law 1767/1988; or (iii) if such councils do not exist, directly by the employees who vote directly according to the provisions of Law 1264/1982,⁷ Articles 12 and 4 and of Law 1767/1988.⁸ Three representatives are elected from each company of up to 300 employees, five representatives in the case of 301–

² ‘Public limited liability company’ – in Greek *ανώνυμη εταιρία* and in French *société anonyme* – according to Annex I of Council Regulation (EC) No. 2157/2001.

³ Presidential Decree 91/2006, as well as the Greek version of Council Directive 2001/86/EC, refers to “the *role* [author’s italics] of the employees’ rather than ‘involvement’, which is used in the relevant English texts. The term ‘role’ is sociological, not legal, however, (see also Patra, 2006, op. cit.).

⁴ The term ‘adaptation’ is used in the Greek text, not ‘transposition’.

⁵ Based on the Greek text of the Directive.

⁶ That is, by company-specific trade unions.

⁷ Law 1264/1982 on the democratisation of the labour movement and the protection of the labour freedom of employees.

⁸ Law 1767/1988 on works councils and other provisions. Validation of ILO Convention 135.

1,000 employees and seven representatives if there are more than 1,001 employees. These representatives meet and elect by secret ballot the members of the SNB in correspondence with the representation of the employees of the participating companies that have employees in Greece. (c) Such members shall include at least one member representing each participating company which has employees in Greece, without, however, increasing the overall number of members of the SNB.’

- Article 3(4, 5, 6 and 7) is similar to the corresponding article of the Directive. However, we should note the following: (a) Article 3(5) refers to one expert of its choice that the SNB may request to assist them in the negotiations; (b) Article 3(7) elaborates on the expenses relating to the functioning of the SNB as follows: ‘the following expenses shall be borne by the participating companies: a. for the election of the members of the SNB, b. for the organization of the meetings of the SNB, including interpreting, accommodation, travel expenses, dining expenses, printing and communication of the results of the meeting, c. compensation of one expert appointed by the SNB to help it carry out its activities.’
- Article 4, ‘content of the agreement’ is similar to Article 4 of the Directive, and Article 5 ‘duration of the negotiations’ is similar to Article 5 of the Directive.
- Article 6 on ‘negotiation procedure’ clarifies Article 6 of the Directive, as follows: ‘2. negotiations begin: either a) on the initiative of the participating companies, or b) on the initiative of the SNB. The application is filed with the participating companies or the registered central office.
3. Negotiations take place at the registered office or the central administration of the European company.
4. At the beginning of the negotiations the SNB and the appropriate organs of the participating companies decide by mutual agreement the rules that will constitute the procedure for meetings. In case of disagreement, the procedure established for meetings should be recorded in the minutes of the first meeting. The minutes of meetings should be signed by an authorised representative from each of the parties.’
- Article 7 ‘standard rules’ is similar to Article 7 of the Directive. However, it omits the second paragraph relating to the establishment of the standard rules in the case of an SE established by merger.
- Article 8 ‘reservation and confidentiality’ clarifies Article 8 of the Directive: ‘the supervisory or administrative organ of an SE or participating company that has its registered office in Greece is not obliged to provide information ... that ...would seriously harm the functioning of the SE. ... The cases in accordance with which confidentiality of information should be secured are those referred to in Law 1767/1988, Article 13(4), as well as the case of protection of the confidentiality of personal data’. Article 8(3) makes provision for judicial appeal only (not administrative), that is, provision for an appeal by employees’ representatives to the first instance court of the registered office of the SE, which may issue an injunction when the supervisory or administrative organ of an SE demands confidentiality or does not provide information.
- Article 9 ‘operation of the representative body and procedure for the information and consultation of employees’ is similar to Article 9 of the Directive.
- Article 10 ‘protection of employees’ representatives’ refers the protection to national legislation, that is, to Greek Laws 1264/1982 and 1767/1988, Article 9(1).
- Article 11 ‘compliance with the present presidential decree’ provides for restrictions and punitive measures according to Law 2639/1998, Article 16 in the case of abuse of procedures.
- Article 12 ‘link between the provisions of the present presidential decree and other provisions’ (Article 13 of the Directive) provides a link between the Directive and Presidential Decree 40/1997 ‘Rights of employees concerning information and consultation in Community-scale undertakings and groups of undertakings in compliance with Directive 97/74/EC’ and Greek Law 3412/2005.⁹

In conclusion, the Presidential Decree retains the provisions concerning the protection of employees and labour unions in accordance with Greek legislation.

⁹ Laws and Presidential Decrees can be found at the site of the National Printing Office <www.et.gr>

5. Application of SE legislation

From information collected from the Ministry of Development, Department of Public Companies,¹⁰ no SE was registered at the Register of Public Companies before 4 November 2008. Furthermore, the Greek subsidiary of the German insurance company Allianz, which has already been transformed into an SE, still operates as a Greek legal entity, namely Allianz AAE (Allianz Public Insurance Company). One employee represented the Greek company in the SNB during negotiations, participates four times a year in meetings and is responsible for information and consultation.¹¹ Allianz AAE is the only subsidiary of an SE in Greece.

¹⁰ Telephone conversation with Mr Masganas, Manager, Department of Public Companies and Credit, Section B – Banking, Ministry of Development, 4 November 2008.

¹¹ Telephone conversation with Ms Diamantopoulou, Human Resource Director, Allianz Hellas Insurance Company S.A., 4 November 2008, and the SNB employee representative.