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

Case study: MAN 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
Author: Udo Rehfeldt (Institut de Recherches Économiques et Sociales, Paris)

Research managers: Christian Welz and Jean-Michel Miller

Research project: Employee Involvement in companies under the European Company Statute
Profile of the company and the nature of social dialogue

General information on the company and the SE
The MAN Group is one of Europe’s leading industrial players in the transport-related engineering, machinery and truck industry. Its headquarters are in Munich (Germany) and it employs 48,000 worldwide, with approximately 46,000 of those in Europe.

Structure and practice of social dialogue
The national social dialogue level of MAN has the well-known heterogeneity of interest representation structures in Europe, with the dual model on the one hand (namely in Germany and Austria) and the single (union) channel on the other hand (namely in the UK, Denmark and the Eastern European countries). France is somehow in between these, having a works council with information and consultation rights and union delegates with the monopoly for collective bargaining.

In Germany, there are works councils in each of the sites, as well as central works councils for each of the three main branches: MAN Nutzfahrzeuge (trucks), MAN Diesel and MAN Turbo (a forth branch, Ferrostaal, has now left the group). The whole representation system is crowned by a group works council (Konzernbetriebsrat). The works councils negotiate company agreements (Betriebsvereinbarung), but have to respect the branch level collective agreements of the metal sector negotiated by the IG Metall union. Both elected works council representatives and IG Metall officials were present at the supervisory board of group MAN AG and at the supervisory boards of the branches, MAN Nutzfahrzeuge AG, MAN Diesel SE and MAN Turbo AG. All the supervisory boards were composed according to a parity composition. There are also supervisory boards in two other subsidiaries: MAN Truck & Bus Deutschland GmbH and Renk AG.

In Denmark the channel for representation is local trade union delegates (shop stewards) and their representation on joint employee-management cooperation committees, which are set up according to a framework agreement between the Danish union and employer confederations. There is also one-third representation (two of six members) on the company board, according to Danish company law.

In France, representation takes place through a works council (comité d’entreprise) and through trade union delegates according to French labour legislation. Four representatives of the works council take part in the meetings of the supervisory board of MAN Diesel SAS without voting rights.

In most of the eastern European subsidiaries, the employees are represented by the unions; in Poland they are affiliated to NSZZ Solidarnosc and OPZZ, in the Czech Republic they are represented by OS KOVO PBS.

In Britain employees were formally represented by the union. However most of the MAN subsidiaries do not have union representation.

Prior to MAN’s conversion into an SE, the company had a European works council (EWC) since 1996. It was established on a ‘voluntary’ basis, i.e. according to article 13, before the new EWC directive came into effect. According to most of the actors, the experience of the EWC was not satisfactory at all. The main reason for this was its composition: two members of the German group works council; two members of the German central works council of the Diesel branch (MAN B&W Diesel AG); and two members of the German central works council of the trucks branch (MAN Nutzfahrzeuge AG); and only three non-German members (two from Austria and one from Denmark).

Since the editing of this case study, MAN Diesel SE and MAN Turbo AG have merged to form MAN Diesel & Turbo SE.”
For the two main production branches, two supplementary bodies, called Euroforum, were also created:

- the Euroforum for the truck branch consisting of five representatives of the German production sites, who were nominated by the central works council, and two representatives of the Austrian production sites;
- the Euroforum for the Diesel branch consisting of four representatives of the German production sites, who were nominated by the central works council, and three representatives of the Danish production sites.

Important European production sites, like in France or the UK, were excluded both from the EWC and the two Eurofora. The agreement had been negotiated between the management and the German group works council. At that time, the German group works council did not go further into deepening the Europeanisation process of employee representation.

This changed when the MAN B&W Diesel AG was converted into a MAN Diesel SE and a SE works council was established with nine members. The composition of the SE works council followed the country key: four from Germany, two from Denmark, one each for France, the Czech Republic and the other countries. The supervisory board of Diesel SE also underwent a Europeanisation process. Alongside these, there were three German representatives (two workforce and one union), two Danish representatives (one workforce and one union) joined the supervisory board.

MAN is characterised by a ‘codetermination culture’, which guides both sides by a certain pragmatic approach based on economic realism. Another factor of influence is the knowledge of the existing power relationships provided by the legal rights and a relatively high unionisation rate.

**The negotiation process of employee involvement**

Both management and the employee representatives in Germany were well prepared for negotiating an agreement on employee involvement. Many of the German special negotiation body (SNB) members were also members of the supervisory board of MAN, which provided them with information and the possibility of informal contacts with the management in advance of the official negotiations within the SNB. On the employee side there was also a longstanding cooperative relationship between the chair of the German group works council and the IG Metall union official in charge of MAN. The union official provided certain knowledge on SE negotiations as he had previously experienced parallel SE negotiations in other German companies in the metal sector. The Diesel branch of MAN had successfully been converted into a SE prior to MAN.

There were 26 SNB members, including seven from Germany, two from Poland and one each from 16 other European countries: Austria, Belgium, Czech Republic, Denmark, France, Greece, Hungary, Italy, Latvia, Netherlands, Norway, Portugal, Slovakia, Slovenia, Spain and Sweden.

The German members represented together 64 % of the voting rights, followed by Poland (10%), Austria (9%), and Denmark (6%).

As a representative of the German trade union IG Metall, a union official, responsible for codetermination, a union coordinator *(Konzernbetreuer)* for MAN and also vice-chairman of the MAN supervisory board, participated in the SNB. He was mandated by the European Metalworkers’ Federation (EMF) and chaired the SNB.

In addition, there were two vice chairs, respectively the chair of the German group works council and the chair of the central works council of the MAN Turbo branch. (All three of them were also representatives on the supervisory board).
The detailed negotiations on the employee side were conducted by a negotiating team with three German chairs and one representative each from Poland, Denmark and Austria. On the management side, the negotiating team consisted of the top HR manager (*Arbeitsdirektor*), the head of the labour relations department and two in-house lawyers.

The first draft agreement was presented by the management. It aimed at a reduction of the supervisory board, which was previously in the MAN AG and composed of 20 members. Finally both sides agreed upon a supervisory board with 16 members. This number was convenient for the employee side negotiators.

The negotiated size of the supervisory board was also acceptable for the management side as it resulted in a reduction of the supervisory board. In exchange for this, the SNB obtained a series of rights both for the supervisory board level and for the SE works council. The discussion with management concentrated on the size, the material support and the rights of the different representative bodies. Initially management proposed a smaller SE work council with only nine members, comparable to the pre-existing MAN EWC, with two meetings per year, a restricted list of information rights and no select committee.

The negotiation process with MAN took only four months. Management was interested to come to an agreement before the shareholders’ meeting, which was scheduled for April 2009, and did not want to wait another year to implement the conversion. The first SNB meeting took place on 16 October 2008, after three meetings and a vote by the SNB, an agreement on participation was signed 18 February 2009 by the three chairs of the SNB and, on the management side, by the CEO and another member of the executive board.

The MAN negotiations benefitted of the preceding negotiations on employee involvement in the MAN Diesel SA, where communication problems between the German negotiators and employee representatives and unions from Denmark and France occurred. As a consequence and an outcome of a learning process, the IG Metall union official in charge of the negotiation was able to constantly inform not only the SNB, but also the EMF and the national unions on the negotiation progress. He also provided all actors with a two-weeks period to formulate written remarks on the final draft agreement before he officially signed the SE agreement.

**The SE agreement on employee involvement**

The main changes of employee involvement compared to the previous EWC agreement were the following. For the first time, clear thresholds for membership of the SE works council were introduced. On the basis of the present number of employees of MAN SE in the European Economic Area (EEA), which is defined as between 40,000 and 55,000, the maximum number of members is 26. If the number of employees exceeds 55,000, the SE works council will have 31 seats. If it drops under 40,000, the size of the SE works council will be 24. Each country has the right to one seat for each slice of 2,500 employees. Countries that do not reach the threshold of 2,500 employees form a common pool (*Entsendekreis*), and are entitled to one common seat. The rest of the seats are distributed according to the number of employees that go beyond the last slice of 2,500 employees. Two more seats are distributed to the countries with subsidiaries of MAN Ferrostaal AG, until it leaves the MAN group (which is now the case). If a country is not able to nominate members for the constituting meeting, its seats are added to the pool. The basis of calculation of the number of employees is 31 December of the year that precedes the nomination procedure. Members are nominated and then elected for a period of four years. Changes in the numbers of employees are taken into account only at the end of each mandate period, unless they are the result of an acquisition or the creation of a new site. In this case each slice of 3,000 employees added is entitled to another seat and each further slice of 2,000 employees to another one (up to a maximum of two seats). The election/nomination procedure of the representatives of each country follows the rules for the nomination of the SNB members settled in each transposition law of the SE directive. The SE works council can agree upon election rules that differ from these principles.
As a consequence of these rules, the new SE works council has presently 25 (initially 26) members, which is nearly thrice the size of the old EWC (which only had six members). It allows a much better representation of the smaller production sites and countries.

The information and consultation rights are settled in a much more detailed manner than in the previous EWC agreement. They are similar to those covered by the German works council’s economics committee (Wirtschaftsausschuss). The following themes for information and consultation are unchanged compared to that of the old EWC:

- the economic and financial situation and evolution of the company;
- its strategy;
- the investment plans and planned organisational changes;
- transnational transfers of activity;
- the closing of plants or parts of them;
- the employment situation;
- planned measures for qualification.

The following themes have been added:

- mass redundancies;
- decisions on plants outside the EEA which have implications for the employees inside the EEA;
- mergers, acquisitions and sales of companies or plants which have implications for at least two countries.

In case of ‘extraordinary circumstances’, the SE works council has to be informed and consulted ‘in due time’. In due time means that management must be able to take the opinion of the SE WC into account before its final decision. The SE works council (or the select committee, if the SE works council decides so) has the right to extraordinary consultation meetings with the management. Local employee representatives may attend these meetings. If the management decides not to follow the opinion of the SE works council, it has the right for a further consultation meeting. Common opinions resulting from this consultation procedure must be written into the minutes and signed by both sides. Employee representatives or employees not directly represented in the SE works council who are concerned by the decisions must receive these documents in translation. They are entitled to consult with the SE works council chairman and to ask for further written information from the management.

Extraordinary circumstances are ‘in particular’ the following cases:

- the closing or transfer of companies or sites;
- mass redundancies;
- reduction of quarterly sales or orders that exceed 20% compared to the previous year.

In the case of structural changes in MAN SE, both parties will try to find an adaptation of the employee implication by agreement. ‘Structural changes’ in the sense of the German transposition law of the SE directive give the right for a
renegotiation of the agreement or part of it. In this case, if no agreement is found, the fallback position of the transposition law will be applicable.

Structural changes concern in particular the following cases:

- changes in the structure of the MAN group that concern at least 20% of the present workforce;
- a change from a dualistic to a monistic governance structure;
- major acquisitions.

**The representation body (SE works council)**

For the first meeting of the SE works council, the following distribution of the 26 seats was settled as part of the SE agreement as follows.

- Germany: 13;
- Poland, Austria, Denmark: two each;
- UK, France, Spain, Italy, Czech Republic: one each;
- One common representative from Norway, for the nine countries: Netherlands, Belgium, Portugal, Greece, Norway, Sweden, Latvia, Slovenia and Hungary (essentially sales and service organisations);
- Subsidiaries from Ferrostaal: two (they have now left);
- ‘Guests’ from Switzerland and Turkey: one each.

As a consequence of the sale of 70% of Ferrostaal, its representatives have left the SE works council. In exchange, there will be a new representative from Slovakia, bringing the total number of seats to 25.

SE works council votes are taken by a simple majority, providing at least half of the members representing half of the voting rights are present for the vote. Each member has voting rights proportional to the number of employee they represent. As Germany represents 64% of the workforce in the EEA countries, this secures a comfortable majority position for the German representatives in the SE works council.

The SE works council elects a chairman and two deputy chairmen, as well as a select committee that consists of the former three and six further members. (The old EWC had no select committee, only a chairman and a vice-chairman). Each branch of MAN ‘should’ be present, with at least one member in the select committee. The select committee composition ‘should be equilibrated’ according to the importance of the different countries and branches.

The present seat distribution of the select committee is the following.

- Germany: six, including the chairman and one vice-chairman, representing Trucks (four) and Diesel (one) and Turbo (one);
- Austria: one (the second vice-chairman), from Trucks;
- Poland: one, from Trucks;
- Denmark: one, from Diesel.
Select committee decisions are taken by simple majority. The chairman can invite other representatives, including the union officials in the supervisory board to select committee meetings.

The agreement stipulates two annual meeting of the SE works council. In case of ‘exceptional circumstances’ that concern the employees of at least two countries, an extraordinary meeting can be called upon by the SE chairman or by at least 10% of the members from at least two countries. In comparison, the former EWC met only once a year, without the possibility for extraordinary meetings and the two Eurofora met once a year. In cases of ‘extraordinary circumstances of transnational character’, the EWC or Euroforum chairman only had the right to receive written or oral information.

Meetings take two days and have the following sequence: preparatory meeting; meeting with the management; final assessment meeting. In the bilateral meetings, management is represented by the CEO, the HR director and the head of the labour relations department.

By April 2010 the SE works council at MAN had only met once, in October 2009. The second meeting was scheduled to take place in Schio (Italy) in April 2010, but had to be cancelled because of the flight interdiction due to volcano ash from Iceland. A new meeting was scheduled for June 2010 in Augsburg.

The select committee meets six times a year, but extraordinary meetings are always possible. In practice, it met every two months, mostly in combination with the meetings of the German group works council.

**Working facilities and training**

The language of the SE works council and the select committee (as well of the supervisory board) is German. If needed, simultaneous interpretation is provided and written documents are translated on request.

After consultation on language capacities, simultaneous interpretation was organised for eight languages, likewise for the written documents and minutes, except for the presented charts, which contained explanations only in German and English.

SE works council members are entitled to training measures, including language training. Travel costs, including those of invited guests, translation and other costs are covered by the company. The SE works council has the right to be assisted by experts, including union experts. The SE works council and its chairman have the right to be assisted by a full time employee (Referent) and a secretary.

German is the language understood by all of the members of the select committee, except the one from Poland. As English is however more and more the working language of the company, many members of the SE works council make use of the possibility offered by the agreement to follow language training courses.

For communication with the employees, the SE works council edits a newsletter, which is translated into all relevant languages and sent to the SE works council members. It also intends to develop an interactive electronic communication tool, based on cooperation with experts from the University of Munich.

The spring meetings are devoted to the analysis of the annual company report, the autumn meeting to the discussion of the company strategy. The most important issues discussed in the first SE works council meetings were however the reports about the situation in the different countries. These are important, because the members of the SE works council are still in the phase of mutual confidence building for which it is necessary to understand the situation in the other
Employee involvement in companies under the European Company Statute (ECS): MAN SE

countries, particularly in the present context of economic downturn. The trucks branch is particularly touched by this downturn, the turbo division to a much lesser degree.

The main problems the select committee was confronted with in the last year were the massive reduction of orders in the trucks sector, as well as specific reductions of orders in the Danish MAN Diesel plant and in the Italian Turbo plant in Schio. The general reduction of activity in the truck sector has been momentarily absorbed by the reduction of working hours. The problems of the Danish plant have led to a reduction of employment, however without collective dismissals, because the redundant employees have been re-employed in the service organisation and in other plants at the site. In the case of Schio, it was planned to sell this plant. Although this could have been interpreted as a purely local problem, concerning only one country, the select committee decided to intervene. After five of its members went to Schio for consultation, they succeeded in convincing the management to abandon the initial plan and to guarantee that MAN will remain the main shareholder of the Schio plant. The problem of overcapacity, however, needs to be settled.

Among other issues on the agenda of the select committee is the negotiation of an international framework agreement, which is carried out in cooperation with the International Metalworkers Federation (IMF) and the international department of IG Metall. There are plans to integrate representatives from a trucks plant in Brazil, bought from Volkswagen in 2009, into the SE works council. Contacts with the colleagues from Brazil were difficult to establish, because they are organised in a local union which is neither affiliated to the national confederation CUT nor to the IMF. The select committee has agreed upon an internal division of labour, each country being responsible for the relations with an extra-European production site of MAN.

Board level representation

MAN SE has kept its two-tier board structure with a management and a supervisory board. Comparable to the former MAN AG and prior to the company’s transformation into an SE, employees and union officials keep their seats on the supervisory board according to parity representation. The size of the supervisory board has been reduced from 20 to 16. Parity of employee representation has however been maintained.

Under the terms of the agreement, six of the employee board members are employees of the company, two are external representatives of the trade unions. The names of those nominated for the first two years are listed in the annex of the agreement. The distribution of the in-house employee representatives is the following.

- Germany: four, respectively:
  - the chairman of the group works council (who is also chairman of the central works council of MAN Trucks and of the SE works council);
  - the chairman of the central works council of MAN Turbo;
  - the chairman of the works council of MAN Diesel in Augsburg;
  - the chairman of the works council of the subsidiary RENK AG in Hanover.
- Austria: one, the chairman of the central works council of MAN Trucks Austria in Steyr.
- Poland: one, the union delegate of Solidarnosc and works council member of MAN Trucks & Buses Sp. z. o.o., the Polish subsidiary of MAN Trucks in Tarnowo Podgorne.
In addition, two German full-time union officers are also nominated, respectively the MAN coordinator of the IG Metall headquarters in Frankfurt and the chief of the local IG Metall office in Augsburg.

After the first two years, the six in-house employee board level representatives will formally be elected by the SE works council in proportion of the respective workforces in the different countries. This vote will be by simple majority of the voting rights of the SE works council members voting, who must however represent the absolute majority of the whole workforce in all countries. The candidates for this election will be nominated by the employee representation body at the highest level in each country, in Germany by the members of group works council together with the chairman of the committee of managerial staff (Sprecherauschuss), each one with voting rights in proportion of the employees they represent. The two full-time union representatives will be nominated by the national union mandated by the European Metalworkers’ Federation (EMF), after coordination with the other unions present in the MAN subsidiaries. The EMF’s custom is to mandate the union where the headquarters of the company or the majority of the workforce is located, which is presently Germany and hence the German trade union IG Metall.

The supervisory board of MAN AG held five regular meetings in 2009 before the conversion into an SE. Since then, the supervisory board of the new MAN SE held four meetings.

The main topics discussed regularly by the full supervisory board meetings were:

- the development of orders, earnings, and employment, in particular the effects of the global financial crisis;
- key strategic projects, in particular investments and divestments.

In 2009, the supervisory board also focused on compliance issues after allegations of corruption were made against MAN managers in May 2009.

Article 48 (1) of the SE Regulation foresees that the statute (Satzung) of an SE must list the types of transactions that require authorisation by the supervisory board. In the case of MAN SE, the transactions requiring consent (zustimmungspflichtige Geschäfte), listed in article 11.1 of the statute, are the following:

- the acquisition and disposal of shareholdings in companies, establishments or parts thereof if the value exceeds limits set by the supervisory board;
- the conclusion of affiliation agreements (Unternehmensverträge).

The transactions comply with the rules of procedure (Geschäftsordnung) stipulated for the supervisory board in the former MAN AG.

At its constituent meeting on 3 April, 2009 of the supervisory board of MAN SE, the employee representative and secretary of IG Metall, was re-elected deputy chairman.

The supervisory board of MAN SE has established two committees, each with three shareholder and three employee representatives:

- the presiding committee, which combines the tasks of the standing committee and the personnel and nomination committee of the former MAN AG, and which prepares the supervisory board resolutions;
- the audit committee, which deals with financial reporting and the audit reports submitted by the auditors.
Some decision-making powers have been transferred to these committees. The presiding committee met three times, while the audit committee of MAN AG and MAN SE met 12 times in 2009. The audit committee also discussed current business developments, in particular the cost-saving program at MAN Trucks, as well as measures to improve the compliance system within the MAN Group.

All the six in-house board-level employee representatives are members of the SE works council and five are represented on the select committee. The two union officials in the supervisory board are ‘invited guests’ to the meetings of the SE works council and the select committee.

**General evaluation**

Both management and employee representatives are pleased with the final SE agreement on employee participation. Management’s overall assessment is that the agreement is an acceptable compromise and will contribute to the internationalisation of the company. The employee representatives are satisfied with the agreement, as codetermination rights in the supervisory board have been secured and important rights have been obtained for the SE works council. The only major compromise was the reduction in size of the supervisory board. According to the chairman of the SNB, the degree of satisfaction on the agreement can be assessed in comparison to four kinds of benchmarks:

- the EMF guidelines for SNB negotiations;
- the transposition law, particularly the fallback positions;
- the agreement and practice of the pre-existing European Works Council;
- other SE agreements.

In all regards, the MAN agreement can be considered as a good agreement.

**Sources and interview partners**

Aside from MAN material such as annual reports and press releases, this report is based on interviews with the head of the MAN labour relations department, the advisor of the steering committee of the SE works council and the deputy chair of the supervisory board, who is also a union full-time official of IG Metall and was the main negotiator of the SE agreement. The interviews were conducted in April 2010 by Udo Rehfeldt in Munich and Frankfurt in person and by telephone.