



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-677/20
IG Metall and ver.di

Advocate General Richard de la Tour: the transformation of a German public limited company into a European company does not make it possible to dispense with the specific ballot for the election of trade union representatives to the Supervisory Board

That ballot is an element characteristic of the employee participation regime in Germany and may not be the subject of negotiation in the context of the transformation

In 2014, the German public limited company SAP was transformed into a European company (SE). Since then it has borne the name SAP SE. Both before and after the transformation, the Supervisory Board was composed of equal numbers of members representing the shareholders and members representing the employees. However, before the transformation the employee representatives were, in accordance with German law, elected by means of two separate ballots, one of which was reserved for the election of trade union candidates.

Prior to the transformation, SAP and a special negotiating body (SNB) representing the workers entered into an agreement concerning the future involvement of employees in SAP SE. That agreement provided that, in the event of the reduction of the number of members of the Supervisory Board to 12, the trade unions would retain the right to nominate candidates but would no longer benefit from a separate ballot for their election.

When SAP SE actually intended to reduce the number of members of the Supervisory Board to 12 the German trade unions, in particular IG Metall (Industriegewerkschaft Metall) and ver.di (Vereinte Dienstleistungsgewerkschaft), brought an action before the German courts.

Against that background, the German Federal Labour Court asked the Court of Justice to interpret the Directive supplementing the Statute for a European company with regard to the involvement of employees. According to that directive, the agreement on the arrangements for the involvement of employees (the agreement on employee involvement) must provide for at least the same level of all elements of employee involvement as those existing within the company to be transformed into an SE.

The Federal Labour Court therefore wishes to know whether the specific ballot for the election of trade union representatives to the Supervisory Board of an SE that arose from the transformation of a German public limited company must be maintained or whether it may be dispensed with during the negotiation of the agreement on employee involvement.

In today's Opinion, Advocate General Jean Richard de la Tour proposes that the Court's answer be that the SNB's autonomy of negotiation does not permit it to dispense with the separate ballot to elect, as employee representatives within the Supervisory Board, a certain proportion of candidates put forward by the trade unions, where that specific requirement is provided for and mandated by the national law applicable to the company to be transformed.

In his view, as regards Germany and thus in the case of SAP SE, it cannot be denied that the specific ballot for trade union representatives is an element characteristic of the participation regime in Germany and it cannot therefore be subject to negotiation.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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