



Eurofound

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

Case study: Equens 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

Overall evaluation

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Profile of the company and the nature of social dialogue

General information on the company and the SE

Equens SE is a full-service payment processing company offering services in payment and card processing. Its headquarters are in the city of Utrecht, the Netherlands. The Equens SE service portfolio covers the full range of requirements in the area of payments including payment clearing and settlement, back-office processing as well as card issuing processing and acquiring processing.

Equens' business activities may be divided into two major segments in the payment processing field:

- payments, namely back office processing, clearing and settlement. In 2009 Equens SE processed 9.4 billion payment transactions with a total value of over €13 trillion;
- cards acquiring and card issuance: creation, delivery, switching, authorisation, hosting, clearing and settlement. In 2009 Equens processed 3.4 billion card transactions, issued 11 million cards for its clients and managed over 580,000 ATMs and point of sale (POS) terminals.

The SE is a European leader in its business segment. Its main clients are European banks.

Equens was established by the cross-border merger between the *Dutch Interpay Nederland BV* and the German *Transaktionsinstitut für Zahlungsverkehrsdienstleistungen AG* (TAI) by contributing both entities (renamed as *Equens Nederland BV* and *Equens Deutschland AG*) into the newly established holding company Equens NV in October 2006.

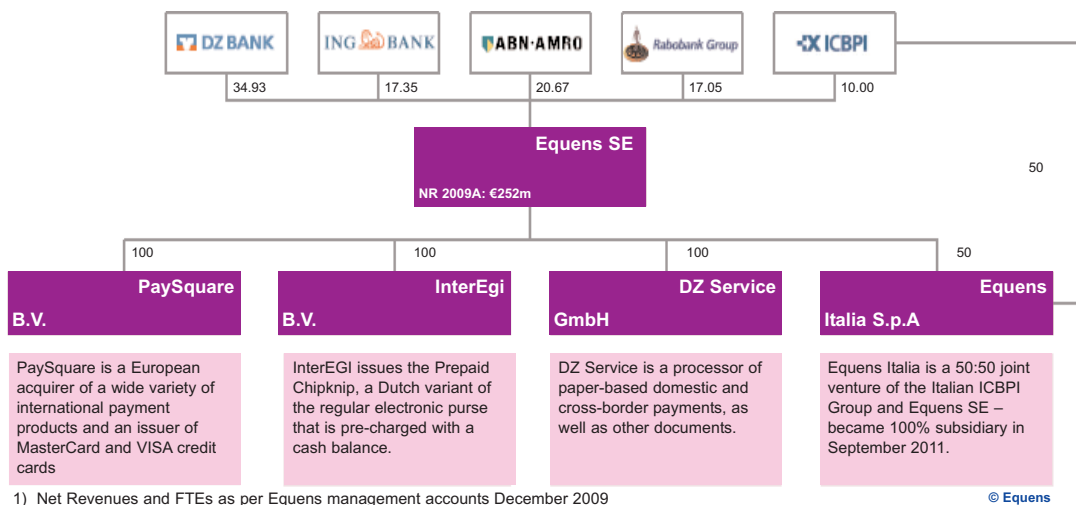
By merging the two entities Equens was a result of the substantial Europeanisation and consolidation process in the payments industry. Equens' strategy is to capitalise on this industry development and be an early mover in the industry. The ambition is to be the top pan-European, full service payments processor with an offering of a full range of payments and card processing as well as complementary services

The transformation of Equens NV into the legal form *Societas Europaeae* (SE) (Latin for 'European Company') was concluded in July 2008 by merging the German subsidiary Equens Deutschland AG into Equens NV, thereby transforming the NV into an SE.

In line with Equens' further geographical expansion, it entered the Italian market by establishing Equens Italia in September 2008. Equens Italia is currently a 50:50 joint venture with Italy's ICBPI (*Istituto Centrale delle Banche Popolari Italiane*) Group and will become a wholly owned subsidiary of Equens SE in 2011.

Aside from its headquarters in Utrecht, Equens SE operates offices in Germany (Frankfurt and Stuttgart), Italy (Milan and Rome) and a small unit in Finland (Helsinki). At the end of 2009, the Equens Group had a total workforce of about 1,615 FTE (full-time equivalent employees) of which around 900 were based in the Netherlands, 195 in Italy, 330 in Germany and one in Finland.

Equens SE legal and shareholder structure



Source: Equens SE

The Equens shareholder structure consists of Dutch banks (ING BANK, ABN AMRO, Rabobank) together representing a total share of 55.07 %, the German DZ BANK holds a share 34.93 % and the Italian ICBPI holds 10 %.

The conversion into an SE: driving forces and motivation

Beginning with, and through its transnational merger with the Dutch Interpay and the German TAI in 2006, Equens set a strong focus on the implementation of its European vision. As a financial payment processor in an increasingly European market, the company follows its aims to become a truly European service provider.

Interview partners indicated that the payments industry – starting with the EC regulation to harmonise fees for cross-border and domestic transactions in 2001¹ and continuing with the work of the European Payments Council (EPC) to create new European standards for electronic payment transactions and to establish a Single European Payment Area (SEPA) – is turning into a European market in which economies of scale resulting from large transaction volumes as well as shared investments are of critical importance. At the time of the merger between TAI and Interpay management from both companies – and later from the Italian partner ICBPI – shared the same vision regarding the development of the market. By merging the two entities, both companies were able to form the first international payments processor and combine volumes on an international scale. Additionally, investments in the SEPA developments were able to be shared between the parties. It is the clear ambition of the combined entity to position itself as a neutral European player targeting banks from all European countries and banking sectors.

In an interview management stated explicitly that the SE legal form ‘documents the positioning of the company as a European service provider’. Also the press release on Equens’ conversion into an SE highlights that ‘[the company] has taken the next step towards achieving our European ambition’ and that ‘the new legal form is in line with the European strategy to further improve our strong position through [...] national and international partnership’.²

¹ Regulation (EC) 2560/2001 on cross-border payments in Euro was repealed by Regulation (EC) No 924/2009.

² Press release: Payment processor Equens becomes SE, 17 July 2008, in <http://www.equens.com>.

Next to this strategic motivation, there were other major driving forces and motivations that triggered the Equens management decision to convert the company to an SE.

One major reason was the urgent need to harmonise its complex corporate structures. It had to align a legal corporate structure consisting of three legal entities (Equens NV, Equens Nederland BV and Equens Deutschland AG), which had three (albeit identical) management and supervisory boards, with the fully integrated internal organisation – thereby also reducing administrative costs. Hence, it was a distinctive objective of the company to reduce the complexity in administration and corporate structures. In its press release ‘Payment processor Equens becomes Societas Europea’, Equens officially states that ‘The SE conversion will lead to cost savings at operative level.’³

An important aspect, rather specific to the case of Equens as a payments processor providing services largely exempt from VAT, was the fact that intercompany charges between the various legal entities were subject to VAT and could thus not be deducted as input VAT. By legally merging the legal entities the resulting divergence between operating model and legal structure were able to be remedies leading to additional savings.

Existing literature on the motivations of companies wanting to adapt the legal form of an SE have referred to the possible advantage of simplified mergers with or acquisitions of companies in the EU or EEA and the harmonisation and optimisation of corporate structures through the SE.⁴ While this has become possible for other legal forms outside the SE as a result of the introduction and implementation of the merger directive, this aspect was and remains applicable to the case of Equens. At the time of the Dutch-German merger the conversion into an SE was the only possibility for a cross-border merger. Also, as also indicated by a management representative, the company remains open for further business expansion, which is facilitated by the legal form of an SE. The case of Equens thus reflects transnationally operating companies’ search for options to harmonise and simplify their governance structures.

It is interesting that the initiative for the merger of the Germany based TAI and Dutch Interpay came from the German management of the TAI; the majority of the workforce was based in the Netherlands.

Structure and practice of social dialogue

Both predecessors of Equens SE, Interpay and TAI, have their own works councils (in Germany works councils for each site as well as an overarching group works council (*Gesamtbetriebsrat*) representing employees at entity level). Both entities also have a history of extensive social dialogue. Additionally, the Equens SE subsidiaries PaySquare BV in the Netherlands and DZ Service GmbH in Germany have their own works councils. The JV employee representation at Equens Italia SpA is assured by various trade unions. Previous to the company’s registration as Equens SE, there was no European works council (EWC), although shortly after the merger of Interpay and TAI establishing Equens there were talks among the interest representation bodies to establish an EWC as the representation body of the European workforce. The talks were overtaken by the plans to convert Equens into an SE and the resulting need to establish an SE works council.

³ Equens press release: ‘Societas Europea (SE) reflects European ambitions of Equens. Payment processor Equens becomes Societas Europea, 17 July 2008’, in: <http://www.equens.com>.

⁴ See for example Ernst & Young: Study on the operation and the impacts of the Statute for a European Company (SE) 2009.

The negotiation process of employee involvement

Identification of major problems and challenges with regard to the negotiations on employee involvement

According to the legal provisions of the SE directive, a special negotiation body (SNB) has to be established to negotiate the practical arrangements for employee involvement in the SE agreement. Equens was one of the first Dutch companies to adapt the legal form of an SE and was evidently placed into a newcomer situation in which actors could hardly benefit from empirical value or experiences under Dutch law. As a result, the company had to deal with limited uncertainties in the codetermination process when establishing the SE, which however were not material and did not lead to major complexity.

The SNB: composition and nomination procedures

According to the corresponding directive and in line with the number of employees per country, the Equens SNB was composed of 11 members according to a country key: seven from the Netherlands and four from Germany. In the election for the four seats for German representatives, the responsible trade union ver.di had the right to nominate a candidate. The SNB was chaired by a chairman of the works council from Equens Nederland who, in close cooperation with a representative from the German Equens Deutschland works council led the negotiations with the management side.

The SNB was supported by an external expert from the Netherlands frequently involved in the consultation of European works councils, and by the Dutch Union Federation (FNV). The management side sought consultation from an international law firm with subsidiaries in all countries involved. The input provided by the law firm was reviewed as positive and essential for a successful completion of the negotiation process.

It should be noted that under German law the nomination and election of the members of the SNB is legally rather complex. The SE directive stipulates for the participation of employees of all undertakings affected by electing a representative to the SNB. As a matter of fact this provision may cause problems if no organ of employee representation has been previously established. In this regard it was advantageous that the Equens subsidiary DZ Service GmbH at this time had a general works council (*Gesamtbetriebsrat*) as their employee representation body.⁵ In the Equens case the representatives of DZ Service decided to transfer their right to dispatch a delegate from its German parent company, Equens Deutschland. A management representative indicated that DZ Service is currently focussed on activities in Germany and that therefore European activities do not impact the company. An employee representative stated that DZ Service employees were not interested in the Europeanisation process and the SE topic as much as other employee groups of the former Equens holding. They therefore opted not to nominate or elect their own representative to the SNB and thus effectively passed the transfer of representation rights (in particular competences and voting rights) to the German employee representatives in Equens Deutschland.

The negotiations for the SE agreement were substantially completed prior to the official ending of the stipulated time span of six months. This was largely the result of Dutch codetermination law giving the Dutch works council the right to advise in the simultaneous merger of the Dutch entity Equens Nederland BV into the Equens NV holding, which was needed for the full economic integration of the group. Effectively therefore, (positive) advice was thus a precondition to the beginning of the formal negotiation of the SE agreement, in that all key items needed to be aligned in advance. Due to the fact that Equens was a rather small company and the responsible actors involved knew each other before, the

⁵ It was reported that the DZ Service GmbH currently only has employee representation bodies at local level

negotiation process was easily initiated, carried out and completed with a common agreement. Interview partners reported that in practice the SE agreement was agreed upon rather early.

An important factor for success was the company's early and open communication. The management recommended that an essential precondition for successful SE negotiation was the involvement and exchange of information with the employee side at the earliest possible stage. Accordingly, Equens' plans to adapt the SE statute and related information were communicated to every single employee with the aim of establishing a feeling of mutual trust. This active communication strategy and the way in which the board of directors handled questions from the workforce was described as very positive and was praised by an employee representative.

The agreement on employee involvement

The first draft of the SE agreement was presented by the employee side (SNB) and was a result of close consultation with an external expert from FNV Formaat, an independent organisation affiliated to the FNV. In the case of Equens, the employees have succeeded in a drawing up an SE agreement that clearly goes beyond the standard rules in regard to a number of items, as shown by the following.

Information and consultation:

- information and consultation right at the earliest stage possible;
- in the case of redundancies the SE works council is involved for finding alternative solutions.

SE works council:

- three annual meetings of the SE works council and additional meetings in the case of exceptional circumstances;
- clear agreement on size and composition. Additional members with no voting rights;
- establishment of a select committee with currently three members;
- costs for administration and secretary as well as travel expenses for external experts covered by the management;
- training and qualification, costs covered by management (e.g. English language);
- interpretation and translation provided until members have gained sufficient English language skills (mandatory to acquire skills for members). Costs are covered by management.

Dispute settlement:

- in the event of disputes on interpretation of the SE agreement, the parties have the right to appeal to the mediation committee;
- composition of the mediation committee: one member appointed by the SE works council and the second member appointed by the board of directors. The third member appointed by the two present members.

English as a working language:

The subject of negotiations between SNB and management was the issue of board level representation. The Dutch system of workers representation stipulates that the works council has the right to nominate up to one third of the members of supervisory boards in larger companies (*'structuur regime'*). According to Fulton, the appointment procedure is rather complex but states that employees of the company or trade union representatives are excluded from

being members of the supervisory board. In the Netherlands, the 'indirect' employee representatives of the supervisory board are typically academics, possibly trade union affiliated or persons with a human resources background.⁶

In the view of the works council, Equens had just fulfilled the complex preconditions for the works council's nomination for the supervisory board before being transformed into an SE. However, the Equens board of directors did not agree with this view. As a result, this item was discussed in the negotiations for employee involvement in the SE. In the negotiations between the board and the SNB on this issue, the management reacted with an official legal response stating that the employee side did not have the right for board level representation. The SNB therefore sought the external support of a lawyer from the FNV. The external expert's recommendation was that the SNB could take the conflict to court, but also referred to an unclear outcome and a possible stagnation of the entire negotiation process. It was agreed to opt for a better bargaining position and consequently for a satisfying agreement instead of a lawsuit.

The chairman of the SNB stated that from his point of view an employee representative at the supervisory board would not be of great benefit for the employees. He strongly questioned the person's function and the benefit that would be generated since the employee representative – who strictly speaking was only nominated by the employee side – would not have competences of direct relevance for the employee side. In regard to the early delivery of information and the direct contact that may have been provided by board level representation, he stated that well developed information and consultation rights for the SE works council already accommodated this advantage. Furthermore the relationship between management and works council was based on mutual trust, mutual respect for each other's needs and an open culture of social dialogue.

For Equens further-reaching results in the context of information and consultation rights were of greater value than formal participation in the supervisory board. This concession made by the employee side has been compensated with other regulations agreed by the management, such as the frequency of SE works council meetings as well as information and consultation rights.

One interesting feature of Equens is that the SE has already implemented two amendments of the SE agreement on employee involvement since 2008. Here, employee and management representatives stated that certain aspects in the primary version of the agreement were insufficient. They harboured several uncertainties only identified during its implementation and the practical work of the SE.

The first amendment was signed in March 2009 and changed a provision dealing with the representation of countries with fewer than 1% of the employees in the SE works council. The right to renegotiate and amend the agreement at any time by joint decision was added for clarification purposes as a new provision. The second amendment was signed in December 2009 and clarifies cases in which an unrepresented legal entity (e.g. a group company that has for various reasons no elected representatives in the SE works council) may dispatch an additional member without voting rights to the SE works council.

The management was advised and supported by an external law firm throughout the negotiation process and the elaboration of details in the SE agreement.

⁶ L. Fulton: Worker representation in European Labour Research Department and ETUI, 2009 in: <http://www.worker-participation.eu>.

It was also mentioned that all actors involved lacked the necessary expertise in elaborating a complete SE agreement and that therefore it was very important to consider the present agreement as a basis for further amendments and negotiations between the employee representatives and the management. Evidently both stakeholders shared this standpoint and were aware of the fact that the Equens SE agreement is not carved in stone and needs to be regularly evaluated in case of upcoming problems ('earning by doing').

A German employee representative referred to the example of the Finish subsidiary, which only employs one person. The first version of the SE agreement stipulated that every subsidiary should be presented in the SE works council. This provision could not be reasonably and efficiently implemented with regard to the lone Finish employee and caused an obstacle. According to the works council representative this issue was not addressed during the negotiations and he further concluded that nobody realised that the provision prior to amendment was not practical. Therefore, the amendment to the agreement signed in March 2009 stipulates that 'a country where the Equens group has activities shall be entitled to [...] one representative in the SE works council if such applicable country accounts for at least one percent [...] of the total number of employees of all applicable countries taken together'.

A second interesting feature of the Equens SE agreement is conflicts regarding the interpretation of the agreement or ambiguities, in which case a mediation committee is to be installed for dispute settlement. The composition of this mediation committee covers three people: one person appointed by the SE works council, one by the board of directors and the third in mutual consent by the two appointed persons. The interesting aspect of the dispute settlement procedure is the manner in which it was perceived by the management and employee representatives. Both stakeholders emphasised its importance and explained that such a mediation committee was a natural component of every agreement and that it was at no time subject of critical discussion within the negotiations.

Again the case of Equens shows that the negotiation of employee involvement may lead to remarkable positive results but is also subject to a number of challenges and may require adaptations after implementation based on the experience gained. The employee side of Equens stated that their relationship to the management board was based on mutual trust and a willingness to openly address problems and concerns with regard to the SE agreement. The fact that only two countries with two different industrial relations traditions are involved may certainly facilitate this process. The planned full legal integration of Equens Italia, beginning in 2011 is considered a challenge for the so far successfully evaluated implementation of the SE agreement and the practical work of the SE works council. To smooth this integration into the SE works council, the Equens SE works council is already in touch with Equens Italia employee representatives to align on the future cooperation.

The representation body (SE works council)

Characteristics of the representation body

Generally the representation of the SE works council was devised to ensure that the body remains relatively compact. The basic rules are that every country with more than 1% of the total number of employees sends one representative. If a country accounts for more than 25% of total employment it may send an additional representative, if there are more than 50% two extra seats are allocated. As a result the Equens SE works council is currently composed of five delegates representing two countries: three from the Netherlands and two from Germany.

Additional seats in the SE works council (but without voting rights) are given to country representatives of subsidiaries that have not been elected into the SE works council. Here it was reported that members are obliged to internally align their decision in order to come to a mutual consent in the form of one vote.

The SE works council has the right to elect a select a committee, which is in charge of all preparations, the coordination of meetings and delivering feedback from the meetings to employees in the group. It prepares the agenda of SE works council meetings in consultation with the board of directors. In regard to the select committee's composition, the SE agreement defines that it should have balanced representation of the SE works council and a minimum size of three and maximum size of seven members. A country key stipulates its composition and size in the case of future growth and a consequent increase of employees: three members if the SE agreement covers 1–4 countries, four members for 5–9 countries, five for 10–14 countries, six for 15–19 countries and seven for 20 countries or more. Additionally it has been agreed that no country may have more than two seats in the select committee.

In view to the merger with Equens Italia in 2011, employee representatives have invited an Italian representative to participate in the SE works council meetings to establish a mutual feeling of respect and trust at the earliest stage possible. It was an anticipated aim to involve the Italian employees in the works council prior to their official integration into Equens SE. However concerns and mixed expectations relate to the fact that another country with a different industrial relation tradition will be part of the employee representation body. Based on recent contacts with the Italian representatives, the actors involved share a very positive feeling about the future cooperation with the Italian colleagues. For a successful integration of Equens Italia into existing and well established structures of constructive dialogue (*'konstruktive Streit- und Dialogkultur'*), the new country was voluntarily involved at this early stage.

The experiences of the work in the representation body

The SE agreement defines extensive information and consultation rights for the SE works council. Among others, the following aspects are most important.

Tasks of the board of directors:

- to hold a joint meeting with the SE works council at least three times a year;
- information on the issues discussed is previously provided to the SE works council;
- to provide the SE works council with the agendas of the board of directors and supervisory board meetings as well as copies of all documents distributed at the general meetings of shareholders.

Information and consultation relate to:

- the structure of Equens SE;
- Equens' economic and financial situation (likely development of the business, production and sales, capital expenditure);
- the situation and trend of employment;
- investments and substantial changes concerning organisation, introduction of new working methods or production processes;
- mergers, transfer of production, cut-backs or closures of undertakings;
- collective redundancies.

A significant right of the SE works council is its distinctive involvement and consultation when exceptional circumstances arise. It has the right to be informed at the earliest possible stage when the board of directors is still considering alternatives to a possible decision. If the board does not act according to the opinion expressed by the works council on the particular matter, the works council has the right to call for further meetings (additional to the three regular meeting per year) to discuss the decision.

Board level representation

As indicated above there is no board level representation for employee representatives at Equens SE. Negotiation between the SNB and the management led to the introduction of broad information and consultation rights for the SE works council instead of the nomination right for a seat in the supervisory board.

According to the Dutch law on codetermination, works councils are entitled to nominate up to one third of the members of supervisory boards in larger companies. Larger companies are generally defined as companies with more than 100 employees and an issued capital of more than €16 million. Different than in the German system of codetermination, for example, the works council may only nominate members to the supervisory board, who are then appointed by the general meeting of shareholders. In practice, the works council nominations are binding.⁷

In the case of Equens, this would have meant significant changes in the governance of the new transnational company and employee participation as a result of the merger between the Dutch Interpay and the German TAI. The resulting adaptation of the SE statute stipulated negotiations for employee involvement between the SNB and the management, who then agreed on no board level representation in the supervisory board of Equens SE.

Overall evaluation

The case of Equens SE is an example of the successful transformation of a company into a European company. Another important feature of Equens is its positive evaluation of the negotiated SE agreement on employee involvement. For both stakeholders – Equens management and employee representatives – the company's decision to adapt the SE statute was mutually considered as the best solution available.

Several preconditions located in the company's background may have been advantageous for its successful transformation and its positive perception. First, Equens SE is operating in a truly Europeanised business segment (payments processing) which also has proven to be rather robust in the recent economic turmoil. Hence, the SE has so far not experienced any cases of exceptional circumstances. Secondly, the majority of employees agreed and supported the European vision of the management, resulting in the transformation into an SE. A third aspect is the involvement of only two European countries within the SE so far. Negotiations internally among the employee representatives and externally with the management are facilitated if two countries are present and only two traditions of industrial relations influence the actors' positions. Last, but not least, a constructive and open dialogue and a relationship based on mutual trust and mutual respect for each other's needs are determining factors for a successful cooperation between management and employee representatives.⁸

In regard to a general discussion on the advantages and challenges of the European company statute, a management representative stated the SE is no universal remedy, but it is an option worth considering for transnational operating companies wishing to harmonise complex corporate governance structures. He elaborated that the complexity of legal and fiscal aspects should not be underestimated, but is certainly manageable.

⁷ L. Fulton: Worker representation in Europe. Labour Research Department and ETUI, 2009 in: <http://www.worker-participation.eu>.

⁸ These aspects are outlined in the SE agreement as factors establishing a constructive dialogue at European level.

Source and interview partners

Beside general information on the company, the SE agreement 'Involvement of Employees within Equens SE' and the two amendments to the agreement from 2008 and 2009, on which this case study report is based, are the result of a joint interview with a representative of a member of the board of directors, the chairman of the SE works council from the Netherlands and two SE works council members from Germany. The interview was carried out in May 2010.