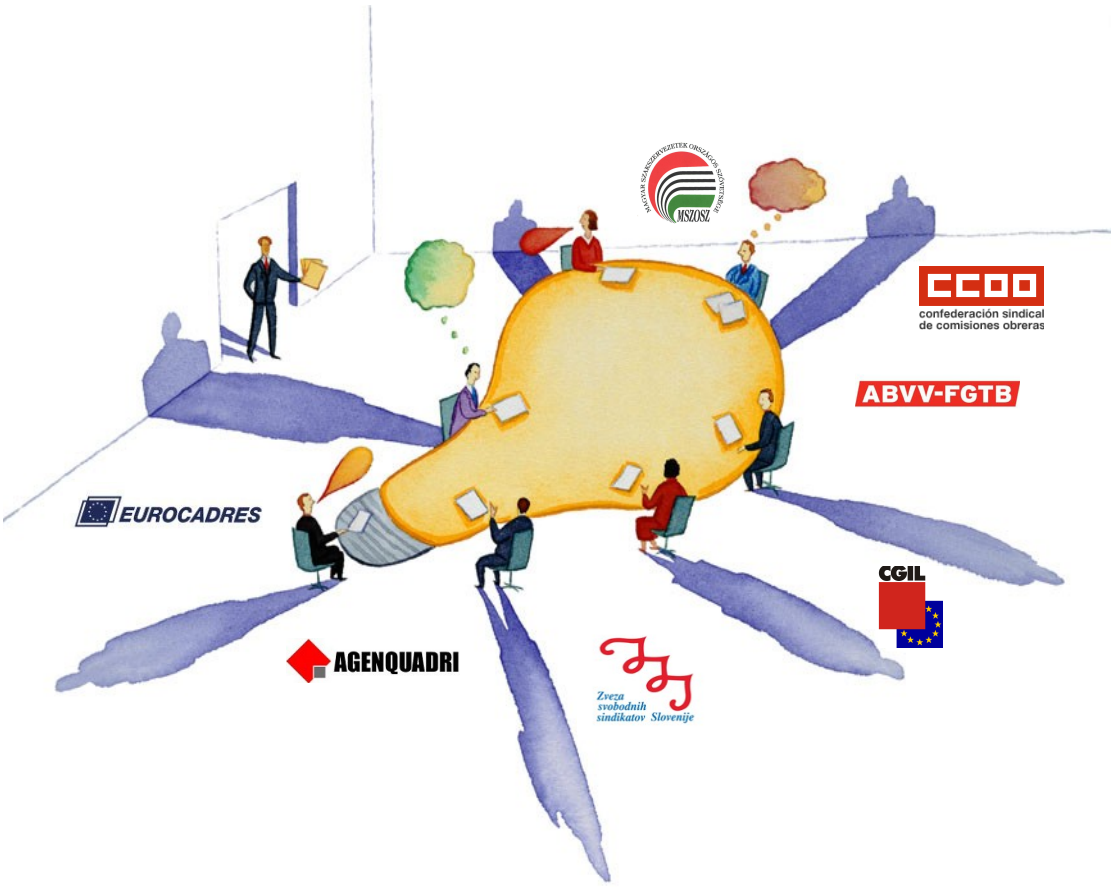

EM.PA.

Employees' participation as a lever to employability: dimensions, approaches, impact and perspectives

European Commission

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Summary

Presentation

The European Union attaches an important role to the dialogue between social partners and collective bargaining, already since the provisions of the Maastricht Treaty.

Community legislation assigns a very strong role to the agreements between the social partners, which can also replace the regulatory intervention of the Commission. In particular, the Treaty on the Functioning of the European Union affirms the importance of supporting and strengthening not only the information and consultation of workers, the theme on which the legislation and practices are more advanced, but also the representation and collective defense of the interests of workers and enterprises, including through co-determination.

The European Union traces thus a clear direction, but assigning a key role to the agreements between the social partners, leaving to the representatives of workers and enterprises a greater autonomy and responsibility. It is an approach that appeals to the countries that have historically considered as central the instrument of collective bargaining, such as Italy. It is less appreciated by other countries, perhaps more used to the direct relationship with politics and institutions. In any case, this approach given by the European Union is the base from which our reasonings leave. But this also means that the collective defense of the interests of workers in Europe depends on how strong the unions at the community level are and how much they invest on collective bargaining and participation. We believe that the content and the proposals arising from this project will actually be feasible, only if we strengthen our European trade unions, especially in a moment like this, in which the supranational and community relations are increasingly central and in the context of the economy crisis that continues to affect several EU countries.

Between 2008 and 2013, in the current 28 EU countries, about 6.5 million jobs have been lost. The loss of employment concerns countries all over the continent: the states of the Mediterranean, the Baltic States, the Netherlands and Denmark, Finland, Poland, Bulgaria and others.

Among the companies are becoming more and more common processes of reorganization, restructuring, mergers, outsourcing, decrease in investments with lowering of employment and transfer of production to other countries. In all of this, representing effectively the interests of workers is becoming increasingly important and, at the same time, complex. But what are the tools that workers and their representatives can use? Involvement (including through the European Works Councils) and participation are undoubtedly an important part of these tools.

In particular, participation of workers has definitely spread in the last decade, especially in large companies, even during the crisis. In 2012, 83% of all big European companies had developed employee share ownership plans, although not always implemented. In 27% of cases, employee ownership has a strategic, determining or monitoring role. Some interesting cases of employee financial participation concern specifically Belgium, and some of them have been selected and studied during the project.

It is sure that ownership is only one among the many possible forms of workers participation and many more exist both in literature and in the experiences: information and consultation, co-determination, participation in the management bodies, in co-managing particular aspects such as the organization of work, working time management, health and safety, etc.

Some state regulations are aimed primarily at establishing that workers must take part directly in company decisions, and that, consequently, the company management and middle-

management do not have to answer for their actions only to the entrepreneur but also to all the workers.

In some cases, as in Slovenia, there is a long tradition, that holds together both the financial participation and the participation in the decision process. In short, despite the presence of a common EU legislation, the experiences of different countries are very diversified.

And especially the brakes and obstacles to the implementation of worker participation are still very strong in many states of the European Union. In some cases, to hinder participation are the national laws, in other it is the hostile attitude on the part of the representative organizations of workers and/or companies.

There are also special cases, such as Hungary, where the participation has a long history and has been expressed in various forms, including in connection with the processes of privatization of public enterprises, but it is nowadays undergoing a complicated phase.

In this context, we have thought and supported the project Em.Pa. - Employees' participation as lever to employability: dimensions, approaches, impact and perspectives, with the aim to make progress together, in the respect to the issue of the involvement and participation of workers from a particular perspective, considering not only the Financial side of the issue, but all the possible points of view, especially in relation to the theme of information and consultation.

The project was conceived and promoted by CGIL, the biggest Italian trade union confederation, along with Agenquadri, an affiliate, that is the professional and managerial staff union. The elaboration and implementation of the project took part, as a co-applicant, by five other unions: the Belgian trade union FGTB, the Hungarian trade union MSZOSZ, the Slovenian trade union ZSSS, the Spanish trade union Comisiones Obreras, Eurocadres, European union of professional and managerial staff.

Together, we focused on three specific objectives:

1. the exchange of experiences and models of worker participation, analyzing best practices and wrong ones.

2. Analyse the impact of participation, in all its forms, employability and organizational well-being (even with its implications on productivity).

3. Collect case studies, also linked to European Works Councils and highlighting the positive aspects and weaknesses of this approach.

The project activities have focused on three main issues. Research activities, with the aim to better understand the different forms of participation in the European context and identify several case studies and best practices in the countries involved. The research sought to collect and put in order the European legislation on employee participation and, supported by a grid of analysis, to build national profiles of individual countries involved, to achieve a first comparison.

An activity of study and analysis of best practices, which allowed us also to realize a first seminar of exchange between the different experiences in the individual countries.

The final processing of a document, that aims to contribute to the development of the European social dialogue on the issue of workers' participation, also providing hints and recommendations to the various stakeholders.

With this project we have tried to make a contribution so that, all of us, can go a bit forward on an issue that we consider of strategic importance, not only for the protection of workers' interests, but also to give substance to that model of development based on social dialogue, that makes the European Union a single subject in the entire world.

We think that this European model, which includes and enhances participation, should be pursued with a strong determination, not only by the Community institutions, but also by those who represent workers and enterprises.

We hope to have made a further contribution in this sense, surely we are doing this and will keep doing it on a daily basis with our national trade union organizations and trade unions in Europe, because we are convinced that Europe can overcome the crisis and nationalist tendencies, only if it also strengthens the European representation of workers and the role of social dialogue, collective bargaining, participation.

Paolo Terranova, president of Agenquadri

Employees' participation as a lever to employability: dimensions, approaches, impact and perspectives. Summary report on workers' participation.

Giorgio Verrecchia[1]

Summary: 1. Introduction. 2. Definitions. 3. Actors. 4. The representation of particular categories of employees. 5. Connession between EWC and National trade union. 6. Tools for achieving participation. 7. Effects on Employability.

1. Introduction

Employee participation, ie any procedure that would involve workers and their representatives in the company dynamics, is a main topic of the European Union since its origins. Many are, in fact, Directives and Charts that deal with the matter. Hence the idea of selecting and proposing to the partners of the project the regulations concerning the establishment of the EWC or participation mechanisms, the European Society, the European Cooperative Society, the framework directive on information and consultation. But, also, regulations on procedures involvement of employees or their representatives in cases of collective redundancies, transfer of business, the merger of cross-border and in the protection of health and safety in the workplace.
In the European idea, in fact, the involvement of workers is a fundamental right that emerges from the common constitutional charters, whose synthesis is in the Charter of Fundamental Rights of Nice, now having the same legal value as the Treaty.
So, as you can imagine from the title of this project, the different forms participation of workers at different levels and on different issues is seen as a mechanism that allows them to deal with the change and the dynamics affecting the company and that have an impact on the work (whether the mere organization of the work or the individual workplace).
Then, below I will try, by analyzing the reports sent by the countries participating in the project (Spain, Belgium, Hungary, Slovenia, Sweden and Italy) to trace the common elements and the peculiarities of the implementation of EU regulations and their reflection on "employability" of workers.

2. Definitions.

Although the concepts of information, consultation and participation are present in the European panorama since the first Community rules of the 70 and 80, to have a complete definition of involvement and information and consultation must wait for the Directives on the establishment of the SE / SCE. Consequently, it is not surprising that in the legislative panorama of the States examined the first definitions of information and consultation are due to the transposition of EU Directives. From the analysis conducted, it appears that in some cases the assumptions national go beyond the provisions of the Directives which implements.
It is the case of **Italy**. In the Italian legislation, in fact, there is a further definition of "information" referred to in d. lgs. 81/08, so called "*Testo Unico*" on health and safety in the workplace, that in the art. 2 letter. bb) defines information as "all the activities aimed at providing useful knowledge to the identification, reduction and management of risks in the workplace.". This definition is not present in the directives on Health and Safety, and that, in fact, is not reported by the national report of Slovenia, Spain, Sweden, Belgium and Hungary.

1 Expert of the project.

There are also cases in which the transpositions national raise the level of protection established by the Community definitions. This is the case of the **Slovenian** law on employee participation in the European company[2] that, for example, expands the catalog of issues that need to be communicated at the beginning of the process of creating a special negotiating also establishing the possibility that, when there is no collegial body, the addressees of the information are all employees (see. Article 4.2 of the SE Act). Also in **Slovenian** law, in the transposition of the Directive on the European Cooperative Society no provision has been made that the central management is not obliged to transmit information whose nature is such that it would seriously harm the functioning of the SCE[3] (contrary to what is possible in accordance with art. 10 of SCE Directive). In Slovenian law, therefore, there is no information that can be segretate by the central management. So in this sense the Slovenian legislation expands the scope of the information knowable.

3. Actors.

Very interesting are the answers on the subject of "actors" of the participation. In all cases, the employees' representatives (provided for the National law)[4] are supported by the National union[5]. The main aim of the mission, whether they come from trade union or not, is to defend the interests of workers. What changes is:
- The threshold of enterprizes.
- The source (legal or contractual) which requires the establishment of a workers' representative.
- Relations with the union.

For example, in **Belgium** companies with more than 100 workers have the Worker's council, and companies with more than 50 workers have the Committee of Prevention and Protection of Work [6]. The representatives a member of a trade union and are appointed by the social elections (every 4 years).The trade unions have exclusively, in fact, the right to nominate candidates for the election of the indication of the trade Union delegation. The union delegation is a different body, that is in charge of the CLA negotiations. Its members are directly appointed by the trade union, it is sometimes elected at the time of the social elections but this is not mandatory by law. This mechanism is regulated by "collective agreement no. 5", that does not obligate the employer to establish a delegation, because only a sectoral agreement can establish an obligation in this sense. At International level we see the presence of CAE that, in Belgium, are the monopoly of representation of the 3 inter-professional National Trade Unions (FGTB-CSC-ACLVB) and are elected by the workers representatives of

2 Participation of Workers in Management of the European public limited-liability Company Act (SE), in Off. Gaz. no. 28/06 (Zakon o sodelovanju delavcev pri upravljanju evropske delniške družbe (SE) (ZSDUEDD)).

3 Workers Participation in Management of European Cooperative Society Act, Off. Gaz. No. 79/06, Zakon o sodelovanju delavcev pri upravljanju evropske zadruge (ZSDUEZ).

4 In Slovenia there are the "works council or workers' representative" that are elected representatives, and "employees' representatives on company boards" that are elected representatives too; in Belgium Employees representatives from national law and Employees representatives from international law e la Specialized representation (NCK).

5 In Belgium there are 3 national representative trade unions in Belgium. They don't ' have legal personality (Wet 21 mei 1921 op de vrijdheid van verenigingen and Wet van 5 december 1968 op de CAO's en PC's). In Italy and in Slovenia trade unions are constitutionally recognized, respectively by art. 39 Italian Constitution and art. 76 of the Slovenian constitution.

6 Each worker (Belgian or non-Belgian; member of a trade union or not) who works at least three months in the company may vote and elect the members of the worker's council and committee for health and safety.

the worker's council or at absence thereof by the personnel but they should always be member of a representative trade union.

In **Slovenia**, the employee representatives shall enjoy the rights of information, consultation, participation and co-determination. The right of workers to participate in management shall not encroach upon the rights and duties of trade unions and employers to protect the interests of their membership. The works' council must refrain from any trade unions' industrial actions (Art. 7 of the WPM Act). The company that has less than 20 employees elect the works council, while the one with more than 20 employees elect the workers' representative [7]. Finally, there are the "employees' representatives on company boards" that are appointed or proposed by the works council, depending on the nature of the company board (one or two tier system, supervisory or administrative role). At International level we have: - special negotiating body, - European Works Council, - work councils of SE, SCE with rights of negotiation, information, consultation, participation and involvement. Even in **Slovenia** the connection with the union is evident, given that the latter has the right to nominate candidates for the works council. Furthermore, trade union with members employed with a certain employer may appoint or elect trade union representatives, who are entitled to carry out trade union activities or/and competencies under the Employment Relationship Act (Art. 205 of the Employment Relationship Act). Finally, there is the representation specializing in health and safety - health and safety representative - with rights of information, consultation and co-determination.

In **Spain**, with regard to the regulation of Savings Banks, the legislation provides that workers choose a representative in the General Assembly, the Board of Directors and the Supervisory Board.

In **Italy**, employee representation is from Union in companies employing more than 15 workers in the same production unit or in the same Municipality or more than 60 workers in the entire country. This representation may take the form of RSAs provided for in Article 19 of Law 300/70 (the Workers' Statute) or RSU provided for in the Interconfederal Act of December 1993. At workplace level there is also the Representative of the workers for health and safety (even this is from Union). In companies below the numerical threshold described there is no obligation to create RSA or RSU elect, but there is an obligation to indicate a Representative of the workers for health and safety. The latter can also be non-union and can not be an employee of that company (in this case it is called "Territorial Representative of the workers for health and safety").
At the international level, in the **Italian** law there are the CAE, and representative bodies in the SE and SCE.
In **Swedish**, trade unions are the main representatives, apart from Health and Safety representatives who are on the other hand subject to approval by the Trade union (which is party to collective agreement)[8]. In fact, worker representatives are elected by workers and agreed upon by the trade unions (with whom the Employer has a collective agreement)[9].
In **Hungary**, workplace representation in Hungary is provided by both local trade unions and elected works councils with the balance between the two varying over time. Under the new labour code, unions have negotiating rights but have lost their monitoring powers and their right to be consulted[10]. Works councils have information and consultation rights but in practice often find it difficult to influence company decisions. Works councils (which cannot

7 Works council/workers' representative represents all workers in a company, elected by a secret ballot by all workers (employed at least 6 months in the company), except leading staff and their family members.

8 Also as employees' representatives as Board Members.

9 Most H&S aspects were already in place before SWE entered into the EU/EC in 1995.

organise strikes and have a very limited ability to influence employers – see section on workplace representation), can now negotiate agreements with the employer, where there is no union at the workplace and it is not covered by a collective agreement. The one important exception is that these agreements cannot cover pay.
A survey published by a Hungarian researcher Béla Benyó in 2003 found that representation through works councils went hand in hand with a union presence. Only 9% of works councils were at workplaces without a union and 70% of works councils were either entirely made up of trade unionists or overwhelmingly made up of them.
Works councils, which are entirely employee bodies, should be set up in any company or any part of a company operating independently with more than 50 employees. In companies or workplaces with between 15 and 50 employees a works representative should be elected. In practice, only one third of workplaces with more than 50 employees have works councils, although they are more common at larger workplaces.

4. The representation of particular categories of employees.

National reports show that there are two aspects of relevance in the identification of particular categories entitled to their representatives. The first concerns the individual workers and refers to the grounds of discrimination typed into law (ie women, youth, disabled person), the second is the level of professionalism of the worker distinguishing between workers, employed and "quadri". Below, I will try to describe a brief outline of each participating country:

4.1. Belgium

Provision on representation of different categories of employees (specify which categories)		
Youthful employee/worker	Act Social Elections 4 December 2007	- Young employees (workers,employees and S.E.) make, under certain conditions, a separate category from participating in the social elections. - If the young employees (employees who, on

10 In the past, the system did not only co-opt union leaders into company management, but union leaders themselves often had managerial careers; a union position was a step in their mobility upwards. The overlap between company management and union leadership paved the way for the practices of "socialist" representation, beyond the transmission belt role, which was maintained but limited to political campaigns until the collapse of the socialist system. Company union organizations represented the interests of their respective companies in bargaining for budgetary resources vis-à-vis central state authorities. Within the company, unions were the playground for the re-distribution of central company resources among the different parts and units of the company. Managers at different levels, being at the same time union officials, doubled their functions and wrapped their claims into union demands, thus facilitating the emergence of embryo-bargaining.

		the election day, are under 25 years of age) are with more than 25 units (regardless of whether they belong to the category of workers, employees or Senior Executives), one or more mandates should automatically be reserved. The total number of employees in the technical business unit is not relevant in the determination of the youth mandates. - Candidates for the young employees must be at least 16 years old and have not yet reached 25 years of age on the date of the elections. - The persons representing the young employees sit in the same organs (Works Council and Committee) as their colleagues workers, employees and senior workers and have the same powers as their colleagues
Workers		- Definition: The employment contract of workers is the agreement in which a worker undertakes against wage under the authority of the employer mainly manual work (article 2 law employment contracts 3 July 1978) - Represented in the Workers Council (100 employees) and in the Committee of Prevention and Protection of Work (50 employees)
Employees		- Definition: The employment contract for employees is the agreement in which an employee undertakes against wage under the authority of the employer mainly headwork (employment contracts law 3 article 3 July 1978) - Represented in the Workers Council (100 employees) and in the Committee of Prevention and Protection of Work (50 employees)
Senior Executives	Organization business law	- Definition: Senior Executives are employees who fulfill a confidential and leading function in the company. (Royal Decree of 10 February 1965). In the framework of the social elections, executives are defined as employees, to the exclusion of leading staff, who executes a higher function, which generally is reserved to the holder of a diploma of a certain level or to those who has an equivalent professional experience (Article 14 organization business law)

		Only represented in the Workers Council, not in the Committee of Prevention and Protection of Work - Represented by the three interprofessional unions and also by the National Confederation of Executives (since 1986) - The candidates who represented the executives will be differently presented by their unions if the company counts a minimum of 15 executives

4.2. **Slovenia**.

Provision on representation of different categories of employees **(specify which categories)**	**YES/NO**	**If yes specify the legal source**
WORKS COUNCILS: women, workers with disabilities, young workers, etc.	YES	**Worker Participation in Management Act:** According to Art 28, the works council may in its rules of procedure determine *that candidates for the works council shall be nominated and elected separately by particular groups of employees (e.g. women, disabled workers, young workers etc.),* by individual organisational units or segments of the working process, and by parts of the company located outside the Headquarters. According to Art 58, the works council may decide to set up *works council's committees dealing with issues which are relevant for particular groups of employees (women, disabled workers, young workers etc.)*
EUROPEAN WORKS COUNCIL: balanced representation of employees with regard to their gender, category	YES	**European Works Councils Act:** An agreement establishing the European works council has to regulate – among others – the composition of the EWC, the number of members, the term of office and the *allocation of seats, so as to ensure, where possible, a balanced representation of employees with regard to their activities, category and gender. (Art 16)*
SPECIAL NEGOTIATING BODY IN THE ECS: gender-	YES	**Workers Participation in Management**

balanced representation		**of European Cooperative Society Act:** Those who nominate the candidates for the members of a special negotiating body of the ECS (works council, trade-unions etc.) have to strive for the balanced representation of each gender. (Art. 8) (Note: There is no similar provision in the Participation of Workers in Management of the European public limited-liability Company Act (SE))

4.3. **Italy**.

In Italy there is a not provision on the obligation or faculty to participate to elect/appoint the representation of particular categories of workers (eg youth, women, disabled) or special skills of workers (with respect to the levels of classification) during of the appointment of RSA or election of the RSU.

Only with regard to the establishment of the EWC, the d. lgs. 113/2012 provides that the agreement on the establishing of the EWC must be determine the composition of the EWC, the number of members, the distribution of seats. In the distribution of seats must be taken into account, as far as possible, the need for balanced representation of employees with regard to activities, categories of workers, and gender.

4.4. **Sweden**.

In Sweden, as in Italy, there are no legal provisions on the representation of special categories of workers in the mechanisms of participation.

In Sweden the representation of employees is separated (in the sense that it is due to different unions) only with regard to adherence to qualification white collar / blue collar.

5. Connection between EWC and National trade union.

From studies on the subject emerges the importance of ongoing dialogue between members of the EWC and the national union. A dialogue that, according to the experiences of EWC members that I had the opportunity to interview, should be institutionalized. In other words, there is a need that the link between CAE and national union is required by law and/or the collective agreement and not just the result of good practices.

While the company is obliged to inform and consult the EWC only when matters transnational nature, it is also true that this link allows members representatives in the EWC of the countries concerned to have direct news of the issues that will be treated. In this way the news is not entrusted only to the employer.

Not only. This would also immediately detect attempts to circumvent legal obligations by the company. The employer, in fact, could decide to differ in time transactions with repercussions on employment contracts and/or employment aimed to avoid dealing with the CAE preferring deal individually with the national unions from time to time involved (in other words, restructuring carried out in series and not in parallel). The scenario just described is not, unfortunately, pure science fiction since the CAE - dealing with the issue from a unique point of view (supranational) - would have more force in pushing the company to reduce or modify the planned interventions. Force that individual unions nationwide does not have, being able to act only on the effects of the choices employers on the contracts and employment of workers in the country of jurisdiction.

Consider the Unicredit case in which the Strategy adopted by the bank in the world has led to a series of layoffs in most member countries. However, the issue never came on the table of the EWC, having been programmed at different times in different countries, so that the social impact of this strategy have been addressed at the national level by individual unions concerned. But there was a single design upstream of the individual transactions well expressed in the Strategy.
Hence, the curiosity to go and see if in the countries participating in this project would present a rule - source legal or contractual - providing for a constant dialogue between EWC and national unions.
We can say that all national implementation of the EWC Directive provide a sort of link between EWC members and representatives of workers at the national level (such as **Hungary, Spain, Italy, Slovenia**). However, **Hungary** reflects the low unionisation of workers: the presence of the union is, in fact, in a sharp decline[11]. This is riflected on the CAE, therefore, does not have a connection with the union.
However, despite the prediction legal, there are cases in wich the agreements on the constitution of the EWC not provide for the above connection. This is the case of **Slovenia**[12], where not all the agreements on the establishment of the EWC have this content[13].
In **Italy** there is a strong connection between the union and members of the EWC [14], that, however, sometimes not is clear from agreements establishing the EWC.
In case of **Belgium**, the situation is different since, leaning toward a laic composition of the EWC, it is not clear, although it certainly exists, the connection with the union.
In **Sweden**, the relationship between the union and EWC is very narrow, so that the latter is affected by the greater or lesser presence of the first. In fact, since the worker representation is not organized in Work Councils in Sweden, the influence of European Work Council Directive is minor. Some companies have introduced the scheme, so far IKEA, Sandvik, Proffie, Atlas Copco, SKF and some more.

6. Tools for achieving participation.

In **Italy** participation mechanisms are "weak". In other words the workers' representatives contribute to influence the decisions of the entrepreneur / employer through mechanisms of information and consultation. The employer may consider the proposals of the employees' representatives but the final decision is still his. For their part, the workers' representatives

11 There is, in fact, a fall in overall union density from 19.7% in 2001 to 16.9% in 2004 and 12.0% in 2009.6 (source http://www.worker-participation.eu/National-Industrial-Relation).

12 Cfr. artt. 16 e 34 of the European Works Councils Act. According to Art 16 of the European Works Councils Act, the EWC Establishment Agreement has to regulate, among others, also the arrangements for "linking information and consultation of the European Works Council and national employee representation bodies". In addition to this, the members of the EWC have to inform employees' representatives (the works council and the representative trade unions) or, where there are no such representatives, all employees in undertakings or establishments in the Member States of the information and consultation procedure (see Art 34 of EWC Act).

13 In the Gorenje Group EWC Establishment Agreement (Velenje, Slovenia), in fact there is no explicit provision in the agreement which would regulate the connections between the EWC level and national level employees' representations. On the contrary, the Novartis Euroforum (NEF) Agreement has many provisions dealing with the relationship between transnational (EWC) level and national level employees' representations. See also Adecco EWC (AEWC) has quite many provisions dealing with the connections and relationship between the transnational (EWC) and national/local level employees' representation.

14 Cfr. art. 9 c. 3 e art. 13 d. lgs. 113/2012.

may ask workers support for the decisions taken with the employer using the institutes of the referendum and Assembly union[15].

In **Belgium** it happens that a draft social plan / agreement is presented by means of a referendum for approval to the workers first. It is also often pre-determined percentage of workers must agree before such a plan is accepted. If this threshold is not met, the social partners go back to the table to negotiate further. Under Belgian law, although there is no general obligation to assist with a "social plan" (= a set of accompanying measures), except in case of early retirement (Act Generation Pact 2006) restructuring layoffs. However, the majority of companies that face with such a social restructuring plan provides such a plan because personnel managers see it as a way to proceed and as it is provided by law that a employer that has the intention to proceed to a collectif dismissal has to consult on the way to reduce the impact on employment

In **Slovenia** the mechanism of the referendum to approve the decisions taken between employee representatives and the employer is not provided. It is expected that the mechanism of the assembly of workers is a collective right but is intended only to warn workers and make them participate in the discussion (but without being able to decide), of matters within the competence of the worker's council or its committees.

In **Slovenia** is furthermore provided the "supervisory board" by articles 78 – 84 of WPM-Act regulates employee participation on company boards:

- in two tier system through employees' representatives in supervisory board and also through a worker director in company management
- in one tier system through employees' representatives in administrative board and in commissions and through representatives among executive director
- the number of employees' representative in supervisory board is laid down in Statute of the company, but not less than 1/3 and not more than 1/5 of all members
- elected and recalled by the works council.

Also planned forms of worker participation in the Management Board through a worker director in companies employing more than 500 employees[16].

In **Hungary**, the representation of employees may appoint a third of the members of the supervisory board in companies with more than 200 workers. New legislation adopted in 2006 allows up companies with one-tier system of management, but in this case the powers of workers are weaker.

In companies with a two tier board system – both a supervisory and a management board – the works council has the right to nominate one third of the members of the supervisory board in companies with more than 200 employees. The one exception, introduced through new legislation, passed in 2006, is where there is an agreement between the works council and management to the contrary. Before making the nomination the works council must pay attention to the views of the unions in the company. The supervisory board is responsible for the general direction of the company, while the day-to-day business is in the hands of the management board. (In practice most supervisory boards only meet rarely.) However, the 2006

15 Ruled by art. 20 (right to assembly) and art. 21 (referendum) of the Statute of Workers (L. 300/70).

16 The WPM-Act (Art. 73 – 84) establishes that in one tier system at least one member of the administrative board shall be an employees' representative, the number is laid down in the Statute, but not less than one employees' representative out of each three members of administrative board; elected and recalled by the works council. A worker director is in company with two tier system of management with more than 500 employees shall have a worker director; in a company with one tier system with more than 500 employees shall have one of representative of workers in the administrative board nominated for executive director; nominated by the supervisory board / administrative board, on works council proposal. A works council of capital-related companies is in capital-related companies shall establish a works council of capital-related companies; comprise representatives of all the capital-related companies; members are appointed by the workers' councils of the individual companies; competent to deal with issues of concern to employees in all the capital-related companies (competencies detailed in a mutual agreement).

legislation leaves the procedures of both the supervisory and management board to companies themselves to regulate. Previously there was more detailed legislative regulation.
In companies with a single tier board system – just a board of directors – employee participation at board level must be regulated by an agreement between the works council and the company. This is a new development – before the 2006 legislation only two tier board structures were possible – and it represents a potential weakening of employee representation at board level, as there are no minimum requirements[17].

In **Sweden**, the involvement of workers' representatives is very encouraged. Infact, law provides an obligation for the employer to inform and to negotiate with the trade union(s) prior to making any decisions that could affect the workers (primary) who are member of the trade union, or if asked to by the trade union (secondary). Another example is provided by the regulation of the phenomenon of layoffs: the dismissal of even one worker must in fact be treated in the same way of collective redundancies as regards the recognition of the rights of information and consultation / negotiation. Missing, however, the guarantee of the tools that support the involvement of employees (Melius, dialogue between workers and their representatives). In Sweden, in fact, the assembly and the referendum are not recognized rights. However, there is a lot of faith in bargaining and negotiation at the local, regional and national level. In other words, in the union representatives of workers.

7. Effects on employability.

The rights of involvement are instruments to improve the anticipation of some risks related to employment.
In **Belgium** is evident that the rights of information and consultation are used to increase the level of employability of workers. In particular:
• training: every company must 1 day training foreseen each year and for each worker
• Risk groups: Effort for the benefit of persons who belong to risk groups and active guidance and follow-up of unemployed. Employers must pay 0,10% of the total wage of the personnel to a fund.
• CLA 104: Every company with more than 20 employees has to draw up an employment plan to retain or increase the number of employees aged 45 or more.
The rights to information and consultation are also very important in the process of restructuring. In **Belgium** every company must foresee 1 day formation each year for each worker. It is thus important that also on company level through the social dialogue a training program is set up taking into account the worker's needs.
The problem reported by Belgian colleagues seems to repeat itself. The confidentiality clause, in fact, is often affixed by the employer to information. There is, in fact, reported that "A lot of information is classified as confidential, what leads to no information flow and a more difficult position to act or set up negotiation plans.".
In **Slovenia** The awareness of the utility of the rights of information and consultation to improve risk anticipation and acceptance of change is found in some EWC agreements (Sava Company e Novartis) where measures are provided to protect workers who are previously informed and made aware of the business dynamics. It is, however, complained about a lack of participation of the decision of the policies of staff training and, more generally, a lack of timeliness in transmitting the information.
In **Italy** the culture of transmission of information aimed to anticipation of risks and to the management of change is not a data available. This, despite the awareness of its importance by the representatives of the workers and the workers themselves. We note, in fact, little confidence with the capabilities of information and consultation processes. For example,

17 For more information see http://www.worker-participation.eu/National-Industrial-Relations/Countries/Hungary/Board-level-Representation

restructuring often end with the expulsion from the production cycle of older workers with no guarantee of their reintegration into productive. In other words, the company follows the easy way instead of following that of retraining of the workers thus allowing active aging as promoted by the European Union.

In **Hungary**, rights to information and consultation are so recognized but is very difficult for workers' representatives to use these rights to influence the decisions of the employer also and especially after the amendments made in 2012 to the Labour Code. Most notable is, in this regard, the elimination of the nullity of the decision of the employer taken without consulting the workers' representatives.

In **Spain** there is a lack of confidence of the employers in the process of information and consultation. "Resistances" of employers led to a poor implementation of the rights in question.

In **Sweden**, although there are no studies on the direct relationship between the promotion of the rights of information and consultation and increase the employability of the worker, the fact is that the involvement of representatives of workers it has effects in change management and anticipation of risks. Infact, if on the one hand the consultation and the search for an agreement with the union makes slower processes of decision-making, on the other hand provide an easier implementation among workers of the decisions taken.

In conclusion, the common data that emerge from the national reports are:

- I&C increase trust and partnership between employees and management;
- I&C ensure opportunities to increase productivity or performance of employees and the undertaking;
- I&C rights promote greater involvement of the employees, increases their innovativeness and their adaptability to changes.

The nature of the post-socialist industrial relations system in Hungary

György Károly and Andras Toth

The system change took place almost overnight. In a relatively short period, between 1989 and 1991 there were formed the key actors and were laid down the essential institutions of the post socialist industrial relations system. A new institutional environment was formed partly through institutional borrowing from the "West" and partly through and reform of state-socialist institutions on a past-dependent way (Stark-Bruszt 1998). Actors of these formative years were acting novel ways and created a novel institutional system hoping that it would assist the successful development of market economy and democratic system after decades of state socialism. New elites emerged across the society. The elite change also represented a generational change. These complex interactions of path-dependency, institutional borrowing and novel way of new start by new actors had characterized the creation of the new post-socialist industrial relations system.

It was clear for all creators of the new system that it shall be compatible with democracy, rule of law and also shall help the creation of a social market economy along the European model. Nonetheless, the new institutions were designed in contested process. Key stakeholder actors acted based on their perceptions of what was needed to change to have a well-functioning market economy and based on their perceived political, organizational and personal interests.

The newly elected government of right wing conservative parties, led by MDF, had the intention to build a new industrial relations system following the example of the model of German social market economy and one which also ensures institutional harmonization with the concept of Social Europe. Employers' organizations wanted as flexible regulation as possible without the straitjacket of the old system. As far as unions concerned, the most important factor was that the transition period ended to a certain extent with inconclusive results. The former state socialist trade unions survived the transition and successfully reformed themselves into democratic unions. Former communist unions were able to maintain their four million strong members. The new pro-democratic and non-communist unions, which were established following the example of Polish Solidarnosc, attracted no more than a few thousands members. One of the consequences of this inconclusive period was the deeply divided union structure fractured along political lines. The new unions, Munkástanácsok and Liga had political ties to the anti-communist pro-democratic parties. The former communist reformed unions, MSZOSZ, Autonómok, SZEF and ÉSZT, on the other hand, were seen by the new political elite as remnants of the past, which may lend organizational and political support to the reformed former communist party, the MSZP. Thus, the new political elite had viewed with suspicion the reformed unions who represented the bulk of the union movement. The government viewed these unions with suspicion also due to the reason of the earlier collaborator role of former communist unions with management at workplace level. The weak new pro-democratic unions were unable to develop a new legitimacy for the union movement. Lack of mass pro-democratic workers' movement meant that the new political elite had not to take into account the demands of legitimate and powerful union movement, which knew what it wants in order to be able effectively represent interest of members and thus ensure strong organizational presence. Thus, one of the main questions was whether unions were representing interest of workers, or being part of the management they rather represented management interest. Influential experts, government officials and judges alike questioned the role of unions at workplace level due to their socialist past (Kollonay-Ladó 1996)

The lack of legitimacy on behalf of unions in the eyes of key government politicians, officials and experts had a major impact how the new system was designed. The consequence was an

unbalanced, top-heavy industrial relations system with weak institutional and regulative underpinnings at sectoral and workplace level.
The new industrial relations system became top-heavy as the key institution of the new system became a standing statutory tripartite body for national level consultation over key issues related to the world of work. The set up of statutory tripartite body was recommended by ILO and was seen as a key institutional anchor for social piece and European harmonization (Héthy 1995, Ladó 1997). Employers' associations and trade unions also supported the creation of the national tripartite body (Bruszt 1993).
The government invited all existing self-proclaimed national level employers' associations, altogether nine, and trade unions, altogether six. All invited organizations irrespectively their organizational strength received one vote. It was required to have unanimous voting on the side of employers' and trade unions'. The national tripartite body set up several tripartite sub-bodies to oversee key policy areas related to the world of work. Over the years, the tripartite body became an important venue for grand bargain over key issues related to world of work, which in most cases of contested issues were able to hammer out a compromise and give certain legitimacy to government policies.
The creation of standing tripartite bodies ensured legitimacy, lobbying power and bargaining table for the 15 organizations invited and stabilized their organizational existence. The access to political decision makers increased their lobbying power. It also ensured media-coverage and ability to put pressure on government through the media irrespective of traditional industrial power. The government also provided financial support to member organizations of the tripartite body. This financial support became key source of revenue for all employers' associations and trade unions (Tóth 2005). The legitimacy and lobby power of national level employers' associations and trade unions became increasingly depended on the existence and well-functioning of the tripartite body.
The new Labour Code of 1992, on the other hand, had questioned the right of trade unions to exclusively represent employees and represent them without prior legitimization or approval of those, whom the unions claimed to represent. Also, the regulation cut considerably the rights of unions to be informed and consulted (Tóth 1997a). At workplace level, it was created the institution of works councils to complement local unions. Works councils were granted the rights to be consulted and informed about management decisions affecting employees. The institutionalization of works councils along workplace unions created a horizontal dual system. This horizontal dual system resulted in duplication of employee representation at workplace level and allowed maneuvering possibilities to management to play out these two local institutions against each other and question legitimacy of unions. The right to conclude a collective agreement for a union was tied to works council elections' results. A union only could negotiate a collective agreement, if union candidates received at least 50% of the votes cast on the last works council elections. This duplication of local representation proved to be a union busting tool: in some cases, management used works council elections to avert union presence (Tóth 1997a). Union participation in grievance procedure was ended at work place level in case of disagreement between a worker and employer. The worker in question shall sue the employer at labor court, and there was not allowed to have a union or a worker initiated statutory internal grievance procedure before the juridical process. This regulation effectively precluded unions to be able to represent employees in individual grievance issues (Tóth 1998). The regulation made unions dependent on their bargaining power and/or management goodwill and did not provided organizational space for unions to be an intermediary agent between employees and employer (Tóth 2005b).
At sectoral level, the extension procedure for sectoral level collective agreement was made complicated. The high threshold set for extension made practically impossible the extension of collective agreement at sectoral level, save a handful agreements (Tóth 1997b).
Despite the regulation, those workplace unions, which sought compromise with management or had power due to workers' support could have achieved voice, bargaining power and could

have consolidated their position. Unions were also able to ensure especially strong positions at public utility companies where management sought to avoid conflict.
The Hungarian economy, however, in the early nineties went through a dramatic restructuring. Large-scale collapse and reorganization of former state socialist companies and emergence of mass-unemployment had undermined unions' presence, membership and bargaining power. Between 1990 and 1993 union membership shrunk from 4 million to 1.5 million. Since then unions have been constantly loosing membership. Currently, there are could be around half million union members, organized by three major national confederations. Sectoral collective agreements have not any meaningful role in regulating terms and conditions of employment.
Other weakness of the industrial relations system, that employers' associations are voluntarily associations of their member companies. Typically, they only represent a smaller circle of companies in their respective sectors, although typically the most important ones. They are primarily functioning as lobby and business service agents of their members. Their industrial relations activity is to be part of the national and sectoral level social dialogue machinery. They are participating in the consultation processes over planned regulations by government authorities, and occasionally providing non-compulsory recommendations to member companies on certain issues (Tóth 2005).
As a consequence of these processes, there developed a top-heavy national industrial relations system, in which the most important activity of social actors was the participation in the state sponsored social dialogue machinery. The legitimacy and resources provided by the tripartite machinery had ensured for each organization legitimacy, organizational existence and revenue despite low or dwindling membership. The benevolent state sponsored machinery of tripartite social dialogue balanced the impact of slow decomposition of bipartite industrial relations system at workplace level.
Due to organizational weaknesses, the European directives have been playing an important role in ensuring regulation at national level providing consultation and information. The directive also ensured to have social dialogue at key issues at workplace level.

The implementation of the Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community

The national implementation of the directive, from a regulative point of view, had been more or less correct in Hungary. The introduction of the legal obligation for consultation and information provided a new quality in social dialogue among social partners in the Hungarian industrial relations system.
As explained above, the peculiarity of the Hungarian workplace level industrial relations institutional system that there is a horizontal dual channel model. Two different types of institutions may co-exist with somewhat overlapping entitlements to represent the interest of employees: trade unions and works councils.
Trade unions are voluntary organizations of their members whose primary function is the advancement and protection of employees' interests related to their employment relationship. Their primary role is collective bargaining. In order to be able to carry out their bargaining role, they are entitled to be consulted and to be informed on certain issues. Works councils are statutory elected bodies through which employees exercise their participation rights. A works council shall be elected at all employers or at all of the employers' independent operational facilities (divisions) with more than fifty employees. Although, the wording of the Labour Code makes electing of a works council obligatory, it is in fact a right of the employees to initiate works council elections and there is no legal consequence of not having works council at a workplace.
Works councils came into existence in 1992. The 1992 Labour Code provided three types of entitlements to works councils: 1) the right of codetermination in certain welfare issues, 2) the right to be consulted and 3) the right to be informed in a number of issues deemed to be

important for employees. Nonetheless, the regulation of the 1992 Labour Code was contradictory and unclear in some points with respect rights and obligations of the works councils. Furthermore, the Law in several cases obliged the employer to consult with or inform both works' council and trade union. It was further confusing that the list of information to be shared with the trade unions and the works councils were similar, but not identical. For example, the right of codetermination and the right of giving opinion was protected by the very severe sanction of invalidity in case of works councils, while in the case of trade unions there was no such sanction.
Unfortunately, the harmonization of the European Directive did not helped to solve these confusing rules. Instead of it, it introduced additional regulation with respect to consultation with works councils and trade unions. Thus it further complicated the regulation. Practically, the right of giving opinion and the right to information has turned into quite similar information and consultation rights, without being renamed. On the other hand, there are still certain differences between them, for example, the works council right of giving opinion is protected by the sanction of invalidity, while the right to information is not.
Nevertheless, the new rules introduced following the adoption of the Directive enhanced the quality of the Hungarian regulation with respect to information and consultation rights. Formerly, the right to give opinion could simply meant a formal change of letters without any real consultation. The harmonization provided that employer and the workers' representatives are legally bound to consult with each other.
The Directive was transposed by Act VIII of 2005, as of March 20, 2005. The most important novelties of the regulation were as followed. The amendment obliged employers to ask for opinion. The obligation to ask for opinion exists both towards trade unions' and works councils. The Code codifies in which cases the employer shall request the opinion of unions and works council. Works council has more rights to "interfere" compared to unions The employer has to ask for the opinion of the employees' representatives in connection with plans of actions affecting a large group of employees, in particular those related to employer's reorganization, privatization and modernization, or in case of change in the legal status of a strategic business unit into an independent organization.
A problem was that there was no definition what large group of employees shall mean in the 1992 Labour Code. Some collective agreements later defined the definition of "large group of employees". The other problem arises in relation to the exemplificative enumeration of the Code 1992. Namely, it did not determine exactly, which arrangements of the employer lead to be rendered invalid where it does not fulfill its obligation towards the works council. This issue, however, have not resulted problematic in the legal practice. Thus, it could be said that the right of consultation and information almost fully correspond to those defined by Directive. In this regard Hungarian law is compliance with the Directive.

The Implementation of the EWCs Directive in Hungary

The transposition of EWC directive

Hungary transposed the 1994 EWCs Directive by legislation and did not use the option of agreement between trade union and employers' organizations allowed by the Directive. The draft bill, before being submitted to the Parliament, was discussed by the tripartite National Interest Reconciliation Council (OÉT) in December 2002. Representatives of employers and trade unions fully supported the government's proposal and did not propose any changes to it. The transposition act has entered into force on the day of accession into EU, on 1st May 2004.
The transposition act follows the structure of the Directive and repeats its provisions in most cases. This evaluation focuses on those areas where the Directive leaves scope for adaptation to national industrial relations systems, notably:
•the composition and operation of the SNB which negotiates over an EWC agreement with management in multinationals which are based in CEECs (or non-EEA multinationals which

choose one of the CEECs as the location of their "representative agent" for the purposes of the Directive) (Article 5 of the Directive);

- the method by which domestic SNB representatives are selected (whether the multinational concerned is based in the given country or elsewhere) (Article 5);
- the composition and operation of the "statutory" EWC to be set up where no agreement is reached in multinationals which are based in the given country (or non-EU/EEA multinationals which choose the country as the location of their representative agent) (based on the subsidiary requirements in the Directive's annex);
- the method by which Hungarian representatives on statutory EWCs are selected (whether the multinational concerned is based in the given country or elsewhere) (Article 5);
- confidentiality of information (Article 8);
- the protection of employees' representatives (Article 10); and
- the enforcement procedures (Article 11).

The transposition laws appears to bear a resemblance – if in a "slimmed down" form – to the German transposition legislation, and will thus be compared to it at a number of points.

The SNB procedure

Where more than one request for the establishment of an SNB is lodged by employees with central management of a Hungarian -based multinational, the number of employees involved must be counted together and the request is valid if the total at least adds up to the minimum number of employees required by the Act (ie at least 100 in at least two countries covered by the Directive).

The Hungarian legislation provides for an SNB to have between three and 28 members, while the Directive stipulates three to 17 members. There must be at least one employee representative on the SNB from each country covered by the Directive (referred to below as member states) in which the undertaking or group of undertakings has an establishment. With the number of member states rising to 28 in 2004, the increased maximum size of the SNB is thus necessary to accommodate a multinational with operations in all of these countries.

In addition to one SNB representative per country where the multinational operates, the Hungarian law provides that additional representatives should be appointed, as follows:

- one additional representative from each member state where at least 25% of the multinational's total workforce in the member states is employed;
- two additional representatives from each member state where at least 50% of the multinational's total workforce in the member states is employed; and
- three additional representatives from any member state where at least 75% of the multinational's total workforce in the member states is employed.

This formula was proposed by the European Commission's transposition working party which issued recommendations on coordinating the implementation of the Directive in the current member states and was followed by many EU member states.

As far as regulation on alternate members, Hungary appears to differ from some old and new member states in requiring the appointment of substitute "alternate" SNB members. Among old member states, for example, the German legislation merely recommends to have regulation on alternate members.

Another difference to the German approach is that the Hungarian law does not make any stipulations on the gender composition of SNBs, while the German legislation requires that men and women shall be appointed in proportion to their respective numbers in the workforce.

As with the transposition measures in a number of current member states, the Hungarian Act provides that central management and the SNB may agree to include in the SNB employee representatives from establishments or undertakings outside the member states ("third countries") and may specify the number of members from these third countries. The Hungarian legislation, however, seems to be more generous with regard to third-country

representation than old member states as it grants such representatives full member status of the SNB.
In line with the Directive, the Hungarian legislation states that the SNB may be assisted in the negotiations by experts of its choice where this is necessary to enable it to carry out its tasks properly. As far as the issue if bearing the costs of one expert, the Hungarian Act does not make this kind of limitation and stipulates that central management must bear all costs deemed to be necessary and reasonable.

Election/appointment of SNB members

Members of SNBs who represent employees in Hungary – under the Hungarian legislation or the law of another member state – are to be appointed by the works council (Üzemi Tanács, ÜT) of the establishment concerned. Where there is a central works council (Központi Üzemi Tanács, KÜT), the latter shall appoint the Hungarian member(s) of the SNB. If there is more than one central works council, the member(s) of SNB shall be appointed at a joint meeting of these central works councils. The provisions of the Act in this area follow the logic of the German transposition legislation. Nonetheless, in contrast with the German law, the Hungarian legislation does not clarify which central works council has special responsibility for convening such a meeting, where there are several such bodies. Furthermore, there are no rules concerning cases in which there is more than one works council operating but they do not form part of a central works council, or where, in addition to a central works council, there is at least one works council not represented on the central works council.
The structure of workplace-level employee representation in Hungary is much more complicated than in Germany. In Hungary, there is a parallel structure involving both: statutory workplace-level works councils that are entitled to consult with the employer on a wide range of issues; and workplace-level trade union organizations which are entitled to bargain with employers over local terms and conditions of employment and also to consult with the employer on a wide range of issues. In contrast with current member states where similar dual "horizontal" structures exist, such as Spain, the Hungarian EWCs legislation does not recognize any role for trade union representatives in appointing SNB members.
Trade unions are excluded from the appointment process even if a particular establishment does not have a works council. In such cases, the representatives of the establishment's employees must be invited to the meeting of the works council or central works council, or joint meeting of several central works councils, of other establishment(s) held to appoint SNB members. In this respect, these appointees shall be deemed to be members of the works council or central works council of the establishment which is the most similar to the appointee's own establishment.
In establishments without works councils or central works councils, Hungarian SNB members are to be elected. The management of such establishments must inform employees concerning such an election. An elections committee, directly elected by employees, will decide on the rules of the election and for counting votes, and set the date of the election. All employees are entitled to vote, but they may stand for election as an SNB member only if they have the "legal capacity" to act and have been employed by the employer for at least six months. It is the duty of the employer to prepare lists of employees who may vote and stand for election. The election is considered valid if more than half of the employees with a right to vote participate, excluding employees on sick leave, maternal leave or unpaid leave, or performing military service or posted to an another workplace for longer than one week. If an election is invalid, it is to be repeated within 30 days. In this case, the second election is deemed to be valid if more than a third of employees eligible to vote do so. The winner is the candidate who receives the greatest number of votes.

Composition and operation of statutory EWCs

The Directive provides (Article 7) that a statutory EWC, based on the subsidiary requirements set out in an annex, must be set up where: the SNB and central management fail to reach

agreement within three years; management fails to open requested negotiations within six months; or the parties so decide.

The statutory EWC provided for by the Hungarian legislation may have a maximum of 30 members (as stipulated by the Directive), with one employee representative from each member state in which the multinational has an establishment, plus

- two additional representatives from each member state where at least 25% of the multinational's total workforce in the member states is employed;
- four additional representatives from each member state where at least 50% of the multinational's total workforce in the member states is employed; and
- six additional representatives from any member state where at least 75% of the multinational's total workforce in the member states is employed.

These formula for additional seats differs from that recommended by the transposition working party (which proposed the same formula as for the composition of SNBs - see above), but similar variations are found in the legislation of the current member states.

With regard to other aspects of statutory EWCs, the legislation of CEECs adds to the Directive's provisions in a number of areas, including the following:

- the selection of substitute EWC members is compulsory in Hungary;
- men and women must be appointed to the EWC in proportion to their respective numbers in the workforce in Hungary;
- EWC members lose their seats if they become the managing director of an establishment or undertaking in Hungary;
- at the request of the EWC, central management shall review and report annually on whether the number of employees in the individual member states concerned has changed to such an extent that the composition of the EWC should be changed. Where it is found that a new composition is required, the EWC shall call upon the relevant competent bodies to appoint new members to the EWC in Hungary,
- where the EWC has nine or more members it shall establish a committee of three members – a chair and two other members, to be elected – who must be employees from different member states. The committee is in charge of running the day-to-day business of the EWC. An EWC with fewer than nine members shall delegate an "administrator" to assist the chair with day-to-day operations – the chair and the administrator must be employees from different member states in Hungary.
- as provided for in the Directive, the EWC and its committee may use experts of their choice where this is necessary for them to carry out their tasks properly in Hungary. Also in line with the Directive, but unlike the German implementing legislation, it is not specified in the Hungarian regulation that such experts may be trade union representatives in Hungary;
- unlike the Directive, but in the same way as some present member states, the Hungarian specifies a term of office for EWC members – three years unless terminated earlier by recall or for other reasons. This three-year mandate is slightly shorter than, for example, the four-year term used in Germany; and
- the EWC has the right to hold one meeting per year, and may hold additional meetings with the consent of central management in Hungary. The meetings of EWCs shall not be public in Hungary.

Members of statutory EWCs

With regard to the selection of representatives of employees in Hungary on statutory EWCs (wherever the multinational concerned is based), the Act repeats the approach taken to the appointment of Hungarian SNB members (see above). Essentially this means appointment by the works council, central works council or several central works councils jointly, with elections in the absence of such bodies in an establishment. Again, the legislation does not make any reference to any role for trade unions and their representative in the appointment and/or election of Hungarian EWC members.

Unusually, there are detailed rules on the recall of Hungarian statutory EWC members by those who appointed them. The works council which nominated an EWC member has the right to terminate the latter's mandate, if such a move is initiated by at least 30% of the members of the nominating works council and the works council then approves the proposal by majority vote. If such a proposal is defeated, it cannot be put on the agenda again for at least six months. The Act does not make any reference to a role for trade unions and their representatives in the recall process.

The legislation stipulates that Hungarian statutory EWC members are eligible for time off to carry out their tasks. During such time off, they are entitled to receive a so-called "out-of-workplace fee", based on the monthly wage specified in their individual employment contract and topped up by their regular wage supplements.

Confidentiality provisions

In terms of its confidentiality provisions, the Hungarian EWCs legislation broadly follows the Directive and the approach taken by transposition provisions in current member states. Central management is obliged to provide information only where the multinational's business or operating secrets are not jeopardized as a result. According to the Hungarian regulation, EWC members (and substitute members in the Hungarian case) must not divulge to a third person, make public or make use of operational or business secrets that have been provided to them by central management in their capacity as EWC members and have been expressly identified by central management as confidential. This provision continues to apply to former EWC members after their term of office. Confidentiality rules do not apply to EWC members' communications with other members (or substitute members of the EWC in the Hungarian case), employee representatives in local establishments or undertakings, employee representatives on management or supervisory boards, and interpreters or experts called in to provide assistance. Nonetheless, the obligation to preserve confidentiality concerning information shall also apply to members (and substitute members) of the SNB, employee representatives in the framework of a information and consultation procedure (as an alternative to an EWC) as well as experts, interpreters and local employee representatives.

Protection of employee representatives

The Hungarian EWCs legislation states that the provisions of the Labour Code concerning the protection of works council members apply to members and substitute members of EWCs and SNBs employed in the given country. According to the Hungarian Labour Code (Act XXII of 1992), the approval of the works council is needed for the employer to transfer a works councilor to another workplace or terminate their employment. Hungarian EWC members enjoy this protection while in office and for one year afterwards provided that they have been members of EWC for at least six months. The law prohibits any party from preventing, controlling or influencing the establishment or activities of an SNB or EWC or the introduction of an information and consultation procedure. No member or substitute member of an SNB or EWC or employee representative in the framework of an information and consultation procedure may be threatened or promised advantages/disadvantages in an attempt to influence their activities.

Enforcement

Hungary's Act LXXV of 1996 on Labour Inspection was amended by Act XX of 2003 to extend the mandate of Labour Inspectorates to oversee the establishment of EWCs and the observance of the stipulations of the EWCs legislation (Act XXI of 2003) concerning the information and consultation duties of employers. The Labour Inspectorate may call on an employer to observe the legal requirements and may fine an employer for breaching the law. For the first offence, the fine is between HUF 50,000 (approx. EUR 200) and HUF 2 million (approx. EUR 4,000), and for a repeat offence within three years between HUF 50,000 and EUR 6 million (approx. EUR 12,000).

The most controversial aspect of the legislation transposing the EWCs Directive in Hungary is that it does not make any reference to the role or responsibilities of workplace-level trade unions either in the setting up of SNBs and EWCs or in their operation. The Act authorizes works councils (or central work councils) to appoint representatives of Hungarian employees to SNBs and EWCs or, in the absence of works councils, provides for direct elections. These provisions are completely different from the approach taken to transposition by many current EU member states where workplace-level union organizations have an important role in shaping workplace industrial relations.
The EWCs legislation adds further controversy to the highly debated relationship between works councils and workplace-level unions in Hungary.
The institution of works council was introduced in 1992. Statutory works councils were integrated into a national industrial relations system, which was based on decentralized workplace-level bargaining, traditionally carried out by workplace unions. Unsurprisingly, the new institution met with the fierce opposition of trade union confederations during high-level political discussions. In the course of the 1990s, unions developed a difficult relationship with works councils. In the majority of workplaces, unions became dominant over works councils or made them redundant. However, in a number of cases "in-fighting" broke out as both local trade unions and works councils claimed to represent the same employees.
The union-works council relationship changed in the period 1998-2002, when the right-wing government reinforced the legal position of works councils, which was seen by unions as a measure to weaken them. However, after winning the 2002 general election, a new coalition led by the Hungarian Socialist Party had repealed the amendments made by the previous administration and strengthened the legal position of workplace-level unions. In this context, the EWCs transposition legislation reinforces the position of works councils in the Hungarian operations of those "Community-scale" undertakings covered by the Directive and completely leaves unions out of the picture. However, unions approved the draft proposal at a meeting of the national tripartite body, and had not criticized the legislation in the press either.

The destruction of post-socialist industrial system

The 2010 elections were won by FIDESZ. It gained the two-third of the parliamentary seats. The importance of this landslide victory was that it secured for FIDESZ a supermajority with entitlement to even change the Constitution, and consequently any constitutional institution. FIDESZ interpreted this landslide victory as a revolution and claimed it received a mandate to re-organize the country and overcome the heritage of the last twenty years, to recast of the wrong model of the transition.
The plans of the government was first outlined by the Hungarian Work Plan, issued in June 2011. The Work Plan argued that one of the main problems of the labour market was the low level of activity rate, which was one of the lowest in Europe, at 55%. The Work Plan called for flexibilization of the labour regulation in order to increase employment level. The Prime Minister argued that Hungary shall have the most competitive labour regulation regime in Europe. The Plan argued for a new type of security: instead of security of employment at one firm, the ability of finding employment in a rapidly changing environment in a flexible way.
Thus the main aim of the new Labour Code, adopted by the 2012 I. Law, was to create the most competitive labour market within the EU by flexibilizing labour regulation. In order to achieve this flexible regime, the law aimed to bring closer labour regulation to that of civil contract as much as possible. It should be noted, however, that Hungarian labour legislation already was one of the most flexible in Europe. Furthermore, the relatively lax control of regulation even further made flexible in practice the real world of work (Tóth A, 1998). This flexibility was aided by the fact that collective agreements had weak regulatory effect. The decentralized nature of industrial relations and the relative weakness of unions allowed for companies to achieve flexibility (Tóth, A, 1997b).

But the government aimed more than flexibilization of the labour market. It aimed the reshaping of the national industrial relations system. The re-organization of the national industrial system had seven major areas:

1) recasting the national level social dialogue,
2) changes in strike law,
3) flexibilization of regulation of the labour market,
4) recasting of interest representation at public administration, armed forces and in some public services,
5) shift towards face-to-face consultation with selected partners,
6) boosting the standing of trade unions close to FIDESZ,
7) nudging the disintegration of unions not related to FIDESZ.

1) Recasting the national level social dialogue

The national level tripartite level social dialogue body was dissolved. It was set up a new consultation forum only for social actors in the competitive sphere of economy, which includes industry and business services. Accordingly, it was invited to this new forum only three employers' associations and three trade union confederations, Liga, Munkástanácsok, and MSZOSZ, while the other confederations of the former tripartite body was not invited to the new forum. The new forum is not anymore a regularly meeting body, which discusses all major issues related to the world of work, but a body, which is irregularly. It is typically convened when the government wants to discuss an issue with social partners. The reorganization also closed the door for access to national level social dialogue to unions in public utility companies, mostly represented by Autonómok, and public administration and public service unions, mostly represented by SZEF and ÉSZT. Thus, social dialogue only maintained for a select group of employers' associations and unions on a far more limited field, and a substantial part of employees, mostly in pubic sectors were closed out by the government.
Additionally a new tripartite plus body was set up for information and consultation over national level strategic issues. This new body, however, rarely meets and does not offer forum for consultation with view of reaching agreements over strategic issues.

2) Changes in strike law

An amendment of the strike law made practically impossible for unions in public utility companies to call a strike by regulating that in case of lack of agreement over minimum services between unions and employers'. The amendment ruled that labour court should decide over the scope of minimal services in cases where the partners could not reach an agreement over scope of the minimum services. Labour courts, however, refused to award a decision over what shall constitute minimal service at public utility companies. In lack of such an award, unions could not call a strike as Law has denied the right to call a rightful strike for unions in lack of such and agreement or award. This measure has ended, without formally banning strike, the ability of calling a strike for public utility unions and has paralyzing effects on pubic utility union strikes.

3) The New Labour Code

The Parliament legislated a Labor Code, which weakened dramatically the positions of unions at workplace level in two ways. In one hand, the new Code changed the earlier balance of rights between an employee and an employer. The new Code c made labor contract more flexible and granted more legal options to employers to terminate labour contract at will. In times of crisis and unemployment, this change clearly weakened employees' position at the workplace vis-à-vis employers. Secondly, the Labor Code heavily curtailed rights and entitlements of unions at workplace level. These new rules are weakening the financial and organizational stability of most unions. Furthermore, the law prohibits that employers provide

better conditions above the minimum level set by the law for unions at publicly owned workplaces.
The new Law has regulated the information and consultation duties of employers. It regulated in section 233 that:
a) 'information' shall mean transmission of information specified by law as related to industrial relations or employment relationships in order to enable the recipients to acquaint themselves with the subject matter and to examine it, and to formulate an opinion to prepare for consultations;
b) 'consultation' shall mean the establishment of dialogue and exchange of views between the employer and the works council or trade union.
(2) Consultation shall take place with a view to reaching an agreement, in such fashion as consistent with the objective thereof and ensuring:
a) that the parties are properly represented;b) the direct exchange of views and establishment of dialogue;c) substantive discussions.(3) The employer may not carry out the proposed action during the time of consultation, or for up to seven days from the first day of consultation, unless a longer time limit is agreed upon. In the absence of an agreement the employer shall terminate consultation when the said time limit expires.
None the less, according to section 234, the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation covers facts, information, know-how or data that, if disclosed, would harm the employer's legitimate economic interest or its functioning. The representatives acting in the name and on behalf of works councils or trade unions are not authorized to disclose any facts, information, know-how or data which, in the legitimate economic interest of the employer or in the protection of its functioning, has expressly been provided to them in confidence or to be treated as business secrets, in any way or form, and are not authorized to use them in any other way in connection with any activity in which this person is involved for reasons other than the objectives specified in the Act.
The new Labour Code made works councils to be the forum for cooperation between employers and workers, and also to take part in the employers' decisions.
In order to facilitate the work of works councilors, they are entitled to ten per cent of their working time to use for their duties in the works' council.
As far as rights and and responsibilities of works councils concerned:
(1) Works councils shall monitor compliance with the provisions of employment regulations.
(2) To the extent required for their responsibilities, works councils shall be entitled to request information and to initiate negotiations, with the reason indicated, which the employer may not refuse.
(3) The employer shall notify the works council semi-annually regarding:a) the fundamental issues affecting the employer's economic standing;b) changes in wages, liquidity related to the payment of wages, the characteristic features of employment, utilization of working time, and the characteristics of working conditions;
c) the number of teleworkers and temporary agency workers, and the description of the jobs they perform.
The works council shall enjoy codetermination right concerning the use of the company welfare funds.
Employers shall consult the works council prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees. Employer's actions shall, in particular, mean:
a) proposals for the employer's reorganization, transformation, the conversion of a strategic business unit into an independent organization;
b) introducing production and investment programs, new technologies, or upgrading existing ones;

c) processing and protection of personal data of employees;d) implementation of technical means for the surveillance of workers;e) measures for compliance with occupational safety and health requirements, and for the prevention of accidents at work and occupational diseases;f) the introduction and/or amendment of new work organization methods and performance requirements;g) plans relating to training and education;h) appropriation of job assistance related subsidies;i) drawing up proposals for the rehabilitation of workers with health impairment and persons with reduced ability to work;j) laying down working arrangements;k) setting the principles for the remuneration of work;l) measures for the protection of the environment relating to the employer's operations; m) measures implemented with a view to enforcing the principle of equal treatment and for the promotion of equal opportunities;n) coordinating family life and work;o) other measures specified by employment regulations.
In the case of transfer of employment upon the transfer of enterprise the transferring and the receiving employer shall, within fifteen days before the effective date of transfer, inform the works council concerning:
a) the schedule or proposed date of transfer;b) the reasons;c) the legal, economic and social consequences affecting the employees.(2) The transferring and the receiving employer shall – with a view to the conclusion of an agreement – enter into negotiations with the works council concerning other proposed actions affecting employees. These negotiations shall cover the principles of the actions, the ways and means of avoiding detrimental consequences as well as the means for mitigating such consequences. (4) The transferring and the receiving employer shall meet the obligation of information and negotiation if the decision underlying the transfer of employment upon the transfer of enterprise had been adopted by the body or person exercising control over the employer. The employer shall not be excused regarding their failure to satisfy the obligation to supply information and hold talks on the grounds that the controlling organization or person had failed to inform the employer concerning its decision.
Works councils shall remain unbiased in relation to a strike organized against employers, and they may not organize, support or obstruct strikes. The mandate of works council members participating in a strike shall be suspended for the duration of the strike.
One of the most important change is, however, the controversial decision to grant the right to conclude works agreement for works councils. According to section 267, the employer and the works council may conclude a works agreement for the implementation of the provisions of the Labour Code and for promoting their cooperation. The works agreement may contain provisions to govern the rights and obligations of employment contract akin to collective agreements, if the employer is not covered by the collective agreement, or there is no trade union at the employer with entitlement to conclude a collective agreement. This regulative works agreement shall be terminated:a) upon the collective agreement concluded by the employer entering into force; orb) upon the trade union notifying the employer of its entitlement to conclude a collective agreement. Unions claim that this regulation is intending to weaken unions and makes difficult to unions to organize non-unionized workplaces.
The regulation on trade unions has curtailed the rights of unions considerably compared to the 1992 Labour Code. It simplified the duty of employers to give information to unions. The Code regulated that trade unions may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment and trade unions shall be entitled to express their position and opinion to the employer concerning any employer actions (decisions), or the draft of such decision, and to initiate talks in connection with such actions.
Trade unions shall have the right to represent their members before the employers or their interest groups concerning the workers' rights and obligations relating to their financial, social, as well as living and working conditions.
The most painful regulation is, however, for unions is reduce the amount of time off for union activists. This regulation, according to union sources, heavily weakens ability of unions to represent their members.

4) Recasting of interest representation in public administration, armed forces and in some public services

The government re-casted interest representation to made sure that unions in public administration, armed forces and in some public services would not represent an alternative force to government will.

The Parliament has legislated the creation of Hungarian Chamber for Employees of Armed Forces. This Chamber shall be the statutory professional and interest representation body for employees of armed forces with mandatory automatic membership for all categories of employees listed in the law. The Chamber is to be consulted and informed concerning issues related to employment related issues of employees in armed forces. The law also stipulated that the Chamber shall granted the right to the Chamber to create the Ethical Rulebook for employees and shall have the right to award a decision whether a member has infringed the Ethical Rulebook or not. In case of infringement, the Chamber shall initiate a grievance procedure at the employer. The Chamber shall represent employees in the consultative forums at the armed forces dealing with terms and conditions of employees. A similar chamber was created for teachers in public education. Unions in vain called the attention of the government that the regulation of chambers is an infringement of legal rights provided for unions and protested against the creation of Chambers and the cutting of unions' rights. Little comfort for unions, that on the elections for presidencies of Chambers, unions gained some representation, which ensure them some stability and voice.

The government ended the traditional check-off system of membership fee payment at armed forces. This measure led to drop of membership at half and undermined the financial situation of unions. A union leader made clear that the intention of the government is to make independent interest representation of unions non existent. It was ended the practice of provision of free office space, telecommunication means. Additionally, the new Labour Code changed the practice of accounting of leave for union purposes, thus unions not anymore receive financial compensation for non-used statutory leave time. This change, together with membership drop due to unfavorable environment, in practice, resulted in severe drop in revenues that most unions not anymore could afford to have full-time union officers at public sector. Smaller unions are relying on voluntary work and voluntary work of retired former union officials.

5) Shift towards face-to-face consultation with selected partners

There was a shift towards face-to face negotiations with selected partners, especially with employers' organizations and certain unions, most notably with Liga and Munkástanácsok over selected issues instead of using the bodies of social dialogue for consultation with view of reaching agreements with all social partners.

6) Boosting the standing of trade unions close to FIDESZ

This new selective policy was clear during the consultation period of the new Labor Code, in which Liga was the main negotiating partner of the government. Only MSZOSZ was invited among the former communist unions to have some role in the institutional framework. But the real partners for the government are those unions, Liga and Munkástanácsok, which were anti-communist pro-democratic unions in the period of the transition and fought together with FIDESZ against the neoliberal austerity measures of the MSZP-SZDSZ coalition between 2006-2010. The Liga also received, together with an employer association, a major government grant for the purpose to ensure capacity building for social dialogue. According to accusations of the President of the Autonómok, Liga is using this funding to buy support by offering various benefits for unions to join to Liga.

7) Nudging the disintegration of unions not related to FIDESZ.

The new government sidelined public sector unions and effectively ended the social dialogue forums available for them to make their voice heard. The public utility unions lost their bargaining chip, the striking power at public utility companies due to the amendment of the Strike Law. These two measures practically sidelined SZEF and Autonomók, the two national confederations which mostly organizes respectively employees in the public sector and in the public utility sector.

Up to now there were few attempts to effectively counter the re-organization efforts of the government. Protest, demonstration had no real effect on government policies. It is also important to note, that protesting unions were not able to put real pressure on the government by mobilizing huge protest actions. Weak and divided organizational structure, low membership and lack of culture of mobilizing employees have certainly contributed to the weaknesses of these protest actions. Years of reliance on top-level negotiations and informal lobbying undermined unions mobilization power. The most recent news is that the Presidents of the three major former communist unions, MSZOSZ, SZEF and Autonómok has agreed that they would pool resources and make a new amalgamated unitary confederation in the autumn 2013. In early 2015, MSZOSZ and Autonomók amalgamated into one confederation, MASZSZ. They hope that together thet could arrest the decline and disorganization at this block of unions.

Conclusion: from state sponsored industrial relations to a government dominated one

The post-socialist model with the weakening of the base of the social partners, especially that of unions, increasingly became dependent on the goodwill of the state. National and sectoral level social partners, trade unions and employers' associations alike became increasingly dependent on revenue provided by the state through various channels and on the lobby space ensured by the social dialogue machinery at national and sectoral level. None the less, they maintained certain amount of autonomy and had also independent resource, which enabled autonomous policy making and ensured room for real negotiations over certain issues.

The top-heavy national level social dialogue centred post-socialist industrial relations system, on the other hand, contributed to the weakening of bipartite industrial relations system. The participation in national tripartite machinery shifted unions and employers associations alike to concentrate their efforts to make their voice heard in national level issues and achieve measures favorable for them through lobbying and political pressure. This national level lobby activity consumed much of their resources and certainly diverted their attention away from real world organizational and interest representation issues at lower level. This also contributed to the weakening of autonomous bipartite industrial relations at workplace level. The lack of autonomous bargaining, as a part of a circulus vicious, also reinforced the belief in the state and the belief that social actors role is to influence state regulation to ensure the interests of their members. There developed an interest representation in the clouds over national issues, while employee-employer interaction increasingly became a face-to-face bargain without intermediation role in it for interest representation organization.

This state centred and state sponsored model facilitated the attempt of Orbán government to establish a new system, a state dominated system, in which the state re-design institutions, rules and facilitates the consolidation of friendly actors in order to ensure omnipotent government. Unions whose influence and power dependent on the benevolent state were not able to put up any serious challenge against the state. Moreover, political divisions in the unions movement ensured that there were unions, which benefited from the new turn. These unions provided legitimacy for the government measures due to their tacit or open political commitment to the right wing parties. On the other hand, unions disadvantaged by the policy turn could not effectively counter the government due to their organizational weaknesses and also due to the disintegration and legitimacy problems of the left in the wake of disastrous years of 2006-2010.

The six measures above listed amounts to end the post-socialist industrial relations system centred around national level social dialogue with the participation of traditional partners,

which were considered to be national actors. They are signaling a beginning of a new era, the era of state dominated industrial relations. In this era, the state effectively pushes out unions from the armed services and from some public sectors, undermines unions' bargaining power in public utility companies and weakens non-friendly unions.

This is the second attempt of FIDESZ to change the rules of the game in world of the work. Between 1998 and 2002, when first governed the country, it had initiated similar measures – although in less bold and resolute form and without seeking alliances among union confederations. The 2002 electoral defeat turned the tables and the returning MSZP dominated government re-established most of key institutional system and reinforced the positions of the unions.

This time, however, FIDESZ has learned the lesson and introduced a much bolder and resolute reform. This time, unions are more divided than they were between 1998 and 2002. The government only has to count with the open opposition of a few union confederations, while others may tacitly or openly support the creation of the new system. Also, unions are much weaker and their positions have thoroughly undermined in key sectors of the economy.

An electoral defeat of the current government may change the shift towards state dominated industrial relations in 2014, although the prospects for such a change is seems to be unlikely at the moment. But a government change alone is not sufficient. It would be difficult to re-establish the former system centred around national level tripartite system given the disintegration of social partners and especially that of unions over the years of economic crisis and non-supportive political environment. It wouldn't be more than an illusionary corporatism without real foundation.

The key for renewal is to develop a new framework at bipartite level, at workplace and possibly at sectoral level, which more effectively facilitate the creation of autonomous bipartite industrial relations with effective regulation in order to be able to arrest the state dominance over the work of world and at the same time to be ensure that there could be developed through joint regulation a more flexible and competitive and at the same time more fair system for everybody.

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Análisis y valoración de la participación sindical en los Consejos de Administración de las empresas.

La participación sindical en los Órganos de Gestión de las empresas.

Francisco González Moreno[18]

Introducción

La interpretación de la cláusula de "Estado Social y Democrático de Derecho" es el pilar fundamental sobre el que se sostiene la participación de los sindicatos en distintos ámbitos de la vida pública y en particular, su participación en funciones normativas de los poderes públicos.

Igualmente debemos entender que dentro del conjunto de intereses de la ciudadanía tienen una posición central los intereses económicos y sociales, que abarcan gran parte de los aspectos más relevantes de los ciudadanos en general y los trabajadores en particular. Es por ello que **la democratización social representativa descansa sobre una fuerte institucionalización de los sindicatos**. En consecuencia el sindicato ya no puede tener como única función la negociación de las condiciones de trabajo y salarios, ejerciendo en consecuencia un control de la fuerza del trabajo sino que en un Estado Social, donde los poderes públicos intervienen en el plano económico y en el social, aquella caracterización funcional del sindicato debe también superarse.

En el ámbito de la empresa, la participación de los trabajadores ha tenido y sigue teniendo un amplio recorrido. Desde mediados de los años 70 han sido muchas y diversas las iniciativas que han ido surgiendo en los distintos países de la Unión Europea para potenciar la participación de los trabajadores, con la finalidad ultima de que el trabajador pueda influir en las decisiones que adopta la empresa en la que trabaja, modificando de esta forma una cierta redistribución de las relaciones de poder en el seno de la misma. Estas iniciativas tienen su origen en un conjunto de prácticas que buscaban asegurar mayores niveles de democracia en las relaciones laborales, teniendo como referente la importante experiencia de la cogestión alemana en la segunda mitad del Siglo XX.

En lo que respecta a su regulación jurídica la Directiva 2001/86 CE sobre **el "Estatuto de la Sociedad Anónima Europea en lo que respecta a la implicación de los trabajadores"** ha sido transpuesta al marco normativo español a través de la Ley 31/2006, de 18 de octubre, **sobre implicación de los trabajadores en las sociedades anónimas.** La Ley ha sido valorada positivamente por los agentes sociales, no obstante, las organizaciones sindicales y empresariales han mantenido discrepancias respecto a algunos aspectos específicos, que reflejan las distintas concepciones y posiciones sobre los mecanismos de implicación de los trabajadores en la sociedad anónima europea.

Por otra parte la transposición de la Directiva 2002/14 CE "**por la que se establece un marco general relativo a la información y a la consulta de los trabajadores en la Comunidad Europea",** está siendo bastante problemática en la Unión Europea ante los diferentes planteamientos sindicales y empresariales en esta materia, al considerar la parte empresarial que el desarrollo amplio de estos derechos conllevaría problemas de ineficacia en la gestión de la empresas por la pérdida en los poderes de dirección y decisión empresarial, y abriría la puerta a la negociación colectiva a escala europea; mientras que por el lado sindical se entiende que el desarrollo de estos derechos es una forma de democratizar y socializar la

18 Secretaría de Acción Sindical y Políticas Sectoriales, Confederación sindical de comisiones obreras.

dirección de las empresas y mejorar las decisiones que afectan a los trabajadores. Estas divergencias están teniendo como consecuencia una interpretación mínima en los procesos de transposición de la directiva por parte de los estados miembros.
En el caso de España no existe una ley específica sobre los derechos de participación de los trabajadores en la gestión de las empresas privadas y se ha optado por su introducción en la norma laboral vigente, más concretamente en los artículos 64 y 65 del Estatuto de los Trabajadores, en el que dichos derechos abarcan el conocimiento, examen y emisión de informes sobre todas aquellas cuestiones que puedan afectar a los trabajadores, así como a la propia situación de la empresa y la evolución del empleo.

Sistemas de Regulación en Europa

En Europa existen dos sistemas de gobernanza o gobierno de la empresa que se considera Sociedad Europea: **El sistema monista**, con un consejo de administración único para asegurar la gestión de la empresa; y **el sistema dualista**, con un órgano de dirección responsable de la gestión de las actividades y por otra parte un consejo de vigilancia encargado de controlar al propio órgano de dirección.
El modelo Español es monista y eso ha tenido en algunos casos sus ventajas, aunque también sus inconvenientes como reflejaremos más tarde; pero primero hagamos una descripción un poco más amplia de cómo funciona realmente este sistema:
En el marco del sistema monista, el consejo de administración es quien asegura la gestión de la empresa societaria. Sus miembros son nombrados por la junta general de accionistas. El Consejo se reúne por lo menos una vez por trimestre para examinar la marcha de la sociedad y su previsible evolución. El número de miembros del consejo se decide en los estatutos de la sociedad. Si la mitad de los miembros han sido elegidos por los trabajadores, sólo puede ser presidente un miembro designado por la junta general de accionistas.
En lo que respecta al **sistema dual, éste se caracteriza porque tiene dos Consejos: el órgano de dirección** como responsable de la gestión **y el consejo de vigilancia**, que es un órgano social cuya función principal es el control del propio consejo de dirección. El órgano de dirección informa al consejo de vigilancia, como mínimo cada tres meses, de la marcha y desarrollo de la empresa y su previsible evolución. El consejo de vigilancia además, puede solicitar en cualquier momento al organismo directivo la información necesaria para el ejercicio de las tareas de comprobación y control.
Entre los derechos que se le reconocen destacan los siguientes:

- Derecho de información periódica cada tres meses por el órgano de administración sobre los asuntos de su competencia, y a ello se le puede añadir la posibilidad de información extraordinaria para conocer aspectos relativos a las condiciones de trabajo.
- Derecho de consulta, respecto a los temas que afecten a la estructura jurídica y económica de la empresa.

<u>Sistema de elección</u>
Los miembros del consejo de vigilancia son nombrados por la junta general de accionistas, pero los representantes de los trabajadores son elegidos por los órganos de representación de los trabajadores como por ejemplo el comité de empresa y éstos a su vez pueden delegar en las secciones sindicales legalmente constituidas en la empresa, siempre que tengan presencia en el propio comité de empresa.
Con respecto a su composición, esta varía en función del tamaño de la empresa y según la legislación de cada país, siendo sólo necesarios, a modo de ejemplo, 25 trabajadores en Suecia, y entre 500 y 2.000 en Alemania; así como el número de representantes de los trabajadores en los más elevados órganos empresariales, variando entre un representante por cada tres de la parte empresarial en Dinamarca y Austria; y hasta la mitad de los miembros del órgano empresarial en el caso de Alemania.

Los representantes de los trabajadores en el consejo de administración o de vigilancia tienen los mismos derechos y obligaciones que los representantes de los accionistas, **incluido el derecho de voto y de remuneración.**

Análisis de la experiencia sindical en España.

Centrándonos ya en la experiencia de la participación sindical en los órganos de dirección de las empresas de nuestro país, vemos que a pesar de ser un derecho constitucional no ha sido desarrollado por ninguna disposición legal. Teniendo que llevarse a cabo cualquier tipo de cambio en la representación de los trabajadores en la empresa privada **a través de la negociación colectiva.**

Federación de Servicios Financieros y Administrativos

En cuanto a la regulación de las Cajas de Ahorro, la normativa prevé que los trabajadores elijan representación para la defensa de sus intereses en la Asamblea General, Consejo de Administración y la Comisión de Control. El intenso ajuste del sistema financiero y el proceso de progresiva bancarización de las Cajas de Ahorro han dado por finalizada la existencia de las mismas entre las entidades financieras de tamaño grande y mediano, y con ellas se ha puesto en cuestión la participación de los trabajadores en los órganos de gestión.

Deteniéndonos un poco en el papel que han desarrollado los sindicatos en dichos órganos de dirección, es importante resaltar que **su participación ha reforzado la representatividad social** en su toma de decisiones y ha respondido a la necesidad de potenciar sus decisiones en estas entidades relacionadas con su **función social** y con su originaria atención primaria a proyectos de ahorro e inversión pegados al territorio y destinados a aquellos con mayores dificultades para financiarse.

A través de la obra social han acometido proyectos de gran imbricación social destinados a dar respuesta a problemas sociales. Han sido en definitiva **un importante factor de desarrollo y cohesión territorial y social.**

Los representantes de las organizaciones sindicales hemos defendido siempre en los órganos de gobierno de estas entidades la función social y vertebradora del territorio propio de las cajas, frente a una deriva legal y práctica tendente al economicismo y mercantilización más cruda de su actividad.

La política desarrollada desde 2009 hasta la fecha ha buscado de forma más que evidente acabar con las cajas de ahorro como entidades de crédito. Además, los gobiernos autonómicos favorecieron la expansión del crédito inmobiliario y permitieron que los ayuntamientos calificasen unos volúmenes desmesurados de suelo como urbanizable residencial, en detrimento, con frecuencia, de actividades productivas sostenibles y competitivas.

No podemos obviar que han existido malas prácticas en algunas entidades, sometidas a mecanismos de control y supervisión externos y autónomos y que también han fracasado y desgraciadamente han puesto en entredicho su labor; sino que también, y hay que admitirlo, la de los propios miembros de los consejos de administración salpicando a los sindicatos, que **no teníamos responsabilidad en la gestión, aunque sí presencia en los citados consejos**.

Lo que ha propiciado la mala situación financiera de las Cajas de Ahorro no ha sido la particular configuración representativa de sus órganos de dirección, sino unas erróneas políticas que amparaban operaciones de excesivo riesgo durante la etapa de la burbuja inmobiliaria, a la que se abría su operativa a la lógica de su competencia y ampliación de mercado propias de los bancos.

Es imprescindible la autocrítica del papel de todos los colectivos y organizaciones con representación en los órganos de dirección de las cajas y los sindicatos sin duda los primeros,

como de hecho ya hemos hecho. Hemos pedido que se abran todas las investigaciones necesarias, parlamentarias y jurídicas, para depurar todas las responsabilidades de las actuaciones impropias que se hayan producido y que sean los jueces quienes, en su caso con la transparencia que requiere el proceso, atribuyan las mismas.

Federación de Industria

Por lo que se refiere a **la participación sindical en las empresas públicas** de carácter mercantil en el sector industrial, esta tuvo su origen en 1984, año en el que se acordó el establecimiento de medidas para la ampliación de los derechos sindicales en las empresas públicas. Muchas han sido las compañías en las que los representantes de CCOO han venido asumiendo esta responsabilidad y sus experiencias han sido diferentes y muy enriquecedoras **como consecuencia de la negociación colectiva,** como el "Acuerdo sobre participación sindical en la empresa pública" y del que se derivan la presencia de representantes sindicales en los órganos de dirección de algunas sociedades que cuenten con un mínimo de 1.000 trabajadores.

Actualmente, a través de la Federación de Industria de CCOO conservamos presencia en los Consejos de Administración de cuatro empresas: dos empresas de titularidad pública, una de participación pública y otra más de titularidad privada. **Empresas Públicas** como HUNOSA (sector de la minería, ejerciendo las funciones de consejero el secretario general de la Sección Sindical de CCOO en la empresa) y NAVANTIA (sector naval, formando parte del mismo el presidente del Comité de Empresa del centro de trabajo de Cartagena y miembro de la comisión Ejecutiva de la Federación de Industria de CCOO de Murcia); **empresas de participación pública**, como EADS, actualmente AIRBUS (sector aeroespacial, donde es el secretario de la Sección Sindical Interempresas el que ejerce de consejero); y **empresas privadas** como ARCELORMITTAL (sector de la siderurgia, donde ejerce esta responsabilidad el secretario general de la Federación estatal de Industria de CCOO).

La experiencia acumulada en más de 30 años de trabajo sindical en estos órganos ha sido muy positiva. Nuestra presencia e intervención en los debates y reflexiones en torno al presente y al futuro de estas sociedades, participando de forma directa en los procesos de fuertes reestructuraciones acometidos por algunas de ellas (Naval y Siderurgia), han resultado muy provechosas para los intereses de los trabajadores, desde donde se han establecido las respuestas sindicales y actuaciones acordes a las exigencias coyunturales. De tal forma, que los órganos de dirección federales siguen apostando por la permanencia y continuidad de nuestros representantes en el desempeño de estas tareas, e incluso están propiciando el traslado de estas experiencias al ámbito de los sectores privados de la industria.

A pesar de todo, también consideran que es preciso reconocer que la capacidad de los sindicatos en estos foros no pasa de la simple participación presencial, teniendo en cuenta las dificultades para incidir y modificar las posiciones empresariales desde los mismos.

Igualmente, es necesario recordar que la legislación no acompaña al desarrollo de estos instrumentos de participación, lo que requeriría considerar la necesidad de poder incidir en cambios sustanciales en la misma para otorgar un papel más relevante a la representación sindical en estos órganos de participación, pudiendo llegar a los niveles aplicados en países como Francia y Alemania (Consejos de Vigilancia), lo que no depende de nosotros y, dada la actitud actual de la patronal y del gobierno, puede considerarse un objetivo difícilmente alcanzable en el medio-largo plazo.

De igual modo, y en tanto puedan cambiar las cosas en este marco, consideran que una cuestión a mejorar en el futuro podría pasar por la indispensable coordinación de los servicios técnicos con los representantes sindicales en los consejos para solventar las dificultades técnicas de comprensión que algunos de nuestros representantes manifiestan en estos órganos de representación; además de una preparación técnica para nuestros cuadros sindicales. **En este orden de cosas, creen que se debería recuperar la implicación de la dirección**

confederal y federal con el trabajo de estos representantes en los Consejos de Administración.

Para la Federación de Industria de CCOO sigue siendo un objetivo la consecución de la participación de los trabajadores en el máximo nivel de dirección de las empresas, situación que han venido reivindicando en las plataformas de negociación colectiva hasta hace no muchos años, porque entienden que es donde se dirimen las posiciones estratégicas de las empresas y desde donde se determina el futuro de las personas que las integran.

Argumentan que la situación derivada de los escándalos surgidos en el sistema financiero, no nos puede llevar al reduccionismo absoluto, valorando la importancia de la aportación de nuestra participación en estos órganos, lo que nos facilita un marco de anticipación a los cambios importante con respecto a las respuestas que tenemos que dar desde la actuación sindical.

Federación de Servicios a la Ciudadanía

Por lo que respecta a las empresas públicas en las que la Federación de Servicios a la Ciudadanía tiene presencia en los consejos de administración existen diferentes experiencias, como por ejemplo la del **sector ferroviario.**

La remodelación de la Comunidad de Madrid en enero de 2012, acordó el cese de los sindicatos en el Consejo de Administración de Metro Madrid donde CCOO llegó a tener un consejero hasta esa fecha.

Con la Extinción de FEVE a 31 de diciembre de 2012 también se deja de tener un consejero en la extinta Empresa.

Por tanto, en la actualidad, el sector ferroviario de CCOO por delegación de la Federación de Servicios a la Ciudadanía de CCOO tiene presencia en el Consejo de Administración de Adif (Administrador de Infraestructuras Ferroviarias) y en el de RENFE Operadora con un consejero, de un total de 15 en cada Entidad Pública Estatal.

La Federación de Servicios a la Ciudadanía de CCOO considera que los Consejos de Administración son una vía próxima y eficaz para que el Sindicato pueda conocer y controlar la gestión de las empresas, así como para realizar propuestas y opiniones razonadas, acordes con la posición sectorial, federal y confederal sobre los distintos asuntos tratados.

Entienden que estas posiciones deben ser acordes y por tanto avaladas por los documentos congresuales aprobados, que definen la posición política del Sindicato, y por las resoluciones de la Comisión Ejecutiva a lo largo de la gestión sectorial entre Congresos.

Estiman que de las decisiones de los Consejos de Administración y de la posición del Sindicato en dichas decisiones, debería tener información puntual nuestra Organización, para poder actuar en cada momento sobre los hechos conocidos y no sobre intuiciones. Se trataría por tanto de que en un Consejo en el que tenga presencia CCOO, no sea la posición del consejero a titulo casi individual la que se lleve a dicho Consejo, sino que debería ser la posición del Sindicato (entendido por ello al menos del núcleo de Dirección más representativo del mismo), y que al menos dicho Equipo de Dirección además de fijar la posición previa al Consejo y asesorar al consejero, conozca de lo tratado en dichos Consejos y los resultados de los mismos.

En lo que respecta a la participación del sindicato en los consejos de administración de las **Autoridades Portuarias**, hay constituidos Consejos de Administración en las 28 Autoridades Portuarias que conforman los Puertos de Interés General del Sistema Portuario Español. Además de un Consejo Rector en el Organismo Público Puertos del Estado.

En estos Consejos, salvo en el Rector, están representados las organizaciones sindicales y empresariales, además de la Administración Estatal, Autonómica y Local, Abogado del Estado, etc..

En la mayoría de ellos tan solo hay un representante sindical, en representación de las organizaciones sindicales, salvo en Cataluña, Andalucía, Ceuta y Melilla que hay dos representantes (normalmente 1 de CCOO y otro de UGT). De forma habitual éstos son

propuestos para su nombramiento por las Confederaciones de Nacionalidad o en su defecto por la FSC-CCOO de su ámbito.

Los criterios de nombramiento y designación de estos representantes en los citados Consejos, son dispares, y en algunos casos obedecen más a criterios de carácter subjetivo que a criterios sindicales homogéneos que favorezcan la presencia de cuadros sindicales del sector cualificados y conocedores de los temas que se debaten de forma habitual en estos órganos de dirección empresarial, cuestión esta que implica a su vez, y debido a una importante falta de coordinación, que en algunas ocasiones nos encontremos con posiciones contrapuestas entre el representante sindical nombrado y las secciones sindicales más importantes de la Autoridad Portuaria.

En lo que respecta a la participación de CCOO en el **Consejo de Administración de la Fábrica Nacional de Moneda y Timbre** (FNMT)**,** la asistencia al mencionado Consejo se produce desde hace más de 30 años, como consecuencia de la firma del convenio colectivo del año 1982, que recogía que se participaba como asesor en las reuniones del Consejo, en representación del Comité de Empresa de Madrid, organismo que designa de entre sus componentes a la persona que lo representa. Durante unos 20 años, la representación ha recaído en miembros de CCOO, por cuestiones de idoneidad y mejor hacer sindical.

La asistencia al Consejo no está retribuida, ni tiene dieta alguna. La valoración general es positiva en cuanto a la participación, pues cada mes se tiene acceso a la información económica de la empresa, de la situación de la producción y el cumplimiento de los objetivos prefijados; además de los planes de empresa que tienen que ser aprobados.

Las deliberaciones del Consejo se trasladan posteriormente a la plantilla a través de asambleas informativas convocadas al efecto o incluso con un boletín específico (en el que no se incluye información de carácter confidencial y aquella que pueda afectar a terceros). Después de cada sesión del Consejo, la persona que asiste en representación sindical, elabora un informe por escrito que se reparte a todos los sindicatos, porque se entiende que el debate es patrimonio de todos los trabajadores de la empresa.

Se considera que la presencia en el Consejo es un importante instrumento de trabajo y tiene una gran aceptación entre los trabajadores de la empresa, sobre todo cuando se discute el plan de producción anual o las inversiones futuras y fruto del cual se realizan asambleas de varios días con opiniones y sugerencias del conjunto de los trabajadores.

En el caso de la **Corporación RTVE,** la norma establece que de los ocho consejeros designados por el Congreso de los Diputados, dos lo serán a propuesta de los sindicatos más representativos a nivel estatal, pero la representación sindical ha sido excluida en marzo de 2013 al reducirse el número de consejeros.

En función de las distintas experiencias y en el ánimo de homogeneizar la presencia y participación de CCOO en los consejos, desde la Comisión Ejecutiva federal se ha presentado un protocolo de actuación para los consejos de administración, aprobándose las siguientes propuestas:

<u>Creación de un Grupo Asesor de los Consejeros/as de Administración compuesto por:</u>

- Secretario/a de Institucional; Consejero/a de Administración; Secretario/a de Acción Sindical; Secretario/a de Organización; Secretario/a de Estudios; Responsable de Actividad en la Empresa, así como el Secretario General cuando lo estime oportuno.

<u>Funciones del Grupo Asesor:</u>

- Recepción de la documentación fundamental disponible y reunión al menos 24 horas antes de la fecha del Consejo
- Análisis del conjunto de los temas a tratar
- Definición y motivación de la posición del sindicato
- El consejero/a realizará un breve informe de la reunión para el secretario/a general y miembros del grupo.

<u>Actuaciones Posteriores al Consejo.</u>

- Tras la reunión del Consejo de Administración, el consejero/a elaborará un informe para el secretario/a general (con copia a los miembros del grupo asesor). El secretario/a general (o el secretario Institucional si delega expresamente en el mismo) dará traslado a la Comisión Ejecutiva, Federación Estatal y Secretarios/as Generales provinciales.
- La Secretaría de Estudios se encargará de que el Área de Comunicación envíe la documentación de los temas de interés a los ámbitos y responsables de CCOO afectados (cuidando la debida reserva interna en función de la documentación a enviar).
- La Secretaría de Estudios se encargará de que el Área de Comunicación elabore, si fuera necesario, la información externa (Nota de prensa, Comunicado, Artículos en nuestras publicaciones, etc..).

En lo que respecta a las retribuciones por asistir a los consejos, vemos también que las experiencias son diversas, desde la no remuneración, como en el caso de la Fábrica Nacional de Moneda y Timbre, a los 6.000 euros al año por 12 reuniones del Consejo de Administración de las Autoridades Portuarias, pasando por los 1.047 euros por reunión de RENFE y ADIF, con un máximo de 11 consejos al año. En todos los casos en los que hay remuneración, esta cantidad líquida mensual o por consejo se ingresa por las empresas en la cuenta del sindicato y se computa en los presupuestos como subvenciones finalistas.

En resumen, en ningún caso pasa por cuentas bancarias de los consejeros ingreso alguno, aunque sí se les imputa por las empresas a éstos como retribución de dietas por asistencia al Consejo de Administración y su retención fiscal correspondiente, por lo que tienen que hacer frente fiscalmente a ello y declararlos en su declaración del IRPF correspondiente.

Federación de Construcción, Madera y Afines.

Por lo que respecta a la Federación de Construcción, Madera y Afines (FECOMA), tiene representación en el Consejo de Administración de Tragsa, y ésta la ocupa un trabajador de la propia empresa. Esto supone poder trasladar en este foro, no solo las posiciones sindicales de nuestra organización, si no que además da una mayor entidad a la representación sindical en la empresa.

El estar representados en el Consejo, supone poder plantear ante el presidente de la empresa y el resto de consejeros, que en su mayoría son del Ministerio de Agricultura y de la SEPI, las reivindicaciones sindicales de interés sobre la calidad del empleo y sus derechos en una empresa pública.

Otorga capacidad de voto, lo que permite, aún no ganando la votación, que quede constancia de la posición sindical ante determinados planteamientos manifiestamente contrarios a las propuestas sindicales de nuestra organización.

Supone también, tener acceso a una mayor información sobre la empresa y sus planteamientos, para poder anticiparnos a los acontecimientos.

Es igualmente un ingreso económico para nuestra organización: las dietas por asistencia van directamente a la cuenta del sindicato. En ninguna ocasión se ha hecho un uso abusivo de la presencia, no se ha asistido a ninguna comida, viaje o festival que hayan organizado, si no al contrario nos ha permitido criticarlo por uso de dinero público en actos que sólo sirven para lucimiento personal de algunos partidos políticos.

Nos permite establecer contactos con los miembros de SEPI y el Ministerio de Agricultura, para trasladar algunos temas de especial relevancia.

En definitiva, la presencia de un miembro en el Consejo de Administración de Tragsa, nos posibilita hacer más sindicato en la empresa. Los afiliados y trabajadores de la empresa tienen una buena percepción de la presencia de CCOO en el consejo de la empresa pública Tragsa, al ser un trabajador de la propia empresa quien asiste.

Valoración Final

Se hace muy difícil hacer una valoración general respecto a la actuación de los sindicatos en los órganos de dirección de las empresas, dado que también las experiencias y las situaciones han sido y son muy diversas, como difícil es evaluar los errores o fallos producidos allá donde se hayan dado. Pero sí podemos y debemos reflexionar sobre cuáles deben ser los objetivos y qué rol debemos jugar en los citados órganos.

Queda claro en función de las valoraciones previas, que el sindicato tiene y debe participar en el control y la decisión de aquellos intereses que afecten a los trabajadores. En situaciones de crisis como las actuales, se requiere de un alto nivel de diálogo y consenso social en las decisiones de las empresas, la existencia de órganos de dirección donde el sindicato está presente es importante a la hora de propiciar un diálogo social estable y esto no sólo en los sistemas tradicionales del conflicto colectivo entendido en su máxima expresión, sino también en los problemas de gestión y administración relacionados con la situación y evolución de la empresa. En este sentido, algunos procedimientos participativos **sirven como preámbulo para la negociación** y tienden a propiciar una especialización de las funciones de representación y negociación.

La progresiva privatización, y en algunos casos transnacionalización de las empresas, obligan a reflexionar sobre la idea de que quizás los ordenamientos legislativos y organizativos no se adecuan por completo a la realidad actual y **debemos abrir un espacio para la reflexión sobre las experiencias en participación sindical en especial en algunos sectores.**

Por otra parte no es menos cierto, que la regulación comunitaria ofrece algunas respuestas ofreciendo un marco normativo que ofrece un espacio para la participación de los sindicatos; pero deja el contenido de estos derechos al ámbito nacional con un enfoque en dos sentidos:

- La participación es un concepto amplio que incluye procedimientos de información y consulta y, por tanto, la participación de los trabajadores en los órganos de la empresa.
  No podemos hablar de participación cuando no se tiene capacidad para influir en las decisiones que se deben tomar dentro de la empresa o ejercer influencia en los asuntos de la empresa.

Employees' participation in Belgium

FGTB

Directives and national implementation

Directives	National Implementation	Definitions	Description
Dir. 2009/38/EC (EWC)	Transposition by C.L.A. n° 101 + adaption of C.L.A. n° 62,84,88	- Information - Consultation	- The arrangements for informing and consulting employees shall be defined and implemented to ensure effectiveness and to enable effective decision-making within the company or group of companies - Information and consultation of workers must be carried out at the relevant level of management and representation, depending on the subject matter - The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States
Dir. 89/391 (H&S)	Act of 4.8.1996 (Health Care Act) + Royal Order of 27.3.1998	Information Consultation Participation	- Framework Directive who doesn't contain a definition of information/consultation/participation as such. - The employer shall take the necessary measures to promote the welfare of workers at work. - The employer shall inform the employee about the nature of his

			work, the associated residual risks and the measures designed to prevent or limit the dangers taking and whenever this related to the protection of its welfare is necessary.
Dir. 2002/14/EC	**<u>Extension</u>** of Collective Labour Agreement: C.L.A. n° 9, provided by Act of 23 April 2008	Information Consultation	- Doesn't contain a definition of information/consultation as such. - To give economic information to workers ' representatives in Belgium was already required before the adoption of the directive, but only for companies which had set up a Work Council (starting from 100 employees). - The Act of 23 April 2008 fits the situation prior to the adoption of the law in this way that a full transposition of the directive is achieved. This new law includes a number of new powers to the Committee for Prevention and Protection at Work (starting from 50 employees) financial information to provide to the Committee. Consequently, the law foresees the obligation as an employer of an enterprise without worker's council certain to provide economic and financial information to the Committee. - The data which, by virtue of the law of 23 April 2008 from now on should be shared to the Committee can be divided into: 1. Basic information (from the establishment of the committee and after each social elections): ⇨ Statute of the company, ⇨ Competition position in the market ⇨ The production and productivity, ⇨ Future expectations of the company

			2. Annual information: a copy of the balance, profits and losses account, annexes and annual report
Dir. 2001/86 (SE)	Transposition by Collective Labour Agreement: C.L.A. n° 84 of 6 October 2004	Information Consultation Participation Involvement	***Information:*** providing the European company by the competent institution to the institution or its agents, employees, information on matters relating to the European company itself and on one of which of its subsidiaries or on matters falling within the competence of the decision-making organs in a single Member State to go outside, at such a time, mode and content for the employees ' representatives to assess thoroughly the possible impact and consult with the competent organ of the European company can prepare. The scope and timing of the information are clearly defined: the provision of information must take place for the consultation and is accurate and complete so that the employees can assess its effects. ***Consultation*:** the establishment of a dialogue and exchange of views between the body representative of the employees and/or the employees ' representatives and the competent organ of the European company, in such a manner, time and content, that the employees ' representatives, a review of the measures envisaged by the competent institution indicating that can be taken into account in the decision-making process within the European company. Also includes the concept of consultation here two fundamental aspects: the time (before the decision is taken) and the opinion right of workers. ***Participation*:** influencing the development of the company by the right to a number of members of the supervisory or administrative organ of the company to choose/appoint or the right to make recommendations regarding the supervisory or administrative organ. ***Involvement*** contains the right of information, consultation and

			participation. Please note: these definitions can be toned in the context of the negotiations on the agreement on the involvement of employees in the European company.

Dir. 2003/72 (SCE)	Transposition by Collective Labour Agreement: C.L.A. nr. 88 of 88 January 2007	- Information - Consultation - Participation - Involvement	***Information*** means transmission, by the competent institution of the European cooperative society, to the body representative of the employees and/or the employees ' representatives, of information on matters relating to the company itself and any of its subsidiaries or establishments situated in another Member State or on matters falling within the competence of the decision-making organs in a single Member State to go outside, at such a time, in such a way and with such a content that the employees ' representatives to assess thoroughly the possible impact and, where appropriate, consultations with the competent organ of the company can prepare; ***Consultation*** means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees ' representatives and the competent organ of the company, at such a time, in such a way and with such a content that the employees ' representatives, on the basis of the information provided, a review of the measures envisaged by the competent institution indicating that can be taken into account in the decision-making process within the company ***Participation*****:** influencing the development of the company by the

			right to a number of members of the supervisory or administrative organ of the company to choose/appoint or the right to make recommendations regarding the supervisory or administrative organ. ***Involvement*** contains the right of information, consultation and participation. Remark: these definitions can be toned in the context of the negotiations on the agreement on the involvement of employees in the European company.
Dir.2001/23/EC (transfer of undertaking)	Transposition by Collective Agreement: C.L.A. nr. 32 bis of 7 June 1985 juncto article 11 C.L.A. nr. 9 of 9 mars 1972	- Information - Consultation	Doesn't contain a definition of information/consultation as such. The aim of this collective agreement is, on the one hand, preserving the rights of workers in all cases of the change of employer resulting from the transition of the company under agreement and to ensure a number of workers ' rights in the event of the transfer of the assets of the company after bankruptcy. In the case of a merger, acquisition, closure or other important concentration, structure changes which the company, the worker's council, or in absence of it, the trade union delegation, will be informed before any publication; He will be consulted actually in advance, on the impact on the outlook for the employment of the staff, the organization of work and employment policy in general". The worker's council must be informed of the economic, financial or technical factors that are at the origin of the structural changes of the company and this answer, as well as their economic, financial

			and social consequences. He should be consulted on the resources, which must be used in order to avoid redundancies and the mutations, which the professional or social decline in workers to bring their own, about the programs of collective redundancies, transfers and mutations, to take over the social measures, on the settlements to be taken to achieve the rapid re-employment and retraining to come as well as the social and vocational, in General, on all measures to be taken with a view to the optimum use of human resources. In the enterprises where neither a worker's Council, nor a trade union delegation exists, the workers concerned must be informed in advance of: - the date or proposed date of the transition, of chapter II of the present collective agreement; - in case of bankruptcy, the date or proposed date of the acquisition of assets of chapter III of the present collective agreement; - the reasons of that transition or of that acquisition of assets; - the legal, economic and social consequences of that transition or of that acquisition of assets for workers; -the measures envisaged with regard to the workers
Dir. 98/59 (collective dismissals)	Transposition by Collective Agreement: C.L.A. nr. 10, 10 bis, 10 ter, 10	- Information - Consultation	Doesn't contain a definition of information/consultation as such. Provides for an additional fee due to collective redundancies if at least 10% of the employees are affected

	quarter and 24 bis		by dismissal. If the company employs between 20 and 59 employees, at least 6 employees has to be affected by the collective redundancies. Information and consultation duty towards the worker's council or in absence thereof the trade union delegation or in absence thereof the personnel
Dir. 2005/56 (cross-border merger)	Articles 772/1 to 772/14 Company Code + C.L.A. nr. 94 of 29/4/2008	- Participation	The Act provides that the draft terms of cross-border merger must contain information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the company resulting from the merger are determined.
Dir. 75/129, adapted by Dir. 95/56/ (collective dismissals)	Transposition by Collective Agreement : C.L.A. nr. 24 + Royal Decree of 24 Mai 1976	- Information - Consultation	When the employer intends to move to collective dismissal, he is obliged to inform in advance the workers' representatives and to consult them on this subject. The information and consultation should relate to the opportunities to prevent or reduce the collective dismissal, as well as the ability to mitigate its effects, by taking social accompanying measures. This requires the employer provide the workers' representatives all necessary details or at least notify: - the criteria used in the selection of the employees who qualify for termination; - the number and categories of workers which the employer usually employs; - the way in which the severance pay and other termination benefits are calculated that are not under a law or a collective agreement are due; - the period during which can be

			passed to dismissal. All of this information is intended to enable workers ' representatives to formulate their comments and suggestions in order that they may be taken into account The consultation procedure is not optional but is aimed at obtaining an agreement: the procedure is not only limited to informing/consulting on the impact of the collective redundancies but is aimed at preventing the collective redundancies.
Article 27 of the Charter of fundamental Rights 18/12/2000	- Information - Consultation - Participation		Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.
European Social Charter	Act of 15 March 2002 (M.B. 10 Mai 2004): direct effect in Belgian law	**information consultation** **Article 21**	With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice: a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those

			decisions which could have an important impact on the employment situation in the undertaking. Please note: only to be considered as a collective right (representatives)
European Social Charter	Act of 15 March 2002 (M.B. 10 Mai 2004): direct effect in Belgian law	**Information** **consultation**	With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Other legal and/or collective bargaining

Other legal and/or collective bargaining National provisions on :	**YES/ NO**	**Description**
Information		
Royal decree of 27/11/1973: Financial and economic information on the situation and performances of the company		Doesn't contain a definition of information as such. The aim of this decree is to make workers able to understand the policy of the company with relation to organization, employment and personnel. Important is that the financial and economic information must be linked to data of a social nature. Also the workers must be able to locate the company in the context of the sector, regional, national and international economy. Financial and economic information on the situation of the company: annual accounts, state aid, restructuring, merges….: • Basic information: must be given in writing within 2 months after the social elections. The works council must receive 15 days before the meeting of the worker's council

		the documents for examination. • Yearly information: updates the basic information and must inform the worker's council of the situation and the evolution of the company during the past year, the differences between the stated objectives and the actual achievements. It also includes the objectives for the following year and the prospects for the following years. • Quarterly information: must be aimed at all aspects of the company. It contains information on the expected progress of the marketing, the orders, the production, the costs and the cost prices, stocks, productivity and employment. • Occasional information: When events occur or decisions are taken which may have a significant impact on the company, occasional information is provided to the worker's council. This information must be given as soon as possible and, where it is the decision of the employer, before the implementation of the decision. Remark: the workers receives the same documents/information as the associates
Information+consultation+ co-decision + co-determination		
Law of 20 September 1948 on the organization of business		The Act of 20 September 1948 organizes the establishment of worker's councils. The law also contains the tasks of the worker's councils. But it doesn't contain a definition of information/consultation/co-decision as such.
Collective agreement nr.9 – social information (25/11/1973)		Doesn't contain a definition of information/consultation/co-determination as such. This agreement has the objective to involve more closely the workers in the life of the company and in the future-oriented policy on employment; this objective will be achieved by a better organization of the right to information and consultation of the employees' representatives, with respect for the management responsibilities and of the decision right of the employer.
⇒ See overview table for the tasks given to the worker's council about information/consultation/co-decision and co-determination		
Information		
Article 10 of the Royal Decree of 9 March 2006		- Individual Right of Information for each worker about the existence and the consequences of the non – inscription to the employment unit created in case of a collective dismissal (lost of involvement – indemnity, early retirement, unemployment compensations, ….)
Consultation		
Law of 16/03/1971 night work		Before the employer starts with implementation procedures of an employment arrangement with night performance, the employer must hold a consultation about the necessary

		adjustments to the working conditions. In the absence of a worker's council, in absence thereof the employer will consult the trade union delegation, and in absence of thereof the personnel.
Information and consultation		
Collective agreement nr. 22 on welcome workers'		The worker's council must be informed and consulted in advance about the planned measures and resources for the organization of the welcome desk. The worker's council may give its opinion on the application.
Collective agreements nr. 39 (13/12/1983) on the introduction of new technologies		- On average employ at least 50 employees - When the employer has decided to make an investment in a new technology and when the investment has important collective implications for employment, work organization or labor conditions then the employer must, not later than three months before the insertion of the new technology, provide the workers' representatives written information about the nature of the new technology and the nature of the social consequences and consult the workers' representatives (depending on the theme: worker's council or committee for health and safety or delegation) on the social consequences of the introduction of the new technology.
Collective agreement nr. 68 (16/06/1998) on the protection of private life of the workers (cameras on the workplace)		Prior to the start of the video surveillance the employer must inform the worker's council on all aspects of the video surveillance. Also the worker's council must be consult about this topic. In the absence of a worker's council this information is provided to the committee for prevention and protection at work or, in the absence thereof, the union delegation of the company or, in the absence thereof, to the employees.
Collective agreement nr. 81 on the protection of private life of the workers (12/06/2012) (electronic communication)		The information must take place at the time that the employer has the intention to enter a monitoring system on the electronic on-line communication data. This information should be given to the worker's council or the committee for prevention and protection at work or the union delegation. Consultation: The control systems are regularly reviewed
Collective agreement nr. 85 (09/11/2005) on teleworking		Representatives of the worker's council must be informed and be consulted about telework
Chapter VII Act of 13 February 1998 – Act Renault (collective dismissals)		- Doesn't contain a definition of information/consultation as such. - This Act aims to establish a regulatory framework that guarantees the information and consultation of workers and social dialogue in the case of collective redundancy

		provoked by restructuring or by the decision to close a site. - The procedure of information and consultation has to be applied step by step. When the management of a company foresees implementing collective redundancies, it must first inform the workers' representatives. Specifically, the management must communicate – both verbally and in writing – key information such as provided by the C.L.A. nr. 24 (see upwards). When the information phase has been carried out, social dialogue can start. Workers' representatives have to be consulted by management about possible ways to avoid redundancy or reduce its impact by social measures of accompaniment aiming, for example, to help affected workers to find another job. The law allows trade unions to ask questions and make propositions, obliging the employer to answer these questions. Time is not limited during the consultation phase. - ***Case:*** The Anheuser-Busch InBev (AB Inbev) case in 2010 showed that this longer period for dismissal procedures can be very useful in terms of trade unions' strategies. On 5 January 2010**,** AB InBev, a Belgian-Brazilian multinational brewing group, announced a large restructuring plan that involved cutting 304 jobs. Contrary to all expectations, the restructuring plan was suspended and a new negotiation framework was decided. The AB InBev case illustrates that the Renault regulations provide a better chance of reaching compromises through social dialogue. - The Act Renault provides a special mechanism of sanctions which allows the Belgian jurisdiction to condemn, as well in criminal law as in civil law, employers for many times in collective and individual cases. The few conditions which can leaded to condemnation in civil law, are strictly foreseen: before a individual protest can leaded to a condemnation, the union who represents the fired workers, has to put a collective protest in the hands of the employer. The sanctions are: suspension of the leaping labor agreements, to restart the whole procedure of information and consultation, to pay the lost salaries for each worker for which the procedure has not been fulfilled.
Participation		
Royal Decree of 3 Mai 1999		- Describes the tasks and responsibilities of the Committee of Prevention and Protection of Work - The employer shall consult its employees concerning any question directly relating o the welfare of his workers at

		work for which their direct participation is required. Participation is understood as to give a point of view, propose suggestions, opinions,… and not co-decision - The employer shall, with a view to this direct participation, a number of communication tools available to its employees on which its proposals on improving the welfare of workers can formulate.
Involvement		
Co-determination		See overview table
Co-decision		Note: About some topics the worker's council can make autonomous decisions: **co-decision** between workers' representatives and employer representatives. No provision with a definition as such is foreseen.
Law of 04 December 2007 on the social elections		Co-decision about the scope of the social elections (social units) + the employers functions: to make he difference between the workers who can vote and the members of he employer representation who can not vote)+ the date of he election
Law of 28 April 2003 on complementary pension shemes		Co-decision on the choice of the pension scheme organism+ fixation of the amounts and regulations
Recovery law 22 January 1985 on social provisions and royal decree of 23 July 1985		Planification of the paid educational leave
Collective agreement nr. 64		Organization rules parental leave
Law of 12 April 1965 on the protection of wage (article 5 and 9)		Determining wage payout mode
Collective agreement 12 bis and 13 bis		Fill out questionnaire absenteeism
Law of 16 April 1963 on social rehabilitation of disabled persons		Application provisions social rehabilitation of disabled persons
Royal decree of 14 July 1987		Preparing and evaluating equal opportunities plans
Collective agreement 77 bis		Planification of time-credit for the workers
Financial participation		
Collective agreement nr. 90 bis on non-recurrent advantages		In the intersectoral agreement 2007-2008, the social partners decided to introduce a new system for the allocation of non-recurring results-related benefits.

		Scope: private sector + some public institutions The initiative to set in place non-recurring results-related benefits is up to the employer. Also a joint committee can take the initiative or determine the framework to set this kind of advantages in place. On the company level these benefits can be introduced through a collective agreement or for employees for whom there is no trade union representation, at the option of the employer, through a collective agreement or through an act of accession
Law of 22 May 2001 on participation of workers in the capital and profits of the company		There can only be introduced a participation of workers in the capital and profit of the company sheme after approval of a wage-collective agreement and more specifically a collective agreement that assigns a pay increase on top of the indexing and scale increases. The introduction of such a scheme must be preceded by the establishment of a participation plan In companies with trade union delegation: the participation plan via a specific collective agreement In companies without trade union delegation: the employer must notify a draft act of accession for advice to the employees. The employees must be able to write down their opinions in a special register. When there are different opinions a special reconciliation procedure is foreseen, in which a officer involved. In second line the involvement of the joint committees is foreseen. If no agreement is reached, the financial participation impossible. It is sufficient that a one trade union signs the collective agreement, so that the collective agreement is valid. Scheme: • Before implementing participation scheme: General information duty to worker's council (or in absence thereof the committee or delegation) + relation between participation plan and employment evolution • During implementing plan: Advice of the modalities which are not determined by the law (worker's council or in absence thereof the committee or delegation) • After implementing plan: In a group is each particular collective agreement submitted to the worker's council by

		the other companies belonging to the same group

Information	**Advisory**	**Approval required**	**Co-determination**
1. Economic and financial			
Basic information			
- Statute of the enterprise			
- Competitive position			
- Production and productivity			
- Financial structure			
- Method of budgeting and costing			
- Staff costs			
- General future expectations			
- Research			
- State aid			
- Organization chart			
Yearly information			
- Actualization of the basic information			
- Balance sheet, income statement and annual review			
Quarterly information (at least every 3 months)			
- Productivity (market, production costs, …)			
Occasional information	***Shares staff***		
- New events	- Introduction		
- Termination payment debtors	- practical arrangements for takeover offer profit sharing plan		
- pronunciation bankruptcy			
2. Social			

Employment – Yearly information		Establish and modify work regulations	Management of social work
Structure of the employment		Capture destination fine	
Evolution of the employment		Determine annual holiday	
Employment prospects		Determine replacement dates holidays	
Taken/planned social measures			
Social balance sheet			
		Applicable professional qualification criteria	
		Co-decision on the internal rules of the worker's council	
Quarterly information	Research general criteria of recruitment		
- Collective dismissal or recruitment	Collective dismissal		
- Structure changes	Structure changes		
- Conclusion company	Conclusion company		
- Vocational training and retraining	Vocational training and retraining		
- Human resources	Human resources		
- Labor organization	Work organization and working conditions		
- Reasons introduction economic unemployment	Pre-pensioning	Supervision replacement pre-pensioning	
- Annual report on equal opportunities men and women			
	Auditor nomination	Application provisions social rehabilitation of	

		disabled persons	
Introduction camera surveillance	Consultation on outplacement	Indicate outplacement agency (collective agreement nr.51)	
	Advice regarding supplementary pensions		

Actors

Actors	Nature	Role	Description
Employees representatives (from national law)	Monopoly of representation of the 3 interprofessional national trade unions (FGTB-CSC-ACLVB)	Representation and defense of the worker's in the worker's council and the committee for health and safety. There is also the trade union delegation. They oversee the entire trade union action and has an eye for everything what happens in the company. The trade Union delegation ensures that all information and all arguments are collected to solve problems and negotiate with the employer. If necessary, they can mobilize the personnel for actions	In the enterprises of the private sector are social elections every four years. • Worker's council: companies with more than 100 workers • Committee: companies with more than 50 workers • Trade union delegation: The trade unions have the exclusively right to nominate candidates for delegation. Regulated by collective agreement nr. 5: it doesn't obligate the employer to establish a delegation. Only a sectoral agreement can establish an obligation
Employees representatives (from international	Monopoly of representation of the 3 inter-professional	The members of the EWC represent collectively the interests of the workers in the Member States and the	Elected by the workers representatives of the worker's council or at absence thereof by the

law)	national trade unions (FGTB-CSC-ACLVB)	right to improve information and consultation of workers.	personnel but they should always be member of a representative trade union
Trade union Wet 21 mei 1921 op de vrijdheid van verenigingen Wet van 5 december 1968 op de CAO's en PC's	They are 3 national representative trade unions in Belgium. They don't ' have legal personality.	The trade union defends the interests of workers, in the workplace, in the sectors and in all kinds of consultative bodies. • Social dialogue at inter-professional (with government and employer's organization) /sectoral and company level • Advisory function to the politics • To represent the interests of the members • Structural advice for members • Organize the payout for unemployment	The trade unions are inter-professional organizations. They are several confederations, organized by profession. The trade unions are geographically structured on different levels (local, regional, provincial, national and international). The inter-professional structure includes the private and public sector
Employees/ workers		Each worker (Belgian or non-Belgian; member of a trade union or not) who works at least three months in the company may vote.	Elect the members of the worker's council and committee for health and safety
Specialized representatio n: NCK	Social elections of 1987 - recognized as representative framework organization	Defends the interests of executives	

Provision on representation of different categories of employees

Provision on representation of different categories of employees (specify which categories)		
Youthful employee/worker	Act Social	- Young employees (workers,employees and

	Elections 4 December 2007	S.E.) make, under certain conditions, a separate category from participating in the social elections. - If the young employees (employees who, on the election day, are under 25 years of age) are with more than 25 units (regardless of whether they belong to the category of workers, employees or Senior Executives), one or more mandates should automatically be reserved. The total number of employees in the technical business unit is not relevant in the determination of the youth mandates. - Candidates for the young employees must be at least 16 years old and have not yet reached 25 years of age on the date of the elections. - The persons representing the young employees sit in the same organs (Works Council and Committee) as their colleagues workers, employees and senior workers and have the same powers as their colleagues
Workers		- <u>Definition:</u> The employment contract of workers is the agreement in which a worker undertakes against wage under the authority of the employer mainly manual work (article 2 law employment contracts 3 July 1978) - Represented in the Workers Council (100 employees) and in the Committee of Prevention and Protection of Work (50 employees)
Employees		- <u>Definition</u>: The employment contract for employees is the agreement in which an employee undertakes against wage under the authority of the employer mainly headwork (employment contracts law 3 article 3 July 1978) - Represented in the Workers Council (100 employees) and in the Committee of Prevention and Protection of Work (50 employees)
Senior Executives	Organizatio n business law	- <u>Definition</u>: Senior Executives are employees who fulfill a confidential and leading function in the company. (Royal Decree of 10 February 1965). In the framework of the social elections, executives are defined as employees, to the exclusion of leading staff, who executes a higher function, which generally is reserved

		to the holder of a diploma of a certain level or to those who has an equivalent professional experience (Article 14 organization business law) - Only represented in the Workers Council, not in the Committee of Prevention and Protection of Work - Represented by the three interprofessional unions and also by the National Confederation of Executives (since 1986) - The candidates who represented the executives will be differently presented by their unions if the company counts a minimum of 15 executives

Connection between the representations in the EWC establishment agreements

Connection between the representations in the EWC establishment agreements	
Yes/ No	If Yes, specify which agreements
Yes	Collective Agreement 101 takes the same definition as the directive. It is up to the EWC to regulate this topic. If there is no agreement on this matter and if decisions are considered that imply important changes in work organization or in contractual relations, the process must simultaneously take place at national and European level, in accordance with the powers and areas of the bodies representing the workers. If the European works council gives an opinion, it may not prevent the local management to take the necessary consultations within the in the national legislation and/or use time limits. The European worker's council and the national worker's should be informed at the same time but the general protection of worker's should not be reduced.

Tools for achieving participation

Note: We understand participation more in the context of involvement = information, consultation and participation

Tools for achieving participation	**YES/NO**	**If yes, specify the legal source**
Referendum	Yes Only a costume	• In Belgium it happens that a draft social plan / agreement is presented by means of a referendum for approval to the workers first. It is also often pre-determined percentage of workers must agree before such a plan is accepted. If this threshold is not met, the social partners go back to the table to negotiate

		further. • Under Belgian law, although there is no general obligation to assist with a "social plan" (= a set of accompanying measures), except in case of early retirement (Act Generation Pact 2006) restructuring layoffs. However, the majority of companies that face with such a social restructuring plan provides such a plan because personnel managers see it as a way to proceed and as it is provided by law that a employer that has the intention to proceed to a collectif dismissal has to consult on the way to reduce the impact on employment • The CAO 24 of 2 October 1975 is a procedure for informing and consulting workers' representatives about the possibilities to limit collective redundancies and social support measures. • Contains such a social plan in general, specific clauses relating to the individual agreement that the employee must be obtained: the granting of certain benefits conditional upon the formal acceptance by the employee depends on the procedure to be followed as well as the benefits that the employer offers him. • Such a social plan sometimes includes some specific clauses relating to the procedure. The existence of a social plan assumes of course that there is no collective dispute of the procedure.
Assembly of workers	Yes Only a costume	• Special Labor Council if the employer intends to proceed with collective redundancies. After such a board, the union often organize a meeting of workers in order to explain. Plans of management. • The same applies if the employer intends to proceed with the closure of the enterprise, unless the bankruptcy. • The union delegation can organize assembly of worker's in their company for informing and consulting the personnel about several topics (for example the collective agreement in the company)
Others		Worker's Council, Committee for prevention and safety at work

Effects on employability

Due to I&C there has been an increase or high level of employability of employees (eg through accompanied employee mobility)?

Yes

Due to I&C several instruments are created helping the level of employability:

- Training: every company must 1 day training foreseen each year and for each worker
- Risk groups: Effort for the benefit of persons who belong to risk groups and active guidance and follow-up of unemployed. Employers must pay 0,10% of the total wage of the personnel to a fund.
- CLA 104: Every company with more than 20 employees has to draw up an employment plan to retain or increase the number of employees aged 45 or more.
- In this matter we would like to underline the importance of a good working information and consultation procedure where all parties have the same rights. A warning and expertise right, such as in France, is an important instrument that helps the worker's to improve the social dialogue. To be assisted by independent experts when there are signs that a company is doing less or when a social plan is presented in times of restructuring is a determinant factor. When the economic and financial situation of the company is analyzed, only then the employees can negotiate on a proper manner.

Due to the participation there has been an increase in the anticipation of risks?

In the Belgium there is no participation.

Due to the employees' involvement there has been an effect in particular with regard to anticipating and managing change?

Restructuring must be properly prepared and be accompanied by a real information and consultation. A warning and expertise right with regard this topic is essential.

For example: to anticipate and manage restructurings the employment needs as well as skills must be foreseen by the company. In Belgium every company must foresee 1 day formation each year for each worker. It is thus important that also on company level through the social dialogue a training program is set up taking into account the worker's needs.

I&C right have made work organization more flexible and have been facilitate employee access to training within the undertaking while maintaining security?

A pragmatic approach is required because employers want more flexibility which is not always for the benefit of workers. In Belgium flexibility is negotiated between the social interlocutors and compensations are foreseen.

I&C rights have promoted employee involvement in the operation and future of the undertaking and increase its competitiveness?

Hereby we would like to point out that information in the hands of a few not necessarily means that all employees/workers receive the information. A good flow of information is necessary but more important the notion of confidentiality. A lot of information is classified as confidential, what leads to no information flow and a more difficult position to act or set up negotiation plans.

Employees' participation in Italy: rights to information and consultation as a way of participation.

Giorgio Verrecchia

1) National implementations of European Directives and definitions of participation, information, consultation and involvement.

Directives	**National Implementation**	**Definitions**	**Description**
Dir. 2009/38/EC (EWC)	d. lgs. 113/2012	- Information - Consultation	Does not add anything new compared to the provision of the Directive.
Dir. 89/391 (H&S)	d. lgs. 81/2009	- Information - Consultation - Participation	There is a further definition of "information" referred to in d. lgs. 81/08, so called "Testo Unico" on health and safety in the workplace, that in the art. 2 letter. bb) defines information as "all the activities aimed at providing useful knowledge to the identification, reduction and management of risks in the workplace.". This definition is not present in the directives on Health and Safety.
Dir. 2002/14/EC (general framework on I&C)	d. lgs. 25/2007	- Information - Consultation	The content of this decree takes the art. 4 of the Directive by introducing, however, a substantial innovation. The content of Article 4 a) in Directive 2002/14 is a matter of only information, in the Italian implementation is subject not only of information but also of consultations (see art. 4 paragraph 3 a) of d. lgs. 25/07).
Dir. 2001/86 (SE)	d. lgs. 188/2005	- Information - Consultation - Participation - Involvement	Does not add anything new compared to the provision of the Directive.
Dir. 2003/72 (SCE)	d. lgs. 48/2007	- Information - Consultation - Participation - Involvement	Does not add anything new compared to the provision of the Directive.
Dir. 2001/23 (transfer of	art. 47 Law n. 428/1990 and d.	- Information - Consultation	It is the only case in which is expressly provides the

undertaking)	lgs. 18/2001		possibility to take legal action using the special procedure under Article 28 St. in the case of violation of the process of information and consultation.
Dir. 98/59 (collective dismissals)	L. 223/1991	- Information - Consultation	Following the changes introduced by the so-called Job act (2015) the violation of the procedure of information and consultation is considered a simple illegality and can be remedied. Before these changes the violation of the procedure of information and consultation was null and invalid and could not be remedied.
Dir. 2005/56 (cross-border merger)	d. lgs. 108/2008	- Participation	

2) Are there in your National System other legal and/or collective bargaining National provisions on information, consultation, participation, involvement, co – determination, financial participation?

Other legal and/or collective bargaining National provisions on:	**YES/NO**	**Description**
Information	Yes	In the collective agreements.
Consultation	Yes	In the collective agreements.
Participation	No	
Involvement	No	
Co-determination	No.	Some decisions can be taken together with trade union (art. 4 St. on remote control)
Financial participation	No	

3) Juridical nature and role of the actors.

Actors	**Nature (trade union, no trade union, legal, contractual, etc.)**	**Role**	**Description**
Employees' representatives (from National law)	Trade union	Information, consultation, bargaining	The representation can be provided by legal or contractual source at workplace level
Employees'	Trade union	Information,	

representatives (from implementation of European Directives)		consultation, bargaining	
Trade union		social dialogue, bargaining, confederal agreements	
Employees		Right to receive informations on H&S	
Specialized representation	trade union	H&S employees' representation	Legal source

4) Are there in your National legal system provision on representation of different categories of employees entitled of participation rights?

Provision on representation of different categories of employees (specify which categories)	**YES/NO**	**If yes specify the legal source**
See sintesys report		

5) The EWC Establishment Agreements provide the connection between the representations? See art. 6 and considerandum n. 20 of Directive 2009/38.

Connection between the representations in the EWC Establishment Agreements	**YES/NO**	**If yes, specify wick Agreements**
	Yes	Unicredit

6) Which tools for achieving participation are provided in your National system?

Tools for achieving participation:	**YES/NO**	**If yes, specify the legal source**
referendum	YES	L. 300/1970, art. 21
assembly of workers	YES	L. 300/1970, art. 20
supervisory boards	NO	

Others Paid union leave. Unpaid union leave.	L. 300/1970, art. 22 and 23

7) Have the participation effects on employability? (See, in particular, *considerandum* n. 7 EU Directive 2002/14 and *considerandum* n. 29 EU Directive 2009/38).

Effects on employability	**YES/NO**	**Note:**
Due to I&C there has been an increase in or high level of employability of employees (e.g. through accompanied employee mobility)?	YES	
Due to the participation there has been an increase in the anticipation of risks?	NO	
Due to the employees' involvement there has been an effect in particular with regard to anticipating and managing change?	NO	
I&C rights have made work organization more flexible and have been facilitate employee access to training within the undertaking while maintaining security?	YES, sometimes	
I&C rights have promoted employee involvement in the operation and future of the undertaking and increase its competitiveness?	No	

Employees' participation in Slovenia

ZSSS

1) National implementations of European Directives and definitions of participation, information, consultation and involvement.

Directives	National Implementation	Definitions	Description
Dir. 2009/38/EC (EWC)	**European Works Councils Act** (Official Gazette of the Republic of Slovenia no.49/11; Zakon o evropskih svetih delavcev ZESD-1)	Article 3 of the EWC- Act faithfully transposes the definitions of "information" and "consultation" from the Directive: '**information**' means transmission of data by central management or any more appropriate level of management to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it. Information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the management of the undertaking or group of undertakings in the Member States; **'consultation'** means the establishment of dialogue and exchange of opinions between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enable employees' representatives to express an opinion on the basis of the	EWC-Act regulates the establishment of European Works Councils (EWC) and the procedures for informing and consulting employees in undertakings or groups of undertakings located in the Member States. Freedom of organization is laid down in Article 15 of the Act. The central management and the special negotiating body shall decide how to organize the process of informing and consulting employees and in doing so they shall not be bound by the provisions of Chapter IV of this Act. The agreement shall apply to all employees in the Member States in which the undertaking or group of undertakings operates. The parties shall agree whether to establish a EWC to inform and consult employees pursuant to Article 16 of this Act or to introduce an information and consultation procedure for employees pursuant to Article 18 of this Act. Article 28 of the Act regulates **responsibilities of the EWC**, which shall *relate to transnational matters*. The central management or any more appropriate level of

		information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the undertaking or group of undertakings in the Member States	management shall **inform the EWC** *of the structure* of the undertaking or group of undertakings, its *economic and financial situation*, *probable development and production and sale,* etc. The duty to inform and consult shall be considered to include also matters such as: *the situation and probable trend of employment, investments, substantial changes concerning organisation, the introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies*. **The consultation** shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express. Article 29 regulates annual information and consultation. Article 30 prescribes **information and consultation in exceptional circumstances**. Exceptional circumstances shall be, above all: – changes in the location of the undertaking or establishments, or important parts thereof; – closure of the undertaking, an establishment, or important parts thereof; – collective redundancies.
Dir. 89/391	**Health and**	H&S- Act does not specifically	- **workers' participation in**

(H&S)	**Safety at Work Act** (Off.Gaz. no. 43/11; Zakon o varnosti in zdravju pri delu; ZVZD-1)	define the terms "information" and "consultation". However, it adopted *a broad meaning of definitions* by referring to general Worker Participation in Management Act (see below). A broad meaning of definitions also comes out from different forms of involvement of employees in decision-making in the field of H&S, such as: workers' participation in management (Art 45), duty to consult (Art 46), the health and safety representative's status (Art 47) and rights and obligations of the works council or health and safety representative (Art 48).	**management** (Art 45)**:** the employer shall allow workers to take part in discussions on all questions relating to health and safety at work in accordance with this Act and other regulations. The right shall be exercised by workers directly, through their representatives in the works council according to the Workers Participation in Management Act, or through a health and safety representative. **- duty to consult** (Art 46)**:** the employer shall consult with workers or their representatives on the risk assessment as well as on any measure which might affect health and safety at work, on the designation of a safety officer, occupational medicine practitioner, workers designated for first aid, workers or persons authorised under specific regulations governing fire safety and evacuation, and on information of workers and organisation of training. The employer shall present to workers' representatives and trade unions organised in the undertaking the safety statement and risk assessment (document) and documents on accidents at work. - **health and safety representative** (Art 47) is a workers' representative with a position and role of the works council in the area of H&S. - **rights and obligations of the works council or health and safety**

			representative (Art 48): The works council or health and safety representative may demand that the employer adopt suitable measures and prepare proposals for the elimination or mitigation of occupational health and safety risks. Workers or their health and safety representatives may request an inspection by the competent inspectorate, if they consider that the safety measures taken by the employer are inadequate. The works council representative or health and safety representative shall have the right to be present at any inspection, when it is inspecting the safeguarding of health and safety at work, and shall have the right to submit observations. The employer shall inform the works council or health and safety representative and trade unions in the undertaking of findings, proposals or measures imposed by inspection bodies.
Dir. 2002/14/EC (general framework on I&C)	**Worker Participation in Management Act**; Off. Gaz. no. 42/93, 42/07; Zakon o sodelovanju delavcev pri upravljanju (ZSDU)	**"Information"** is the informing of works council or other employees' representatives by the employer about issues relating in particular to (Art. 89): - the economic position of the company; - the development targets of the company; - the state of production and sales; - the economic position of the branch as a whole; - changes of activity;	This act is the sedes materiae for the Slovenian legislation in the area of employees' participation. Besides information and consultation, it regulates also co-determination and participation of employees in company bodies (Art. 2). Workers shall exercise the right to participate in management as individuals or collectively. A works council shall be formed if the company employs more than 20 workers having the right to vote. In a company which employs less than 20 workers

		- any decline in economic activity; - changes in the organisation of production; - technological changes; - the annual accounts and annual report; - other issues under mutual agreement. According to Article 91 the employer shall be bound to request **joint consultations** on *the status of the company* and *personnel issues* (Art. 93, 94) such as: - status changes; - the sale of the company or of essential parts; - the closing of the company or of essential parts; - essential ownership changes, - the need for new employees (number and profile); - job systematisation; - the movement of a significant number of employees to outside the company; - the movement of a significant number of employees from one place to another; - the adoption of enactments in the sphere of additional pension, disability and health insurance; - a reduction in the size of the workforce; - the adoption of general rules of disciplinary accountability.	who have the right to vote, workers shall participate in management through a workers' representative. The provisions of this Law relating to works councils shall meaningfully be applied to a workers' representative. The right to vote representatives onto the workers' council shall be granted to all employees who have worked in the company for at least six uninterrupted months (right to elect). Workers' council members shall be elected in a secret and direct ballot. The employer shall be bound to keep the works council informed about issues relating in particular to topics under the Article 89 and request joint consultations on matters under the Articles 93 and 94. At a request from the works council the employer shall be bound to allow inspection of the documentation required to obtain an insight into the matters referred to in Art. 89. Information and consultation have to be done before taking decisions on these issues. The employer shall be bound to give the workers' council the necessary information at least 30 days before taking the decisions, and organise joint consultations at least 15 days before taking the decisions. Pursuant to Article 107 of the aforementioned Act, an employer in breach of the obligation to inform and consult workers is fined as follows: penalties ranging from EUR 4,000 to 20,000 can be imposed on the

			employer/legal person and a fine of between EUR 1,000 and 2,000 on its responsible person; in the case of sole proprietorship, penalties range from EUR 2,000 to 4,000. Finally, it has to be mentioned that Slovenian system adopted dual structure, where employee representation is achieved not only through works councils but also through the trade union channel (see provisions of the Employment relationship Act and Collective Agreements Act).
Dir. 2001/86 (SE)	**Participation of Workers in Management of the European public limited-liability Company Act (SE)**; Off. Gaz. no. 28/06; Zakon o sodelovanju delavcev pri upravljanju evropske delniške družbe (SE) (ZSDUEDD)	Article 3 of the SE-Act faithfully transposes the definitions of "information", "consultation", "participation" and "involvement" from the Directive: **»involvement«** of employees in administration is any procedure, including information, consultation and participation, through which employees may exercise an influence on decisions to be taken within the company; **»information«** is the informing of the works council of the SE or other employees' representatives by the management of the SE about questions that concern the SE or any of its subsidiaries or branches in another Member State and about questions that exceed the powers of the decision-making bodies in a single Member State. Information provision shall be carried out at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the	Provisions concerning the creation of a special negotiating body have been implemented in Slovenian legislation by Articles 4 – 14 of the SE-Act, content of agreement by Articles 9(2), 16 and 17, duration of negotiations by Articles 9(3,4), legislation applicable to the negotiation procedure by Article 15, standard rules by Articles 19 – 34, principles of involvement and provisions on protection of employees' representatives by Articles 35 – 37, settlement of disputes by Article 38 and penal provisions by Article 39. National law more or less repeats provisions from Directive with some enlargement. For instance, Slovenian legislature enlarges the catalogue of issues which must be communicated at the start of the procedure for a creation of a special negotiating body and establish possibility that, when no collective body exists, the addressees of the information are all employees

		possible impact of the decisions and, where appropriate, prepare consultations with the management of the SE; **»Consultation«** is the establishment of dialogue and the exchange of views between the works council of the SE or other employees' representatives and the management of the SE at a time, in a manner and with a content which allows the employees' representatives, on the basis of the information provided, to express an opinion on measures envisaged by the management of the SE which may be taken into account in the decision-making process within the SE; **»participation«** under this Act is the influence of the works council of the SE or of the other employees' representatives in the affairs of a company by way of: – the right to elect or appoint individual members of the company's administrative or supervisory bodies, or – the right to recommend and/or oppose the appointment of some or all of the members of the company's administrative or supervisory bodies	(article 4(2)). SE-Acts regulates the election of members of the special negotiating body in Article 8; employees' representatives from the Republic of Slovenia shall be elected to the special negotiating body by all employees by secret ballot. Works councils, representative trade unions and at least 50 employees in a participating company, concerned subsidiary and branch shall be entitled to nominate candidates for membership of the special negotiating body. The SE-Act in detail regulates employees' participation in management on the basis of an agreement and on the basis of the law.
Dir. 2003/72 (SCE)	**Workers Participation in Management of European Cooperative Society Act**, Off. Gaz. No. 79/06, Zakon o sodelovanju delavcev pri upravljanju	Article 3 of the SCE-Act faithfully transposes the definitions of "information", "consultation", "participation" and "involvement" from the Directive: **involvement of employees** in decision-making is defined as any procedure, including information, consultation and	The SCE-Directive has been in general faithfully implemented in the Slovenian legislation. National law mostly repeats provisions from Directive and is very similar to the SE-Act (see above). However, there is no provisions in SCE-Act that the central management is not obliged to transmit information, which nature is

	evropske zadruge (ZSDUEZ)	participation, through which employees may exercise an influence on decisions to be taken within a legal entity. **Information** means the informing of the works council of the SCE or other employees' representatives by the management of the SCE about questions that concern the SCE or any of its subsidiaries or establishments in another Member State and about questions that exceed the powers of the decision-making bodies in a single Member State. Information provision shall be carried out at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact of the decisions and, where appropriate, prepare consultations with the management of the SCE. **Consultation** is defined as the establishment of dialogue and the exchange of views between the works council of the SCE or other employees' representatives and the management of the SCE at a time, in a manner and with a content which allows the employees' representatives, on the basis of the information provided, to express an opinion on measures envisaged by the management of the SCE. The opinion may be taken into account in the decision-making process within the SCE. **Participation** under the SCE-Act means the influence of the works council of the SCE or of the other employees' representatives in the affairs of a company by way of:	such that it would seriously harm the functioning of the SCE (compare with Art. 10 of the Directive). There is no such information that could be kept in silent by the central management, so in this aspect the national legislation enlarges the scope of information in comparison with Art. 10 of the Directive. SCE-Act has followed the solutions which are adopted in the Slovenian general system of employees' participation as laid down in the WPM-Act (protection of the employee's representatives, election to the special negotiating body by all employees by secret ballot etc.)

		- the right to elect or appoint individual members of the company's administrative or supervisory bodies, or - the right to recommend and/or oppose the appointment of some or all of the members of the legal entity's administrative or supervisory bodies	
Dir. 2001/23 (transfer of undertaking)	**Employment relationship Act**; Off. Gaz. No. 21/13; Zakon o delovnih razmerjih (ZDR-1) **Worker Participation in Management Act**; Off. Gaz. no. 42/93, 42/07; Zakon o sodelovanju delavcev pri upravljanju (ZSDU)	Informing and consulting ***trade unions*** by the employer about issues relating to transfer of undertaking is regulated by Article 76 of the Employment relationship Act**.** Informing and consulting ***works council*** is regulated by articles 89 – 94 of the Worker Participation in Management Act.	- **Informing and consulting trade unions** The transferor employer and the transferee employer, at least 30 days prior to the transfer, must inform the trade unions at the employer about the following: – the date or the proposed date of the transfer, – the reasons for the transfer, – the legal, economic and social implications of the transfer for workers, and – measures envisaged for workers. The transferor employer and the transferee employer, with the intention of achieving an agreement, must consult the trade unions referred to in the preceding paragraph at least 15 days prior to the transfer about the legal, economic and social implications of the transfer and about the envisaged measures for workers. **- informing and consulting works councils:** The employer shall be bound to inform about and request joint consultations on the status of the company before taking decisions on these issues, such as status changes, the sale of the company or of essential parts, the closing of the company or of essential parts, essential ownership changes, etc. The employer has to give the works council the necessary information at least 30 days

			before taking the decisions, and organise joint consultations at least 15 days before taking the decisions.
Dir. 98/59 (collective dismissals)	**Employment relationship Act**; Off. Gaz. No. 21/13; Zakon o delovnih razmerjih (ZDR-1) **Worker Participation in Management Act**; Off. Gaz. no. 42/93, 42/07; Zakon o sodelovanju delavcev pri upravljanju (ZSDU)	Informing and consulting ***trade unions*** by the employer about issues relating to collective dismissals is laid down in Articles 99 and 100 of the Employment Relationship Act. A duty to inform and consult the ***works council*** is regulated by articles 89 – 94 of the Worker Participation in Management Act.	***- informing and consulting trade unions:*** In accordance with Article 99 the employer must inform in writing the trade unions about the reasons for redundancies, the number and the categories of all employed workers, the foreseen categories of redundant workers, the foreseen term in which the work of workers will no longer be needed, and the proposed criteria for the determination of redundant workers. With a view to reaching an agreement, the employer shall previously have consulted the trade unions. Consultation shall be considered to include following matters: the proposed criteria for the determination of redundant workers, the elaboration of the dismissal programme for redundant workers, the possible ways of avoiding and limiting the number of dismissals and the possible measures for the prevention and mitigation of harmful consequences. he employer must inform also the Employment Service about the procedure of establishing redundancies of a larger number of workers, the performed consultation with trade unions, the reasons for the redundancies, the number and categories of all workers employed, etc. (Article 100) and send a copy of the written notification to

			the trade unions as well. ***- informing and consulting works councils:*** The employer shall be bound to give the workers' council the necessary information at least 30 days before taking the decisions, and organise joint consultations at least 15 days before taking the decisions.
Dir. 2005/56 (cross-border merger)	**Act Regulating Employees Participation in Decision-Making in Cross-Border Mergers of Limited Liability Companies**; Off. Gaz. No. 56/08; Zakon o soodločanju delavcev pri čezmejnih združitvah kapitalskih družb (ZSDČZKD)	Article 16 of the Directive 2005/56 is implemented in Slovenian national law by the aforementioned Act (CBM Employee Participation Act). It regulates the employee participation system applicable for the company resulting from the cross-border merger. It is stated in the Slovenian Act that the **participation** under this Act is the influence of the works council or other employees' representatives in the affairs of a company by way of: – the right to elect or appoint individual members of the company's administrative or supervisory bodies, or – the right to recommend and/or oppose the appointment of some or all of the members of the company's administrative or supervisory bodies (Art. 3).	According to Article 4 of this Act, the laws of Slovenia on employee participation (especially the Worker Participation in Management Act) apply to a company resulting a cross-border merger that has its registered seat in Slovenia, unless any of the three exceptions of Article 16(2) of the Directive applies. In such a case, provisions of the Companies Act and the aforementioned Act apply. Article 16(2) of the Directive has been implemented in Slovenian law with no further or diverging rules. Article 16(4) has been transposed under Articles 19, 16 and 20 of the Slovenian law. Article 20 of the Slovenian law states that employees' participation in a company must be set up in accordance with that Act if, before registration of the company resulting from the merger, one or more forms of participation applied in one or more of the participating companies covering at least one third of the total number of employees in all the participating companies. Under Article 21, the employees of a company resulting from a cross-border merger and the employees of its affiliated companies and subsidiaries have the right to elect, appoint, recommend or oppose the appointment of a

			designated number of members in administrative organs, whereby the number of such members shall be equal to the highest proportion of such member in administrative organs of any participating company. If in one of the merging companies employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower proportion of employee representatives in the administrative organ than one third, as required by Article 16(4) of the Directive.

2) Are there in your National System other legal and/or collective bargaining National provisions on information, consultation, participation, involvement, co – determination, financial participation?

Other legal and/or collective bargaining National provisions on:	**YES/NO**	**Description**
Information	YES	Beside ZSDU which determines a general framework for information there are some other relevant Acts: **- Takeovers Act** (Off.Gaz.79/06 with amendments); the management of the offeree company and the offeror shall notify the employee representatives, or, in their absence, the employees themselves of the intention to takeover (Art. 24); the management of the offeree company shall deliver, immediately and free of charge, the prospectus to the representatives of the company's employees or, where there are no such representatives, to the employees themselves (Art. 33); the prospectus has to contain, among others, information concerning maintenance of jobs of employees and management, including any modifications of recruitment requirements, as well as the impact on recruitment (Art. 28); the management of the offeree company shall communicate its opinion on the takeover bid simultaneously with its announcement to the representatives of its employees or, where there are no such representatives, to the

		employees themselves (Art. 34). **- Employment Relationship Act** (Off .Gaz. 21/2013); the company has to inform the trade union, the works council or the worker representative at least once a year on the reasons for the use of temporary workers and their number (Art.59); the employer has to inform the trade union or the works council on the intended dismissal if so requested by the worker concerned (Art. 86); the employer has to inform the trade union, the works council or the worker representative once a year on the use of working time, its (re)distribution and overtime work (Art. 148). Almost all **branch collective agreements** provide for broadly defined right of the trade union to be informed on employment issues. **Participatory agreement** (Art. 5. Of the WPMA): The exercise of rights and other questions as provided for by WPM Act may be defined in greater detail in a written agreement between the workers' council and employer; and the right to be informed may be extended beyond the scope provided for by this Law. However, such an agreement may not regulate working conditions and terms of employment, which are, according to the law, the content of collective agreements (such as wages, etc.).
Consultation	YES	Beside ZSDU which determines a general framework for consultation there are some other relevant provisions in legislation, for instance: **- Employment Relationship Act** (Off. Gaz. 21/2013); at least once a year, the employer has to consult trade unions on the night work (organization, measures of safety and health at work, etc. (Art. 153). Many **branch collective agreements** have provisions on consultation with trade union on particular aspects of employment relations (for instance, harassment and violence at work). **Participatory agreement** with the works' council (according to Art. 5 of WPMA) may enlarge the scope of consultation rights beyond the legislation minimum.
Participation	YES	**Worker Participation in Management Act**; Off. Gaz. no. 42/93, 42/07 regulates - besides information, consultation and co-determination - also employee participation on company boards (supervisory boards or administrative boards; Articles 78 – 84).
Involvement	YES	This term is used as a broader term for different forms

		of employees' participation, including information, consultation and co-determination etc. (see all other descriptions in this table). Besides, the **Social Entrepreneurship Act** (Off. Gaz. No 20/2011, Zakon o socialnem podjetništvu, ZSocP) was enacted in 2011. It regulates social enterprises, one of their main characteristic being also the participatory nature. This Act provides for a high degree of involvement of employees in the decision-making and management of the enterprise. According to Art 4, a non-profit legal entity may engage in social entrepreneurship provided that it is established and operates pursuant to the prescribed principles and requirements, one of them being that the stakeholders, also employees, are involved in decision-making. According to Art 12, the memorandum or articles of association have to, among others, regulate the mode of management embedding the principle of equality and specify the method of stakeholders' (i.e. employees', users' etc.) participation in management, such as consultation, mandatory opinion, etc. The employees (and other stakeholders) have to be given the possibility of participating in the management of social enterprise by at least influencing the decisions of importance to their work and the quality of products and services; the relevant issues, the right to be informed, the method of informing and the detailed definition of the method of participation in decision-making have to be regulated by the general act of a social enterprise with the prior consent of the representatives of the employees' (and other stakeholders)(Art 24).
Co-determination	YES	**Worker Participation in Management Act**; Off. Gaz. no. 42/93, 42/07 regulates, besides information and consultation, also the right to co-determination. The employer shall be bound to submit for approval by the works council draft decisions on certain matters (company vacation homes and other worker welfare facilities, employee promotion criteria etc.) and if decisions result in an increase or reduction in the workforce in which a significant number of employees are concerned under employment regulations (Art. 95, 96). The right of the works council to decision-making by giving its consent and failing this, having the capacity to put in stand-by the execution until the decision of the competent courts is regulated in Article 98. **Participatory agreement** (Art. 5. Of the WPMA): The exercise of rights and other questions as provided for by WPM Act may be defined in greater detail in a written agreement between the workers' council and employer; and the right to participate in decision-

		making may be extended beyond the scope provided for by this Law.
Financial participation	YES	**Financial Participation Act** (Off. Gaz. 25/08); the Act regulates different tax incentives for employees to purchase company shares and for share-based profit-sharing schemes.

3) Juridical nature and role of the actors.

Actors	**Nature (trade union, no trade union, legal, contractual, etc.)**	**Role**	**Description**
Employees' representatives (from National law)	- **works council or workers' representative** (elected representatives; on the basis of the law) - **employees' representatives on company boards** (elected representatives; on the basis of the law).	- information - consultation - co-determination - participation The right of workers to participate in management *shall not encroach upon the rights and duties of trade unions* and employers to protect the interests of their membership. The works' council must refrain from any trade unions' industrial actions (Art. 7 of the WPM Act)	- **works council** (in companies with more than 20 employees having the right to vote) **/ workers' representative** (in companies with up to 20 employees having the right to vote). Works council/workers' representative represents all workers in a company, elected by a secret ballot by all workers (employed at least 6 months in the company), except leading staff and their family members. The right to nominate works council candidates have: certain number of employees, representative trade unions in the company - **employees' representatives on company boards**; appointed or proposed by the works council, depending on the nature of the company board (one or two tier system, supervisory or administrative role)

Employees' representatives (from implementation of European Directives)	- special negotiating body - European Works Council - work councils of SE, SCE	- negotiation - information - consultation - participation - involvement (see detail definitions and descriptions in the table no 1).	- Special negotiating body is a body established **to negotiate with the management** (of participating companies (SE) or legal entities (SCE)) or with the central management (EWC)), **on arranging the means of involvement of employees** (in the administration of SE or in decision-making of the SCE or in the establishment of the EWC or a procedure for I&C) (Art. 3 of the SE-Act, SCE-Act and EWC-Act). - works council (of the SE/SCE) is the body that **represents employees** and is established *with a view to informing and consulting the employees* (in the SE/ SCE) and its subsidiaries and branches and in specified cases, *to enforce the rights of employees to participation* (in the SE/SCE) (Art. 3 of the SE-Act, SCE-Act).
Trade union	- **Constitutionally recognized** freedom of association (Art. 76 of the Slovenian constitution) - **Legal personality and representativeness** of trade unions; regulated by the Law (Representativeness of Trade Unions Act; Off. Gaz. 13/1993) - **activities of *trade union representatives* at company level:** trade union with members employed with a certain employer may appoint	- information - consultation - co-determination (consent of the trade union is needed in a dismissal procedure of the trade union representative) - right to nominate works council candidates Collective bargaining as trade union traditional activity; regulated in the Collective Agreements Act (Off. Gaz. 43/06).	**Competencies** regarding employees' participation at company level upon the Employment relationship Act: - both, *representative and non-representative trade unions* can represent their members in procedure against individual worker (dismissal, disciplinary procedures) - *only representative trade unions* can take part in procedures which refer to all workers (information and consultation on certain aspects in case of collective dismissals, agency work, transfer of undertakings etc.),

	or elect trade union representatives, who are entitled to carry out trade union activities or/and competencies under the Employment Relationship Act (Art. 205 of the Employment Relationship Act).		Prescribed *requirements for the representativeness* of a trade-union: - are democratic and respect the principle of freedom of association, - function at least six months continuously, - are independent in relation to the employers and public authority, - finance themselves predominantly out of the membership fees, - have at least a minimum number of members, prescribed by the law (10% or 15%, depending on whether they are joined in an association or confederation at national level or not)
Employees	- employee as an individual - assembly of workers	- information - assembly of workers has also certain competences in the election of employees' representatives under the EU Directives (see above)	Employees as an individual has the following rights: to give initiatives and receive answers in relation to their work or organisational unit, to be informed on changes in their sphere of work, to state their opinion about the organisation of the work process, to ask the employer, or the person authorised by him, to answer questions relating to salaries/wages and other spheres of labour relations, and questions relating to the contents of that Act. Employment Relationship Act states, that if there is no trade union or workers' representative at the employer, workers must be informed with the unilateral employer's draft general act (which may regulate rights and duties in employment relationship) in the usual manner and prior to its adoption

Specialized representation	- **health and safety representative** means a workers' representative with a position and role of the works council; elected representative; on the basis of the law	- information - consultation - co-determination	Issues regarding the election, rights and competences etc. of the health and safety representative are regulated by the same rules that apply to the works councils (see above)..

4) Are there in your National legal system provision on representation of different categories of employees entitled of participation rights?

Provision on representation of different categories of employees **(specify which categories)**	**YES/NO**	**If yes specify the legal source**
WORKS COUNCILS: women, workers with disabilities, young workers, etc.	YES	**Worker Participation in Management Act:** According to Art 28, the works council may in its rules of procedure determine *that candidates for the works council shall be nominated and elected separately by particular groups of employees (e.g. women, disabled workers, young workers etc.),* by individual organisational units or segments of the working process, and by parts of the company located outside the Headquarters. According to Art 58, the works council may decide to set up *works council's committees dealing with issues which are relevant for particular groups of employees (women, disabled workers, young workers etc.)*
EUROPEAN WORKS COUNCIL: balanced representation of employees with regard to their gender, category	YES	**European Works Councils Act:** An agreement establishing the European works council has to regulate – among others – the composition of the EWC, the number of members, the term of office and the *allocation of seats, so as to ensure, where possible, a balanced representation of employees with regard to their activities, category and gender. (Art 16)*
SPECIAL NEGOTIATING BODY IN THE ECS: gender-balanced representation	YES	**Workers Participation in Management of European Cooperative Society Act:** Those who nominate the candidates for the members of a special negotiating body of the ECS (works council, trade-unions etc.) have

		to strive for the balanced representation of each gender. (Art. 8) (Note: There is no similar provision in the Participation of Workers in Management of the European public limited-liability Company Act (SE))

5) The EWC Establishment Agreements provide the connection between the representations? See art. 6 and considerandum n. 20 of Directive 2009/38.

NOTE: Art. 6 (2.c) and considerandum 21 of Directive 2009/38 – "... reinforcing the effectiveness of dialogue at transnational level, permitting suitable linkage between the national and transnational levels of dialogue..."

Connection between the representations in the EWC Establishment Agreements	**YES/NO**	**If yes, specify wick Agreements**
	YES	**Legal regulation:** Slovenian legislation explicitly regulates the linkage between I&C at the transnational (EWC) and national level and the transmission of information between the employees' representation on the transnational and national level. - According to Art 16 of the European Works Councils Act, the EWC Establishment Agreement has to regulate, among others, also the arrangements for linking information and consultation of the European Works Council and national employee representation bodies. - The members of the EWC have to inform employees' representatives (the works council and the representative trade unions) or, where there are no such representatives, all employees in undertakings or establishments in the Member States of the information and consultation procedure. (Art 34)
	NO	**Gorenje Group EWC Establishment Agreement (Velenje, Slovenia):** - There is no explicit provision in the agreement which would regulate the connections between the EWC level and national level employees' representations. - However, the agreement emphasizes, for instance, that "the EWC complements workers' representations existing at the level of individual states and shall not replace the

		said bodies of workers' representations" and that "the agreement shall not affect any rights to information and consultation to which employees and their representatives are entitled by the law of individual states ... except in case that standards ... are higher".
	YES	**Novartis Euroforum (NEF) Agreement** has many provisions dealing with the relationship between transnational (EWC) level and national level employees' representations. For instance: - in relation to the change process, the agreement states that "in additions to the exchange at local/national level, social dialogue in the framework of the NEF is of high importance" (no 6), - as regards the information "the employee members (of the Novartis Euroforum) are responsible for disseminating the received information to all Novartis employees that they respectively represent" (6.1.5.), - Agreement also states that I&C at the transnational level (EWC) will take place "in parallel and be linked to those of the national works council, with due regard to the competences and areas of action of each". (6.1.6.) - in relation to consultation procedures, the agreement states that "where allowed, in accordance with local legislation, employee members (of the EWC) may be informed and consulted prior to national works councils to allow them to provide their timely input to the national works councils" (6.2.1.) - in relation to the extraordinary meetings of the EWC, the agreement, among others, states that members of the EWC "may also invite Novartis employees to these ... consultation meetings ... who represent the interests of the sites concerned, if they are not represented in the NEF". (6.2.5.)
	YES	**Adecco EWC (AEWC)** has quite many provisions dealing with the connections and relationship between the transnational (EWC) and national/local level employees' representation. For instance: - general considerations, such as that "the purpose is to promote the social dialogue at European level within the Company, without encroaching upon the purview of national representative bodies...", that the European level "is complementary to and distinct from national systems of information, consultation and participation" and that "national and local representative bodies ... shall not be affected by this agreement" and it will "not replace or diminish the rights of information and consultation at national and local level". (preamble, I.-objective). Besides, the agreement emphasizes local matters "are to be dealt with specifically through local or national I&C

		arrangements" (II.1.). - Under the title "Link with local level I&C" it is stated that the EWC and any local level I&C "shall run concurrently and shall not delay or impede the other's progress" (IV.3.). - As regards the extraordinary meetings at the European level, the agreement states that they "will be convened at the same time or as soon as reasonably practicable after (and in any event within five working daysafter) the relevant circumstances or decision are announced in the affected Countries to local works councils, trade unions or other Employee Representatives as required by local laws" and that "European and local level I&C "shall run concurrently...". (V.1.4.) - Communication from EWC level to local level as well as disclosure and dissemination of information to the local level is regulated quite in detail. Information disclosed at the EWC will be disseminated to Adecco employees in the various subsidiaries (subject to restrictions due to the confidentiality etc.) , either through local works councils or similar employee representative bodies, or – if there are no such representatives – through local management. (VII.1., VII.2.)

NOTE: Art. 6 (2.b) and considerandum 20 of Directive 2009/38 – "...to provide, if they consider appropriate, for a balanced representation of different categories of employees."

Connection between the representations in the EWC Establishment Agreements (balanced-representation of different categories of employees)	**YES/NO**	**If yes, specify wick Agreements**
	YES	**Legal regulation:** See above, in the table under 4) **European Works Councils Act** (Art 16)
	NO	**Gorenje Group EWC Establishment Agreement (Velenje, Slovenia):** No provision as regards the balanced-representation of workers with regard to gender, category or other characteristics.
	YES	**Novartis Euroforum Agreement (NEF):** According to provision 2.2.3. of the agreement "employee members and their deputies will be elected by the employees within each participating country ..., considering all different groups of employees (e.g., workers,

		employees, women, men)."
	YES	**Adecco EWC (AEWC):** In relation to the election and composition of the EWC, the agreement explicitly states that "those involved in the election or appointment of Employee Representatives will be reminded to consider the need for balanced representation of Employees with regard to their activities, category and gender in making the selection" (III.1.1.).

6) Which tools for achieving participation are provided in your National system?

Tools for achieving participation:	**YES/NO**	**If yes, specify the legal source**
referendum	**YES** – Slovenian National Assembly shall call a referendum on national important matters **NO** – Slovenian legislation does not prescribe any such obligation as referendum within the company with a view to validating the outcome of participation procedures between employees' representatives and management	**Legislative referendum** According to Article 90 of the Slovenian Constitution (Off.Gaz.nos.33/91-I, 42/97, 66/2000, 24/03, 69/04, 68/06, and 47/13), the Slovenian National Assembly shall call a *referendum on the entry into force of a law* that it has adopted if so required by at least *forty thousand voters*. A referendum may not be called: - on laws on urgent measures to ensure the defence of the state, security, or the elimination of the consequences of natural disasters; - on laws on taxes, customs duties, and other compulsory charges, and on the law adopted for the implementation of the state budget; - on laws on the ratification of treaties; - on laws eliminating an unconstitutionality in the field of human rights and fundamental freedoms or any other unconstitutionality.
assembly of workers	**YES** - collectively exercising of employees' participation	- regulated by the Art. 69 – 72 of the WPM-Act - **composed** of all employees except management personnel; assemblies may also be convened by individual organisational units or sectors of the company work process - **convened** by works council; works council is obliged to convene a workers' assembly if so requested by the management **- discuss** matters from the field of competence of

		the workers' council or of its committee, ***but may not decide*** upon matters falling within the competence of the workers' council or its committee
supervisory boards	**YES**	WPM-Act (Art. 78 – 84) regulates **employee participation on company boards:** - <u>in two tier</u> system through employees' representatives in *supervisory board* and also through a *worker director* in company management - <u>in one tier</u> system through employees' representatives in *administrative board* and in commissions and through *representatives among executive director* - the number of employees' representative in supervisory board is laid down in Statute of the company, but not less than 1/3 and not more than 1/5 of all members - elected and recalled by the works council
Others: - administrative board in on tier system of management - commissions of the supervisory or administrative boards - worker director /executive director - works council of capital-related companies		WPM-Act (Art. 73 – 84): - in one tier system; at least one member of the **administrative board** shall be an employees' representative, the number is laid down in the Statute, but not less than one employees' representative out of each three members of administrative board; elected and recalled by the works council - **worker director**; in a company with two tier system of management with more than 500 employees shall have a worker director; in a company with one tier system with more than 500 employees shall have one of representative of workers in the administrative board nominated for **executive director**; nominated by the supervisory board / administrative board, on works council proposal. - **works council of capital-related companies; c**apital-related companies shall establish a works council of capital-related companies; comprise representatives of all the capital-related companies; members are appointed by the workers' councils of the individual companies; competent to deal with issues of concern to employees in all the capital-related companies (competencies detailed in a mutual agreement).

7) Have the participation effects on employability? (See, in particular, *considerandum* n. 7 EU Directive 2002/14 and *considerandum* n. 29 EU Directive 2009/38).

Effects on employability	**YES/NO**	**Note:**
Due to I&C there has been an increase in or high level of employability of employees (e.g. through accompanied employee mobility)?	NO/partly	- not enough shared responsibility of employers, employees' representatives and individuals to invest in employability of employees, in skills development, etc.; - lack of financial resources; - employees' representatives do not have enough practical possibilities to influence decision-making as regards the employability measures; I&C is not enough (predominantly formal and not effective tool); - lack of joint action to increase the adaptability of employees through retraining and redeployment of employees, mobility within the company and groups of companies, shared jobs, shorter working time etc.). However, there are some good examples, for instance, Novartis EWC Agreement explicitly states that "the goal should be to avoid dismissals as a result of restructuring as far as possible"; the agreement enumerate, among others, the following measures designed to mitigate the negative consequences: transfers within the Group, training and qualification measures, promotion and support mobility and others (6.3.3.).
Due to the participation there has been an increase in the anticipation of risks?	YES/partly	- existing legal regulation provides a framework for the involvement of employees' representatives in procedures regarding collective dismissals or where there are essential changes which could result in an increase or reduction of employment (see tables 1) and 2): - however, in practice, the I&C procedures and other forms of employees' participation are usually too late, the employer has already reached the decision and I&C procedures mean only fulfilling formal requirements - anticipation of risk should be the result of the continuous I&C process
Due to the employees' involvement there has been an effect in particular with regard to anticipating and managing change?	YES/partly	- existing legal regulation provides a framework for the involvement of employees' representatives, however, in practice, this is not enough (see above); -in particular, with regard to anticipating and managing change in case of takeovers the situation is especially problematic; the Directive 2004/25/ES and the national implementation legislation do not provide adequate protection of employees against risks of change of working conditions and

		redundancies after the takeover; -employees' representatives predominant opinion is that they have no real influence in takeover procedures; however, there are some good examples of the employees participation in takeover procedures (Sava company: no collective dismissals three years after the takeover; production and research departments were not transferred abroad) - there is a problem of the implementation in practice
I&C rights have made work organization more flexible and have been facilitate employee access to training within the undertaking while maintaining security?	NO	- the lack of legal basis; the lack of the involvement of employees' representatives in company training policy; - employees' representatives do not have enough practical possibilities to influence decision-making as regards the training policy of the employer;
I&C rights have promoted employee involvement in the operation and future of the undertaking and increase its competitiveness?	YES	- I&C increase trust and partnership between employees and management; - I&C ensure opportunities to increase productivity or performance of employees and the undertaking; - I&C rights promote greater involvement of the employees, increases their innovativeness and their adaptability to changes.

Employees' participation in Sweden
Giorgio Verrecchia[19]

1) National implementations of European Directives and definitions of participation, information, consultation and involvement.

Directives	National Implementation	Definitions	Description
Dir. 2009/38/EC (EWC)	Act (2011:427) in European Works Council Lagen (2011:427) om europeiska företagsråd	- Information: Information is given in at a time, in a way and with a content which provides the Workers representative the possibilities to make a thorough examination of consequences and to prepare the consultation with the company or group of companies of employment. - Consultation; is persued through dialogue and exchange of opinions between labour representatives and the company or group of companies.	- Since the worker representation is not organized in Work Councils in Sweden, the influence of European Work Council Directive is minor. Some companies have introduced the scheme, so far (IKEA, Sandvik, Proffie, Atlas Copco, SKF and some more).
Dir. 89/391 (H&S)	Implemented in the Health and Safety Act (1977:1160), Arbetsmiljölagen (1977:1160).	- Information - Consultation - Participation	Worker representatives are elected by workers and agreed upon by the trade unions (with whom the Employer has a collective

19 Interview to prof. Andreas Inghammar, LL.M., LL.D., Associate Professor, Head of Department of Business Law, School of Economics and Management, Lund University – Lund (Sweden).

			agreement). Most H&S aspects were already in place before SWE entered into the EU/EC in 1995.
Dir. 2002/14/EC (general framework on I&C)	Implemented in the Co-Determination Act (1976:580)	- Information As stated in the Swedish Co-determination Act, Information is more or less anything that could affect the relation between the employee and the employer. - Consultation Wide duty to negotiate, primarily with the trade unions parties to collective agreements (most workplaces are covered, ca 90 per cent), stated in the Co-determination act.	- There is, in Swedish law, an obligation for the employer to inform and to negotiate with the trade union(s) prior to making any decisions that could affect the workers (primary) who are member of the trade union, or if asked to by the trade union (secondary).
Dir. 2001/86 (SE)	Implemented through Act (2004:555) on employee representation in Europe-companies). Lag om arbetstagarinflytande i europabolag.	- Information 45 §, information about the Europe-company and its daughter companies in other EES-states. 46 § Information should be provided in a fashion and at a time which enables the Work Council to make a thorough investigation. - Consultation 46-47 §§ Consultation shall be held in a way and at a time that enables the work council to provide input on the measures planned by management and influence the process of decision. - Participation,	- Only very few "Europe-companies" have been formed in Sweden (less than 10).

		see consultation. - Involvement Upon formation of the Europe-company, the employees should be entitled to involvement.	
Dir. 2003/72 (SCE)	Lag (2006:477) om arbetstagarinflytande i europakooperativ.	- Information 48 §, information about the European Cooperative society and its daughter companies in other EES-states. 46 § Information should be provided in a fashion and at a time which enables the Work Council to make a thorough investigation. - Consultation 46-47 §§ Consultation shall be held in a way and at a time that enables the work council to provide input on the measures planned by management and influence the process of decision. - Participation, see consultation. - Involvement Upon formation of the European Cooperative Society the employees should be entitled to involvement	-
Dir. 2001/23 (transfer of undertaking)	Implemented in the 28 § Co-determination act (and the Employment Protection Act (1982:80).)	In line with ordinary duty to negotiate already in the Co-determination act. Collective agreement will prevail for a year with the new legal entity.	-
Dir. 98/59 (collective	Implemented (already mainly	Information Employer duty to inform and consult, and	- In Swedish employment law, any

dismissals)	covered) in the 11-14 §§ Co-determination act.	negotiate (primary duty) already before the decision on collective dismissal is made. Consultation	redundancy, even if only one (1) employee is treated the same in relation to information and consultation/negotiation.
Dir. 2005/56 (cross-border merger)	Lag (2008:9) om arbetstagares medverkan vid gränsöverskridande fusioner	Participation	-

2) Are there in your National System other legal and/or collective bargaining National provisions on information, consultation, participation, involvement, co – determination, financial participation?

Other legal and/or collective bargaining National provisions on:	**YES/NO**	**Description**
Information	YES	
Consultation	YES	
Participation	YES	
Involvement	YES	
Co-determination	YES	
Financial participation	YES	

3) Juridical nature and role of the actors.

Actors	**Nature (trade union, no trade union, legal, contractual, etc.)**	**Role**	**Description**
Employees' representatives (from National law)	Trade unions are the main representatives, apart from Health and Safety representatives who are on the other hand subject to approval by the Trade union (which is party to collective agreement). Also as employees' representatives as Board Members.	Massive	In public bodies (Universities…) this might differ and further employee representativity is arranged at different levels.
Employees' representatives (from implementation	Trade unions, see also about Working councils, above on specific EU-		

of European Directives)	law.		
Trade union	See on employees' representatives above		
Employees	See on employees' representatives above		
Specialized representation	See on employees' representatives above, (Board members)		

4) Are there in your National legal system provision on representation of different categories of employees entitled of participation rights?

Provision on representation of different categories of employees (specify which categories)	**YES/NO**	**If yes specify the legal source**
Only in relation to different trade unions (blue collar/white collar workers are represented separately)		

5) The EWC Establishment Agreements provide the connection between the representations? See art. 6 and considerandum n. 20 of Directive 2009/38.

Connection between the representations in the EWC Establishment Agreements	**YES/NO**	**If yes, specify wick Agreements**
	No significance	

6) Which tools for achieving participation are provided in your National system?

Tools for achieving participation:	**YES/NO**	**If yes, specify the legal source**
referendum	NO	
assembly of workers	NO	
supervisory boards	NO	
Others Only Trade Unions and Colletive Bargaining and negotiation at workplace, regional or central (national) level.		

7) Have the participation effects on employability? (See, in particular, *considerandum* n. 7 EU Directive 2002/14 and *considerandum* n. 29 EU Directive 2009/38).

Effects on employability	**YES/NO**	**Note:**
Due to I&C there has been an increase in or high level of	No, I have not seen any such information.	

employability of employees (e.g. through accompanied employee mobility)?		
Due to the participation there has been an increase in the anticipation of risks?	YES	
Due to the employees' involvement there has been an effect in particular with regard to anticipating and managing change?	YES	Double edged sword. Slower decision processes, but more easily implemented once agreed with Trade unions.
I&C rights have made work organization more flexible and have been facilitate employee access to training within the undertaking while maintaining security?	NO	This was introduced already in 1977 so not easily judged empirically (industry has seen an enormous change in 40 years).
I&C rights have promoted employee involvement in the operation and future of the undertaking and increase its competitiveness?	Yes and No.	

Employees' participation in Hungary

Giorgio Verrecchia

1) Juridical nature and role of the actors.

The new Labour Code authorizes' agreements with works councils, concluded between the employer and committees enterprise workers, to assume the function of real contracts collective.
The new Code allows that such agreements may contain provisions governing the rights and obligations arising from or in connection with the employment relationship (the normative part of the collective agreement). The only limit is the prohibition of amend the rules on pay. These agreements ("quasi-collective") may be concluded on condition that the employer is not obliged to apply a collective agreement entered into or that there is no union at the company that is entitled to conclude a collective agreement.
A works council is elected if the average worker in the enterprise or the unit production is more than 50 workers (29) and if it does not exist in a union, given that the unions are concentrated in firms more large, as multinationals (such as Tesco, Audi), and state-owned (like the Hungarian Railways or utility companies).
Consequently the remaining firms do not record a tradition nor cultivate an interest in collective bargaining. The reform thus induce a change considerable[20], given that small production units will be interested in conclude a collective agreement with the works council to take advantage, through exemptions, the flexibility in the regulation of working hours or other institutions.
However, the lack of effective collective action weakens the position of works councils.
There is also a risk that some employers encourage the formation of works councils 'of convenience' just to have a party with which to conclude agreements derogatory of the rules of the Labour Code in a manner favorable to the entrepreneur.

The labor law provides for four models of worker representation:
- Unions are separate legal entities, typical organizations worker representation of conflicting nature;
- Councils: ensure the participation of workers in management firm and does not constitute an autonomous organization or a legal personality;
- Workers' representatives in the supervisory bodies of companies: in enterprises employing more than 200 workers there is a special form worker participation;
- Representatives of workers' health and safety is a form special organization of workers' representatives whose function is to facilitate the participation of workers in the creation of a safe working environment, as required by the Framework Directive of the EU health and safety in the workplace.
Despite the new Labour Code does not consider any of the two representation structures superior to the other, you may notice some emphasis in favor of works councils:
- In the structure of the Code, the rules concerning works councils precedes that concerning trade unions, while in the previous Code was the opposite;
- According to the new rules, to verify the correct application of standards of labor law is a task of the councils, which first belonged to unions, although the former does not have the necessary prerogatives (for example, to initiate a procedure before a public authorities) (art. 262 new Labour Code);

20 Tamás Gyulavári e Gábor Kártyás, *La riforma ungherese del diritto del lavoro: un grande salto verso la piena occupazione,* RGL, 2004, 4, p. 211.

- EU law requires the consultation of representatives of workers in case of restructuring the organization of the (transfer of undertaking, collective redundancies). The new Code Labour attributes this competence to works councils and trade unions (articles 72 and 265 new Labour Code);
- Finally, the new Labour Code allows the employer to conclude an agreement with the works council that is equivalent to the collective agreement, unless there is already one in the company or a union willing to conclude it.

The two main forms of employee representation are trade unions and works councils.

Furthermore, in terms of protecting the interests of workers, the role of trade unions is obviously more important than that of the committees, since these past can affect the entrepreneur only through the information rights and consultation. So it seems strange that the new Labour Code assign to them a substitute role of trade unions.

The unions offer a representation basically through the conflict with the employer, and they recognized the juridical for this role. Instead the councils collaborate with the employer and do not enjoy the rights granted to the former.

2) Union prerogatives.

The union leader is guaranteed special protection against unilateral acts of the employer, which could affect the protective function of the workers whose collective interests it represents.

This protection in short is that the entrepreneur can take unilateral initiatives concerning the union leader only if he consulted and obtained the consent of the trade union organization to which it belongs.

Especially the protection against dismissal is particularly significant in practice, as an employer may terminate the employment contract with a union leader only with the prior written consent of the union.

However, while in the Labour Code of 1992 the protection was recognized to each union representative, the new rules restrict the number beneficiaries.

While unions are free to decide unilaterally the number of elected leaders, the legislative protection can be ensured to a maximum number of union leaders. It is the union to choose leaders to protect.

It often happens that a worker is at the same time a union representative and a committee member. In this case, before the reform, the law guaranteed the worker in his dual function and provided that the union and the committee were involved in the process. The new rules do not allow this "supertguarantee': if a seat of the works council is incardinated a union representative protected, the protection will be guaranteed only by virtue of the latter title (art. 260 new Labour Code).

3) Dual channel of representation

The unions, with conflicting nature, can take collective actions (eg, demonstrations, strikes) and signs collective agreements legally binding. Infact, the bargaining power of the union depends more on the ability to mobilize the labor force and the results achieved through the conflict that the rights recognized by the Labour Code (such as rights to information and consultation).

On the contrary, the works council is primarily the addressee of rights to information and consultation. But the influence of WC on the activity of the employer is participatory and its impact on the decision-making process is limited.

As specified above, in the new Labour Code, you may notice a certain preference of the legislator in favor of the councils, compared to unions.

4) Have the participation effects on employability?

Although the purpose of the new Labour Code is clear, and that is to rapidly increase the employment rate, it does not seem that a more flexible labor law is the right tool to implement it. Nevertheless, the transition from a relationship regulation of work expected from legislative to adjustment based essentially on individual bargaining is considered the therapy suited to solve the many problems of the code of 1992, especially for those relationships in which both involved a weaker party.
The new legislation poses a number of challenges for the Hungarian Trade Unions. It's all to be seen whether they will support the new role imposed by timeand constitute a counterparty with adequate strength conflictual.
Therefore participation could be the keystone of the system. But it remains to be seen.

Proposals from the project

Introduction

A comparative assessment of the project partners has emerged as the participation of workers is a mechanism common in most of the other countries that suffered the influence of the German model of industrial relations (eg Slovenia). In other countries, it developed a different system based on the rights of information and consultation. This occurs even in Hungary, where, however, at least in theory, was to develop participation. In fact, even after the changes made to the Labour Code, the participation (to be clear, that coming under the the German model) of workers is not full. For these reasons, it was decided not to push for the adoption of the German model of participation but to recognize in general terms of the rights of information and consultation. These, in fact, are the *minimum minimorum* of involvement of employees recognized in all European countries because it arises from the transposition of EU directives. In other words, even if not originally present in the legislative substrate of member States, rights to information and consultation of workers are applied because of the implementation of European directives. In fact, it seems difficult that the rights of information and consultation do not find recognition before the implementation of EU directives, as derived from the processes of collective bargaining.

But there is more to. The rights to information and consultation are recognized as fundamental rights in the Charter of Nice. The Charter, as is known, contains rights that are part of the common legal heritage of all countries as well as expected in international sources.

However, despite the statutory provisions, still much to do to ensure the effectiveness of this fundamental right. In fact, it was found that the right to information and consultation, as perceived by employees representatives and employers, does not allow an effective employee involvement in the decision to be taken. This does not allow the achievement of the objectives described in the Directives (one for all the anticipation of change).

1. *Threshold of applicability of the rights of information and consultation.*

One of the problems faced during the project and on which there was broad consensus in the need to take action to propose an amendment concerns the threshold for applicability of the rights to information and consultation.

As is known, there is a clear dichotomy that must be resolved by the European legislator that on one hand qualifies the right to information and consultation as a fundamental right, and on the other makes their provision to achieve size thresholds. If, in fact, it is a fundamental right of the individual (although at collective exercise), it

must be provided to all workers, (except, at most, the legal limits of each country for the establishment of employee representation: eg in Italy the trade unions must be recognized in all production units with more than fifteen employees). However, the size threshold from which the obligation to recognize the rights of information and consultation is not tied to that provided for the establishment or the election of a union representation company. The above comments were observed in the laws of all the countries that participated in the project.

Hence the proposal to extend the recognition of the rights of information and consultation regardless of the number of workers employed. Thus, both in the case in which there is a representation of workers, and in the case of absence of the latter. In fact, as already experienced in Italy in the field of territorial representation of workers for health and safety, in the event that has not been appointed / elected or there is no union representation, you can appoint a representative of the workers for health and security outside the company.

A solution could be for the information and consultation, in the event of lack of representation at workplace level that a structured representation outside the company that deals only processes information and consultation. In this way all workers would enjoy the rights of information and consultation.

2. Strengthening of the information.

In all cases analized, has emerged as the information given by the employer is often lacking of the necessary requirements in order to make effective consultation. In other words, the information transmitted to the trade unions or workers 'representatives are often full of gaps and sometimes transferred in times that do not allow a more careful reflection of the union or workers' representatives before the consultation. As highlighted by the Italian Court of Cassation, an incomplete information can not be remedied by the subsequent agreement between the parties because the agreement can not also cover topics or materials of which the union had not been made aware of[21].

That being so, the proposal that emerges from this project concerns the strengthening of the information.

It is to take effect those characteristics that are deemed essential requirements of an information. First it is necessary to strengthen the process of information on the normal operation of the business in order to make workers aware of all the events of a company *in bonis*. Often, in fact, the transmission of data elements and news is only for situations "pathological" or when the company makes decisions that have, to use the terms of the Community rules, negative social fallout. It is common opinion, shared by the partners of the project, that a continuous information, complete and constant allows the employees' representatives to exercise a controlling influence on

21 Corte di Cassazione, 12 November 2013, n. 25394, Corte di Cassazione 9 September 2013 n. 20614.

the work of the employer. Also allows you to turn a critical phase in order to guide socially some choices of the employer. Consider, for example, the verification of plans investments in safety and in welfare at workplace level or the information on the choices of industrial policy in the enterprise and in the factories. It is indeed necessary to create a network of representatives of workers who can ensure that the individual choices of the employer are not laid down solely by the increase in profits but also from environmental and employment protection in the territories in which they are located.

Workers' representatives can also verify the compliance of the production chain of suppliers and subcontractors of the criteria of safeguard minimum standards of dignity and safety. In this way, through the scrutiny of the larger companies will have the virtuous effect to protect workers in smaller firms.

3. Effective involvement of workers in the consultation.

European legislation states that the consultation must take place on time, method and content which allows the employees' representatives, on the basis of information provided, to express, within a reasonable time, an opinion on the proposed measures to which the consultation refers. However, the project found that the times, the form and content of the consultation must be implemented. As recognized by employers is not, in fact, enough to make effective consultation.

Often the final decision adopted by the employer does not take into account the results of the consultation. Unfortunately, at the time the law of transposition of the different member countries does not provide anything on the point.

It was decided, therefore, that an effective solution would be to introduce in all the assumptions required for the employer provided by the European legislator only within the Directive 2002/14 but not repeated in the EWC Directive, in that the collective redundancies and transfer of company. The solution to remedy the problem, first described could be, in fact, to oblige the employer to make a reasoned response to the opinions of the representatives of the workers. This way you would be sure that the opinion of workers' representatives has been given its due importance by the employer made the final decision. Also you would know the reasons for which the employer believes not having to accept the opinion or suggestions given by representatives of the workers. As said, this is provided in Directive 2002/14. However, it was generally recognized the poor effectiveness of the above provision. To counter the lack of effectiveness might apply a penalty to the employer in case he fails to bring the reasoned opinion or is this lack of motivation.

4. Training of the delegates to information and consultation and of the experts.

The processes of information and consultation should be able to use always outside experts appointed by the representatives of workers and paid by the employer, since only an expert can ensure to the parties that processes of information and consultation happen correctly and are effective.

This benefit both parties because it would have the effect of virtuous cooperation between employer and employee representatives. It would, moreover, a significant reduction of the litigation as both parties would be satisfied with the results.

That said, it is clear that training in the field of information and consultation is essential and indispensable for all actors of the procedure. Training, in fact, must cover both the delegates that the same experts.

For training means both basic training regarding the applicable legislation, the definitions and the subjects of the process of information and consultation, that the deepening of the peculiar issues and the relevant case law of the European Court of Justice and National Courts.

Furthermore, it is necessary that whenever an employee is appointed or elected in bodies with processes of information and consultation, is obliged to follow a training course on legislation applicable in the place where it is dependent as well as that legislation applicable in the place where the company has its registered office.

European legislation on the point appears incomplete.

5. Applicable sanctions.

Sticking point of the discipline in the field of information and consultation are the sanctions applicable to infringements of legal obligations. As known, the directives that lay down obligations of information and consultation establish the principle that sanctions identified by the legislature must be proportionate, effective and dissuasive. Is the national legislature to identify the sanctions that best respond to the wording of the directive into national law.

What emerged from this project is that sanctions often identified by the legislature are not of the characteristics required by European legislation. This results in a lack of effectiveness of the rules on information and consultation since employers prefer to endure the application of sanctions rather than slow down the decision-making process respecting the obligations of information and consultation. Very often these are pecuniary sanctions that may be certainly a disincentive to small companies, but not for those companies of medium or large size.

As repeatedly stated by the Court of Justice[22], sanctions are dissuasive against the employer when they are sufficient to deter conduct in violation of the rules; are effective when not only are certain in their application but also able to ensure the effectiveness of the rule that govern; are proportional when they are appropriate to the entity of the violation committed.

6. Conclusions.

The principle of transparency of the decision-making process of the employer as promoted by the European legislator can find real application only if the processes of employee involvement in company decisions are respected.

Correct and complete information enables, in fact, the workers' representatives to exercise the powers of preventive control. The exercise of these powers allow the adoption of remedies or the identification of the social measures aimed at upgrading and conversion of redundant workers in the cases "pathological" in the life of the company.

In other words, incomplete information is an obstacle, an impediment to a successful participation of workers' representatives in the decisions of the employer.

As is known, the European law and then the one derived, devolved the task of guaranteeing the correctness of the choices of employer to employee representatives and trade unions. The information made in a non-complete and timely manner does not allow the execution of that function.

Therefore, to ensure that they need to be empowered and recognized to all workers, regardless of the size thresholds of companies, rights to information and consultation. It is also necessary to provide effective sanctions in case of violation of the rights in question to ensure that the employer takes action, in a spirit of cooperation, to provide workers with all the information concerning decisions to be taken and responding (in writing) about the reasons for the rejection of the proposals formulated by them.

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22 Tra tutte si vedano Corte di Giustizia, sentenza 25 aprile 2013, C-81/12, *Asociania Accept v. Consiliul National pentru Combaterea Discriminării,* punto 63*;* Corte di Giustizia, sentenza 10 aprile 1984, C-14/83, *von Colson e Kamann*, punto 23 della motivazione; Corte di Giustizia, 2 agosto 1993, causa C-271/91, *Marshall v. Southampton and South-West Hampshire Area Health Authority*, punto 24 della motivazione; Corte di Giustizia, 15 maggio 1986, causa C-222/84, *Johnston*; Corte di Giustizia, sentenza 8 giugno 1994, C-383/92, *Commissione cv. Regno Unito,* punto 42; Corte di Giustizia, 22 aprile 1997, causa C-180/95, *Draehmpaehl,* punto 40*;* da ultimo Corte di Giustizia, 4 luglio 2006, C-212/04, *Adeneler et a*., punto 94. Sui requisiti di effettività, dissuasività e proporzionalità delle sanzioni cfr. anche GAROFALO M.G., RECCHIA, *Le sanzioni e la loro efficacia,* in FABENI, TONIOLLO (a cura di), *La discriminazione fondata sull'orientamento sessuale,* Ediesse, 2005, p. 316-317. Sul compito del giudice nazionale cfr. Corte di Giustizia, Sentenza del 7 settembre 2006, C-180/04, *Vassallo c. Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate*.