

# One step forward, two steps back? Taking stock of social dialogue and workers' participation

## Introduction

With a view to assessing the current state of play in social dialogue, social policy, and workers' participation, this chapter assesses a range of issues and indicators. It opens with a critical analysis of the European Social Dialogue and the attempts to revive it. Seeking to anticipate the contributions of other key actors, we identify a few social policy initiatives embedded deep within the European Commission's 2017 work programme and highlight the role that the jurisprudence of the European Court of Justice has played in aligning the rights of atypical workers. Turning to workers' participation rights more specifically, we open with a reiteration of the benchmark established by the many specific rights to information and consultation laid down in the EU *acquis*, and assess the spread and impact of the institutions of workers' participation at workplace level across the European Union. To assess the European dimension of these rights, we look at the variation in the quality of the transposition of the Recast Directive and highlight some of the findings of recent evaluations on the impact of the EWC Directive on EWCs in legislation and practice. We also sketch some initial figures on the potential impact of Brexit, which may result in the exclusion of UK workers from information and consultation processes going on in multinational companies. Finally, we assess the current practices and debates around board-level employee representation, which represents one of the least harmonised or integrated elements of workers' participation.

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## Renewing the European Social Dialogue?

Figure 4.1. Overview of joint European cross-industry social dialogue texts (2008-2016)

Year	Type/theme of outcome
2008	Progress report on reconciliation of professional, private and family life (07/02/2008)
	Joint letter on childcare (07/07/2008)
2009	(Revised) framework agreement on parental leave (18/06/2008, incorporated in Dir. 2010/18)
2010	Report on joint work on ECJ rulings <i>Viking, Laval, Ruffert</i> and <i>Luxembourg</i> (19/03/2010)
	Autonomous framework agreement on inclusive labour markets (25/03/2010)
	Joint statement on the Europe 2020 strategy (04/06/2010)
2011	–
2012	–
2013	Framework of actions on youth employment (11/06/2013)
	Declaration on European alliance for apprenticeships (01/07/2013; with Commission and LT Council Presidency)
	Joint declaration on social partner involvement in European economic governance (24/10/2013)
2014	–
2015	In-depth employment analysis (01/09/2015)
2016	Joint declaration on new start for a strong social dialogue (27/01/2016)
	Joint call on EU institutions to bring competitive and sustainable industry back to core of EU policy agenda (16/03/2016; BusinessEurope and ETUC)
	Joint statement on digitalisation (16/03/2016)
	Joint statement on the refugee crisis (16/03/2016; together with Eurochambres)
	Joint statement on industrial policy (16/03/2016, BusinessEurope and ETUC)
	Joint statement on 'Towards a shared vision of apprenticeships' (30/05/2016)
	Quadripartite statement on a new start for social dialogue (27/06/2016; together with Commission and Council)
Framework agreement on active ageing and intergenerational solidarity (December 2016, but not yet adopted and signed)	

Source: ETUI sectoral social dialogue text database, Commission social dialogue text database; all texts are concluded by all European cross-industry social partners (ETUC, BusinessEurope, CEEP and UEAPME) unless otherwise mentioned; table does not include implementation and/or follow-up reports/tables on framework agreements/frameworks of action, nor the three joint work programmes (2009-2010, 2012-2014 and 2015-2017 concluded within the reference period).

### Can a stagnating EU Social Dialogue...

Developing and fostering social dialogue is an essential element of the European social model and it is anchored in Articles 152-155 of the Treaty on the Functioning of the European Union. Since the second half of the 1990s in particular, the European Social Dialogue (ESD) has developed considerably, both at cross-industry and sectoral level. At least from a quantitative point of view, it has yielded an impressive array of legally binding and non-binding documents – such as (autonomous) framework agreements, frameworks of action, declarations, opinions, rules of procedure and toolkits – on a wide variety of topics.

However, over time and in particular since the emergence of the economic crisis in 2008, some important institutional, socioeconomic, political and legal developments have caused the European

Social Dialogue at both levels to lose impetus, resulting, in some cases, in setbacks or even a complete standstill.

There are several causes of this loss of momentum. Firstly, the Commission, which had previously been the main driving force, has gradually withdrawn as a (pro)active actor in the ESD at both levels. Evidence of this disengagement can be seen in the (deliberately?) forgotten role of the Social Dialogue in the EU 2020 strategy (ETUC and ETUI 2011: 86-89), the Commission's (and Council's) deregulatory approach towards social dialogue actors and structures as expressed in the memorandums of understanding and the country-specific recommendations issued in the framework of the European Semester (Clauwaert 2015 and 2016a; ETUC and ETUI (2016: 40), and finally, its refusal to put forward proposals to convert certain sectoral framework agreements (such as that on the protection of occupational health and safety in the hairdressing sector) into directives, despite the joint demands of the European social partners to do so.

Secondly, the growing hostility to social dialogue amongst some Member States' governments, as evidenced by their actions at national level (such as the implementation of national or European-level measures to decentralise, dismantle, or undermine social dialogue and collective bargaining structures, processes and actors, directly or indirectly) as well as at EU level (such as the pressure reportedly exerted by some Member States on the Commission not to put forward proposals for the incorporation of sectoral agreements into directives).

Last but not least, there is the increased reluctance of employers (again at both national and European level) to genuinely engage in social dialogue and collective bargaining and to commit themselves to binding outcomes.

This can be seen in the refusal of some European employers' organisations to engage in negotiations on issues like paternity leave or carers' leave in the framework of the Commission's consultations on work-life balance.

## Renewing the European Social Dialogue?

Figure 4.2. New European sectoral social dialogue committees (SSDC) 2008-2016

Sectoral social dialogue committees (SSDC)				
Creation SSDC	Sector	Employees	Employers	Joint texts 2008-2016
2008	Professional football	ECA, EPFL	FIFPro	3
2010	Metal	IndustriAll	CEEMET	15
2010	Central government administrations	TUNED	EUPAN	14
2010	Education	ETUCE	EFEE	15
2010	Paper industry	IndustriAll	CEPI	6
2012	Food and drink industry	EFFAT	FoodDrink Europe	8
2013	Graphical industry	UNI Europa Graphical	Intergraf	5
2013	Ports	ETF, IDC	FEPOR, ESPO	1

Source: European Commission (2015), ETUI sectoral social dialogue text database, Commission social dialogue text database.

With support seemingly draining away since the emergence of the crisis, the European Social Dialogue has been delivering below its potential at both the sectoral and cross-sectoral levels, albeit with certain nuances.

### ...be successfully relaunched?

As Figure 4.1 shows, at the cross-industry level the last framework agreement incorporated into a directive dates as far back as 2009 (revised parental leave) and the last (autonomous) framework agreement (on inclusive labour markets) dates back to 2010. More promising is the fact that at the end of 2016, ETUC, BusinessEurope, CEEP and UEAPME successfully concluded the negotiations on a framework agreement on active ageing and intergenerational solidarity; at the time of writing however (January 2017), this agreement has not yet been formally adopted and signed. For the rest, as demonstrated in Figure 4.1, in the period 2008-2016 the European cross-industry Social Dialogue yielded only limited results, albeit on important issues, such as the role of the European social partners in the European economic governance process, the refugee crisis and the impact of digitalisation (on the latter, see also ETUC and ETUI 2016: 60-61).

During that same period, the European cross-industry Social Dialogue in fact witnessed three 'dry' years in which no joint text was concluded (2011, 2012, and 2014).

The picture looks a bit rosier for the European sectoral Social Dialogue. In the same period of 2008-2016, a total number of eight new European sectoral social dialogue committees were established (see Figure 4.2) and in 2012 a test phase was launched for the establishment of a sectoral committee for the sports and active leisure sector. Furthermore, a total of ten framework agreements were concluded in nine different sectors (see Figure 4.3; in fact, the total amounts to 11 framework agreements, since – due to pressure from both the Commission and the Council – the 2012 hairdressers agreement was renegotiated in 2016). However, and particularly when compared to the cross-sectoral social dialogue, this uneven record of the European sectoral dialogue does not necessarily imply that the sectoral social dialogue was more active; rather, the rise in activity is due to its having broadened its coverage to more sectors (Degryse 2015).

Some progress notwithstanding, the European Social Dialogue at both levels was (and still is) clearly in need of a new stimulus. The commitment of Commission President Juncker to revive it is certainly to be welcomed. This revival process aims for: (1) more substantial involvement of the social partners in the

European Semester; (2) a stronger emphasis on capacity-building of national social partners; (3) a strengthened involvement of social partners in EU policy- and law-making; and (4) a clearer relation between social partners' agreements and the Better Regulation agenda.

The 'relaunch' of the European Social Dialogue kicked off with a high-level conference on 5 March 2015 and was followed by intensive discussions and negotiations between the Council, the Commission and both European cross-industry and sectoral social partners in two thematic groups. One group focused on the role of social dialogue in economic governance and the importance of capacity-building (particularly the functioning of social dialogue in newer Member States), while the second group dealt mainly with the involvement of social partners in policy- and law-making as well as the concept of representativeness at the EU level.

The discussions led on 27 June 2016 to the unprecedented 'Quadripartite statement [...] on a New Start for Social Dialogue' being signed by the European cross-industry social partners (but covering also the European sectoral social partners), the European Commission and the Council (Presidency of the Council of the EU 2016).

It should be noted, however, that this statement amounts to a 'light version' of the European social partners' joint declaration on 'a new start for a strong social dialogue', which had emerged from the

## Renewing the European Social Dialogue?

Figure 4.3. List of the framework agreements signed by the European sectoral social partners 2008-2016

Date	Sector	Title (theme)
19/05/2008	Maritime transport	Agreement on the ILO maritime labour convention, 2006 (working conditions)
10/06/2009	Railways	Joint declaration on the application of the CER-ETF agreement on a European locomotive driver's license (training)
18/06/2009	Personal services	European agreement on the implementation of the European hairdressing certificates (training)
17/07/2009	Hospitals	Framework agreement on prevention from sharp injuries in the hospital and healthcare sector (health and safety)
24/11/2010	Private security	European autonomous agreement on the content of initial training for CIT staff carrying out professional cross-border transportation of euro cash by road between euro-area Member States (training)
15/02/2012	Inland waterways	European agreement concerning certain aspects of the organisation of working time in inland waterway transport (working time)
19/04/2012	Professional football	Agreement regarding the minimum requirements for standard player contracts in the professional football sector in the European Union and in the rest of the UEFA territory (working conditions)
26/04/2012	Personal services	European framework agreement on the protection of occupational health and safety in the hairdressing sector (health and safety)
21/05/2012	Sea fisheries	Agreement between the social partners in the European Union's sea-fisheries sector concerning the implementation of the work in fishing convention (2007) of the International Labour Organization (working conditions)
21/12/2015	Central government	General framework for informing and consulting civil servants and employees of central government administrations (information/consultation)
23/06/2016	Personal services	European framework agreement on the protection of occupational health and safety in the hairdressing sector (renegotiated version of 2012 agreement following refusal of the Commission to incorporate into Directive)

Source: ETUI sectoral social dialogue text database, Degryse (2015).

discussions in the thematic groups, but to which the Commission in particular could not fully agree. Unlike the joint declaration of the social partners, the title of the quadripartite statement excludes the word 'strong' from its reference to social dialogue (ETUC 2016), arguably an indication of their lower level of commitment.

Although this new roadmap for the European Social Dialogue has at least the merit of bringing all the main stakeholders back to the negotiating table to explore and put down in black and white their respective and mutual commitments to this dialogue, all will of course depend on its actual implementation. Although the Commission has already expressed a positive view on the fulfilment of (some of) its commitments (European Commission 2016), the social partners, and in particular the ETUC, remain more prudent.

Early signs do look promising; for instance, the track record for 2016 shows that the cross-industry social partners concluded no less than nine joint texts, including an autonomous framework agreement.

Nevertheless, the future of the Social Dialogue and its success will very likely depend on the social partners themselves, through the implementation of their current work programme 2015-2017 (Lapeyre 2015); in particular, it will depend on the quality of the content of their next work programme 2018-2020

and their overall ability to reach binding agreements. Negotiations on this new work programme are envisaged to start in the second half of 2017.

### Will this relaunch be the 'last chance'?

Indeed, the time may have come to cease conducting a noncommittal, insubstantial Social Dialogue, i.e. talking for the sake of talking without a genuine commitment to achieve binding outcomes. Instead, the key motivation should be to pursue a strict, results-oriented agenda for the Social Dialogue, with a clear focus on concluding and effectively implementing binding agreements. This is declared as a top priority in the latest ETUC Resolution on a European Social Dialogue Strategy (ETUC 2016). Not only does the ETUC consider that it is 'crucial' to avoid 'time-wasting on issues of minor political importance', but it is also 'committed to achieving a short, concrete and precise work programme, while maintaining the flexibility to jointly address issues which may not be addressed in the text of the work programme.' Furthermore, the ETUC seeks to explore the possibility of setting up a joint working group on the modernisation of the Social Dialogue (which will investigate amongst other

issues how to improve the effectiveness of the Social Dialogue Committee), to enhance the work of the so-called Subgroup of the Social Dialogue Committee (which is mandated to examine the implementation of the framework agreements and frameworks of action) and, finally, to consider how to involve European Works Councils more actively in the implementation of autonomous framework agreements.

Reciprocal concrete commitments from the employers' organisations are eagerly and urgently awaited. Launched in 2015, this process carries high stakes and it could turn out to be, in the words of Commission President Juncker, the 'relaunch of the last chance' (Degryse and Pochet 2016).

## Legislative initiatives in social policy

Figure 4.4. Overview of legislative initiatives

Initiative	COM	Pending	Outcome	Initiative	COM	Pending	Outcome
Personal pension product	P			EU Agency on Asylum		L	
Social security		L		Application for international protection		L	
E-privacy		L		Crisis Relocation Mechanism		L	
Whistleblowers	P			Safe Countries List		L	
Apprenticeships	P			Procedure for international protection		L	
Work-life balance	P			Accessibility to products and services		L	
Access to social protection	P			Application for protection of unaccompanied minors		L	
Written statement directive	P			Platform on undeclared work			A
Road transport	C			Regulation EURES			A
Consumer protection	E/R			Pregnant Workers Directive			R
Posting of workers		L		Working Time Directive			R
EU-OSHA		L		General Equality Directive		L	
Eurofund		L		Directive on copyrights for print-disabled		L	
Qualifications Regulation		L		Directive on mutual recognition of seafarers' certificates	E/R		
EU Resettlement		L		OHS <i>acquis</i>	E/R		
Residence permits for TCNs		L		Information and consultation of workers	C		
Standards for reception of TCNs and stateless persons		L		Part-time work and fixed-term work	E/R		
Uniform status for refugees		L		Equal treatment in social security	E/R		
Entry by TCNs for work		L		Women on company boards	E/R	L	
Entry by TCNs for studies			A	Legal migration <i>acquis</i>	E/R		
Protection from carcinogens and mutagens		L		Asylum Package		L	
Establishment of 'Eurodac'		L					

Source: COM(2016) 710 final with annexes and also OEIL - European Parliament Legislative Observatory (<http://www.europarl.europa.eu/oeil/home/home.do>).

Note: COM: within the Commission; P: planned; E/R: evaluation/REFIT; C: consultation; L: legislative process; A: adopted; R: revoked. TCNs: third-country nationals.

## Workers' rights back on the agenda?

Rather than delivering much-needed social change, the EU legislative machinery seems more occupied with already proposed measures and evaluations of existing ones (see Figure 4.4).

At the same time, the amount of social initiatives in the pipeline could be seen as a positive sign. The landmark initiative of 2016, the controversial European Pillar of Social Rights (Lörcher and Schömann 2016), will be accompanied by proposals on work-life balance and access to social protection, as well as the revision of the Written Statement Directive. Other expected initiatives are proposals for a pan-European personal pension product and protection for whistleblowers. Finally, the non-legislative initiative on working time suggests that, after two failed attempts, the idea to amend

the Working Time Directive has been abandoned.

Initiatives with potential social impact still going through the REFIT, evaluation, or consultation processes include the E-Privacy Directive, the improvement of social legislation in road transport, proposals on the information and consultation of workers, consumer protection, legal migration, equal treatment in social security, and the part-time and fixed-term framework agreements. The long-awaited Communication on the modernisation of the occupational health and safety *acquis* (the result of the biggest REFIT evaluation on social matters so far) (COM(2017) 12 final) proposes a range of actions and important amendments to the existing *acquis*. Another significant group of initiatives are pending in the legislative process. Some have been there for a very long time with small prospect of being adopted (e.g. the Equality Framework Directive and the proposal on gender balance on company boards). Others were proposed only recently and might lead to actual change (e.g. the

Posted Workers Directive, and the Carcinogens and Mutagens Directive).

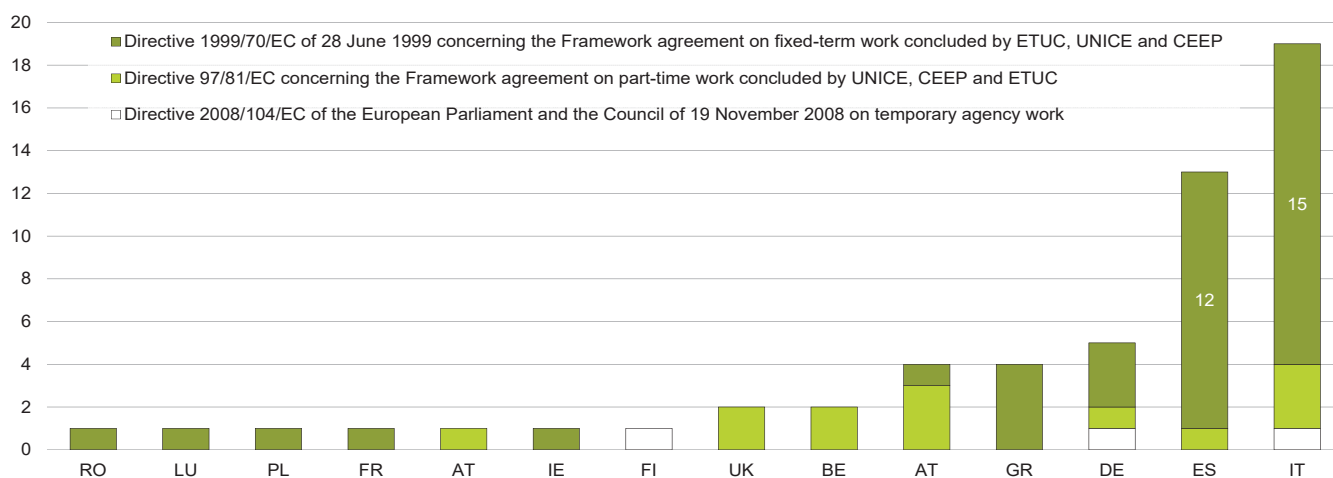
While all this suggests a lot of activity, the actual legislative outcomes in 2016 were negligible. The only two pieces of 'social' legislation actually adopted were the Decision establishing a platform on undeclared work and the Regulation on the European network of employment services. Both have had only marginal impact: the former is only a framework for further cooperation and the latter does not give any new rights to European workers. Finally, in 2016 the Commission withdrew its 2015 proposal to amend the Pregnant Workers Directive which would have *inter alia* increased the length of maternity leave and clarified the prohibition of dismissal in line with the case law of the European Court of Justice.

Overall, while there is some cause for optimism about the future of Social Europe, until now there has been very few actual legislative outcomes.



## Litigating atypical workers' rights

Figure 4.5. Overview of the litigation focusing on the EU Directives on atypical work (part-time, fixed-term and temporary agency work) (number of cases)



Source: CVRIA (<http://curia.europa.eu/>).

### The European Court brings equality to 'atypical' workers

Over the years, the European Court of Justice (CJEU) has heard many cases concerning the three key EU measures designed to protect the rights of atypical workers: the Directives on fixed-term work (1999/70/EC), part-time work (97/81/EC) and temporary agency work (TAW) (2008/104/EC).

The intense amount of litigation underscores the importance of these measures (see Figure 4.5). The majority of cases have concerned fixed-term arrangements (40 cases), followed by part-time work (12 cases), with the most recent measure on temporary agency work bringing up the rear (3 cases). Most notably, the vast majority of cases have been referred to the CJEU by southern European courts, suggesting widespread problems with the rights of atypical workers in the region.

In most of these cases the CJEU has held that national law restricted workers' rights and found it incompatible with EU requirements. This puts the CJEU in

a rather positive light when it comes to protecting atypical workers.

The same can be said of the cases that were decided by the CJEU in 2016. On 14 September 2016 the CJEU adopted three separate judgments concerning fixed-term work. First, in *Martínez Andrés* (C-184/15 and C-197/15), the CJEU ruled that the national law prohibiting the courts from upholding employment relationships in the public sector where the use of successive fixed-term contracts had resulted in abuse breached Clause 5(1) of the Framework Agreement. The Court also ruled that the requirement for the worker to bring two successive cases (one to recognise the abuse and the other to determine the penalty) breached the principle of effectiveness.

Second, in *de Diego Porras* (C-596/14), a fixed-term worker's contract was abruptly and prematurely ended when the worker whom she replaced returned to work earlier than planned. The question raised concerned the right to compensation for early termination and whether it has to be the same as for a full-time worker. The CJEU ruled that different treatment was forbidden.

Third and most significant was the CJEU's judgment in *C-16/15 Pérez López*. In this case, a health care worker was hired to provide services of a 'temporary, auxiliary or extraordinary nature' even though the needs of the hospital had actually been of a permanent nature.

The CJEU ruled that while temporary replacement contracts issued in order to satisfy the employer's temporary needs are allowed, temporary staff cannot be used for the purpose of performing tasks that normally come under the activity of the ordinary hospital staff. The Court's ruling suggested a positive obligation on the Member State to ensure that, where there is a structural deficit of regulated staff in a sector, additional permanent posts are to be created instead of continuously hiring temporary staff.

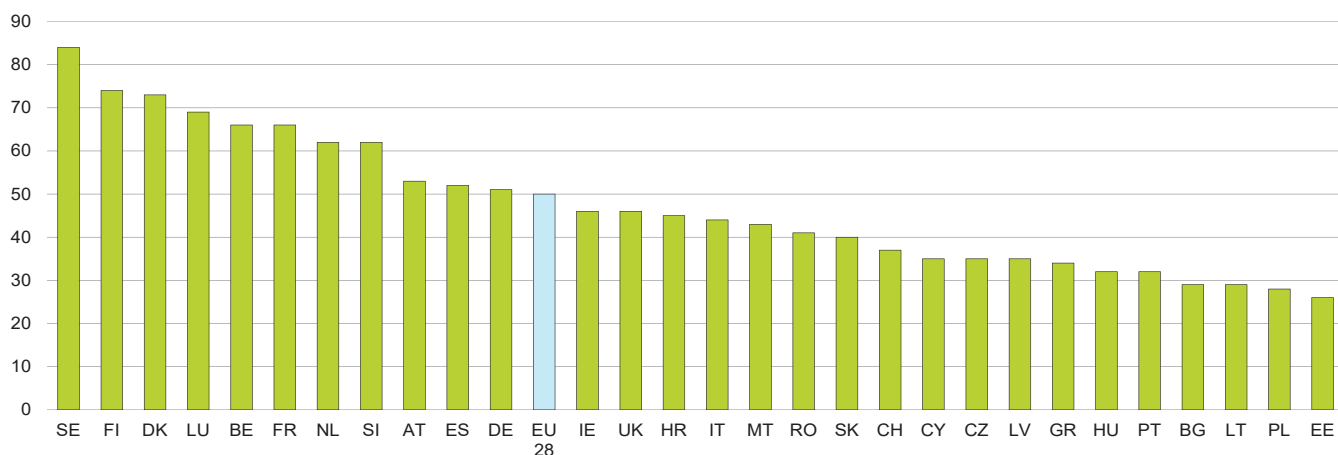
Finally, the case *Betriebsrat* (C-216/15) concerned the TAW Directive. Here, the Court ruled that the status of the worker under EU law has to be determined independently of national law. Even though the worker in question was not recognised as a temporary agency worker under German law, the CJEU ruled that she fell under the scope of the TAW Directive.

In sum, in 2016 the Court continued to bridge the gap between typical and atypical workers by increasingly recognising that the latter should benefit from the same privileges as the former. At the same time, the amount of case law suggests that the time might be ripe for the EU legislator to follow suit and improve the protection of atypical workers, at the very least by codifying the Court's case law. This would also provide a solution to the apparent problems of protection, most prevalent in southern Europe.



## Company-level workers' representation

Figure 4.7. Company-level employee participation in Europe



Source: European Working Conditions Survey 2015 (Eurofound).

Note: proportion of employees answering 'yes' to the question: 'Does your organisation have a trade union, works council or a similar committee representing employees?'

### Workers' representation: essential for all parties

The results of the 2015 European Working Conditions Survey are very revealing. On average, 50% of all employees in the EU work in an organisation which has a trade union, a works council or a similar committee representing employees (see Figure 4.7).

However, behind this figure lies a wide degree of variation. More than 60% of employees have a trade union or works council in the Nordic countries, Belgium, France and Slovenia. Between 60 and 40% have one in Germany, Austria, Spain, the UK, Croatia, Italy, Malta, Romania and Slovakia. In Cyprus, Czechia, the Baltic states, Greece, Hungary, Portugal, Bulgaria and Poland, less than 40% of employees have any form of workplace representation.

The observed cleavage between employees with and without access to employee representation is cause for concern. Employee representation of any kind is useful for all parties involved: the employees, the employer and the wider society.

In Europe, we are proud defenders of *political democracy*. According to some, however, political democracy is incompatible with capitalism (Webb and Webb 1897). In a political democracy, citizens have basic rights. Yet an employment relationship, as many of these same citizens experience it, is often one of authority and subordination. Without the necessary checks and balances, this relation could undermine political democracy and freedom. Legislation and workers' participation in companies provide these checks and balances and serve as a safeguard for democratic societies.

However, there are also ways in which employee representation benefits the company. Wigboldus *et al.* (2014) identified three main channels. The first is the *innovative channel*. Through employee representation, management can obtain an insight into what goes wrong and develop ideas about how to improve the organisation's functioning. The second is the *social channel*. Good communication with the employees and early involvement lead to better management plans but also a higher level of acceptance by the employees and a smoother implementation. Furthermore, if employees can voice their discontent through representative organs, they are less likely to leave the company. The third channel is a *political* one. Employee representation reduces possible opportunistic behaviour of

management which might damage the companies' interests.

Last but certainly not least, employee representation is essential for the employees themselves. Given the relation of authority between an individual employee and their employer, speaking out individually is not always easy. Employee representation gives a collective voice to the employees and to any discontents they may have, enabling this to be communicated to management with a view to finding collective solutions. Additionally, such collective representation aims to ensure equal treatment of employees.

Moreover, employee representation gives a certain degree of control to the employees over their workplace. It is widely accepted that control and self-determination are crucial to preventing employees from being alienated from their work.

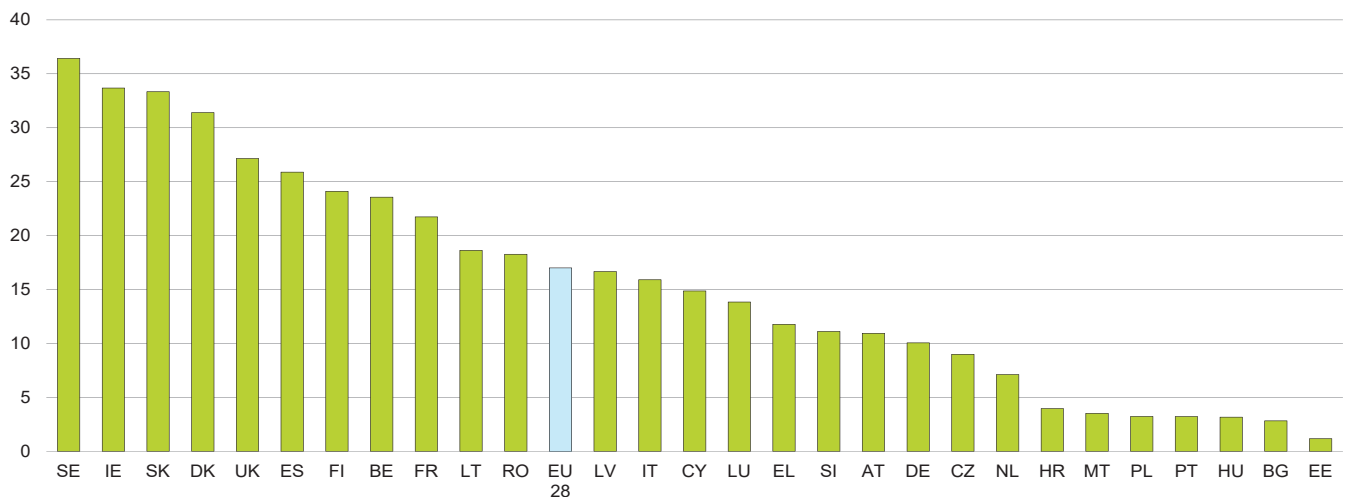
It is clear that employee representation is essential for a democratic society, productive organisations and motivated employees. The observation that 50% of all employees still lack any kind of collective representation through trade unions, works councils or other means should therefore be an alarming one.

Public policy, trade union activism and the enforcement of workers' rights are all indispensable in the effort to bridge this gaping divide between the haves and the have-nots.



## Company-level workers' representation

Figure 4.8. Percentage of the workforce in small companies with workplace representation in the EU28 (2013)



Source: Own analysis of ESENER-2 database, Vitols (2017).

### No workplace representation in most small establishments in the EU28

Large-scale surveys show that roughly half of the European workforce enjoys representation by a trade union or works council at the workplace level. One of the most recent of these surveys is the second edition of the European survey of enterprises on new and emerging risks (ESENER2), which was conducted by the European Agency for Safety and Health at Work in 2014 and covered almost 50,000 establishments (European Agency for Safety and Health at Work 2016). Based on the data from this survey, it can be estimated that a 'general' form of representation – that is, trade union or works council representation on a broad range of issues – covers about 56% of workers in enterprises with five or more employees (Vitols 2017). This percentage is even higher (about 80%) when the definition of 'representation' is expanded to also include health and safety representatives and committees.

When considering workplace size, however, worker representation is very unevenly distributed. In the EU28, an estimated 87% of workers in large establishments (with 250 or more workers) have some sort of general representation, i.e. a local trade union or works council. However, workplace representation decreases rapidly as establishment size gets smaller: 70% of workers in medium-sized establishments (with 50-249 employees), 37% of workers in small establishments (with 10-49 employees), and only 17% of workers in micro establishments (with 5-9 employees) are covered by 'general' representation.

Figure 4.8 above shows that worker representation in small establishments varies significantly across countries. Substantially above the EU28 average of 17% are the Nordic countries Sweden, Denmark and Finland; however, Ireland and Slovakia also have representation levels of over 30%. At the other end of the scale are a number of eastern European countries (Estonia, Bulgaria, Hungary, Poland and Croatia) but also Portugal and Malta with less than 5% of the workforce covered by workplace representation.

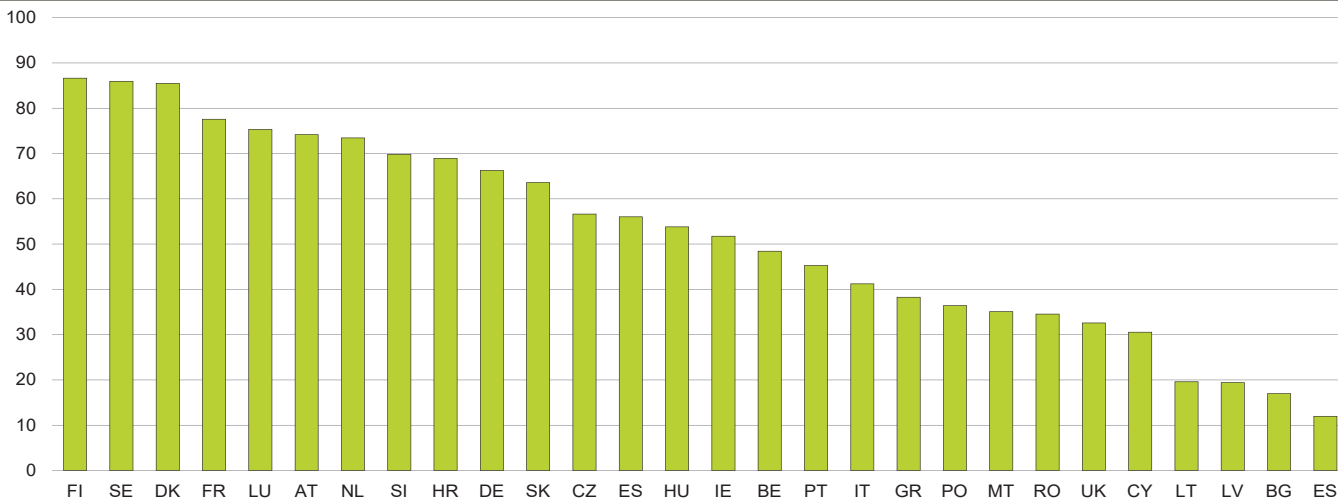
Significantly, a number of countries with relatively strong overall systems of worker representation also have below-average representation in small establishments. For example, works councils in the Netherlands, Germany and Austria have extensive rights of information,

consultation and co-determination (Rogers and Streeck 1995). All three of these countries have scores above the European average on the European Participation Index (EPI), which is designed to measure the strength of worker 'voice' in companies in different countries (Vitols 2010). However, in all three countries the representation of workers in small enterprises is below the EU28 average. Only 7% of workers in the Netherlands, 10% of workers in Germany and 11% of workers in Austria in this size category enjoy 'general' workplace representation. This indicates a quite significant gap in the coverage and strength of worker representation between small and large companies in these countries.

The overall weakness of workplace representation in small establishments should be a particular cause for concern for policymakers when making recommendations impacting the small firm sector. On the whole, workers in this sector are less well protected than workers in large and medium-sized enterprises. However, over the past decade, many initiatives by the European Commission have emphasised reducing regulations in the small and micro-firm sector to a level lower than those covering the rest of the economy.

## Company-level workers' representation

Figure 4.9. European Participation Index (EPI) in 2013, by EU28 country



Source: Vitols (2017).

### Uneven participation rights

Previous editions of *Benchmarking working Europe* applied the European Participation Index (EPI), an instrument for measuring the strength of worker participation in different countries (ETUI 2009: 55; ETUI 2011: 98-99; ETUI 2012: 104). The EPI includes three sources of worker influence on companies: 1) board-level employee representation, 2) workplace representation, and 3) collective bargaining strength, as measured through the percentage of the workforce covered by collective bargaining and trade union membership. The components are scaled: countries get an EPI score of between 100 (very strong participation rights) to 0 (no participation rights). The EPI is described in detail in Vitols (2010). In successive annual evaluations, countries that score higher on the EPI have performed better on all eight of the Europe 2020 headline indicators. Income inequality is also lower in countries with higher EPI scores.

The original EPI was based on data gathered in 2009, at the start of the financial crisis. An update based on data from 2013 shows that developments within its individual components and between specific countries have been rather

differentiated. On the whole, however, worker participation rights have weakened since the crisis. The average EPI decreased from 55 to 52 between 2009 and 2013.

The EPI component with the greatest stability in the past half-decade has been board-level employee representation (BLER). This component differentiates between three types of countries: those with widespread worker rights, those with limited participation rights (mainly state-owned or privatised companies) and those with no or very limited rights. Between 2009 and 2013, only two countries have switched groups: Malta moved downward, from the 'limited' to 'no' category, whereas France moved upwards, from the 'limited' to the 'widespread' category. Because the French workforce is larger than the Maltese workforce, the 'average' EPI weighted by the size of workforce has therefore slightly increased.

A second component of the EPI, however, indicates an overall erosion of participation rights at the workplace. The extent of workplace representation in Europe can be estimated through large-scale establishment surveys, such as Eurofound's European Company Survey (ECS) and EU-OSHA's European survey of enterprises on new and emerging risks (ESENER). An analysis of the 2009 and 2013 waves of ESENER estimates a drop by 3% in the proportion of workers that enjoy formalised workplace

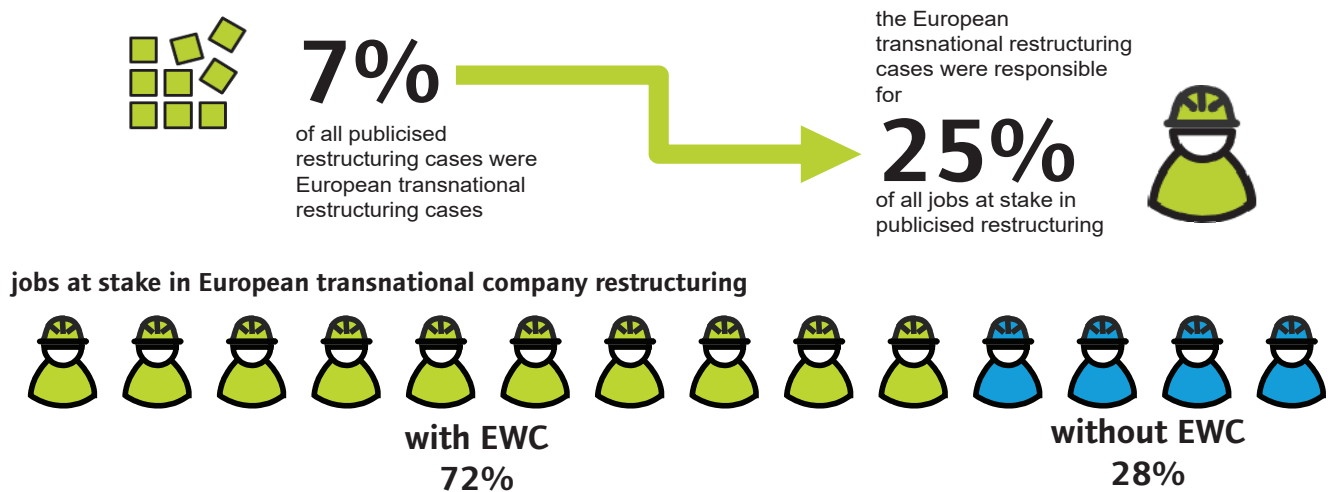
representation through a works council or trade union. An estimated 68% of workers in establishments with ten or more workers had formal representation in 2009, but by 2013 this had eroded to 65%.

The third component of the EPI, worker voice through collective bargaining, also indicates an overall weakening since the financial crisis. The percentage of workers represented by trade unions through collective bargaining decreased by an average of 5% from 65 to 60%. Especially large decreases were experienced in collective bargaining coverage in Romania and Greece (down by 63% and 41%, respectively). Trade union density fell less drastically from 23.9 to 22.4%.

Due to the small sample size of establishments in different countries, it is not possible to make detailed statements about EPI trends in specific countries. However, it is possible to create a rough ranking of countries based on their EPI score at a specific point in time. Figure 4.9 shows that Finland, Sweden and Denmark have the highest score (around 85 out of 100 possible points). These countries have strong rights in all three components of the EPI. Several eastern European countries as well as Cyprus and the UK have EPI scores at the lower end of the scale. The EPI tended to decrease more in countries which had a lower score in 2009, indicating an increasing cleavage between countries with strong versus weak participation rights.

## European Works Councils

Figure 4.10. Company restructuring and European Works Councils (2013-2015)



Source: European Works Council Database (ETUI) and European Restructuring Monitor (Eurofound).

### Workers in transnational restructuring: closing the gap

When a company undertakes a transnational restructuring project, it is essential for employees and their representatives to have direct access to the transnational management of the company. Talking to the national management at the local or national level is not enough to be able to really influence the company's decision or defend the workers' interests.

A European Works Council (EWC) can serve that purpose. It brings together employee representatives from different European countries and the transnational management. It enables the workers to be informed about the transnational strategy of the company and consulted about transnational restructuring plans, and can, ultimately, enable a move towards a coordinated European employee response.

European Works Councils, however, are not present in all companies facing transnational restructuring. Some of those companies might not meet the thresholds for the establishment of an

EWC (1,000 employees in total, of which 150 are employed in at least two Member States). But even if they meet these thresholds, the establishment of an EWC is, as a rule, the outcome of lengthy negotiations initiated by an employee or the employer.

Using data from the European Restructuring Monitor, maintained by Eurofound (Hurley *et al.* 2013), and the ETUI European Works Councils Database ([ewcdb.eu](http://ewcdb.eu)), Figure 4.10 displays the number of national and European transnational restructuring cases in the last three years, and whether or not the companies involved in these cases had an EWC in place. The figures should be interpreted with some caution as the data on company restructuring has some drawbacks (see: De Spiegelare 2017).

The figures show that in the last three years, the impact of most restructuring cases was confined to the local or national level, i.e. only affecting sites within a single country. However, about 7% of all restructuring cases had a European scope. In these cases, sites in more than one (European) country were involved. Here, an EWC is essential in order for a genuine process of transnational information and consultation of the employees to take place. However, in about one third of all European transnational restructuring cases, there was no EWC established in the company concerned.

The second figure looks at the jobs declared to be at stake in these national and European transnational restructuring cases. As companies involved in transnational restructuring tend to be larger, they represent a larger share of the 'jobs at stake' in restructuring. About one fourth of all jobs at stake in the last three years (as registered by the European Restructuring Monitor) were related to transnational restructuring measures. 8% of all jobs at stake were located in companies which did not have an EWC, accounting for about one third of all jobs at stake in European transnational restructuring projects.

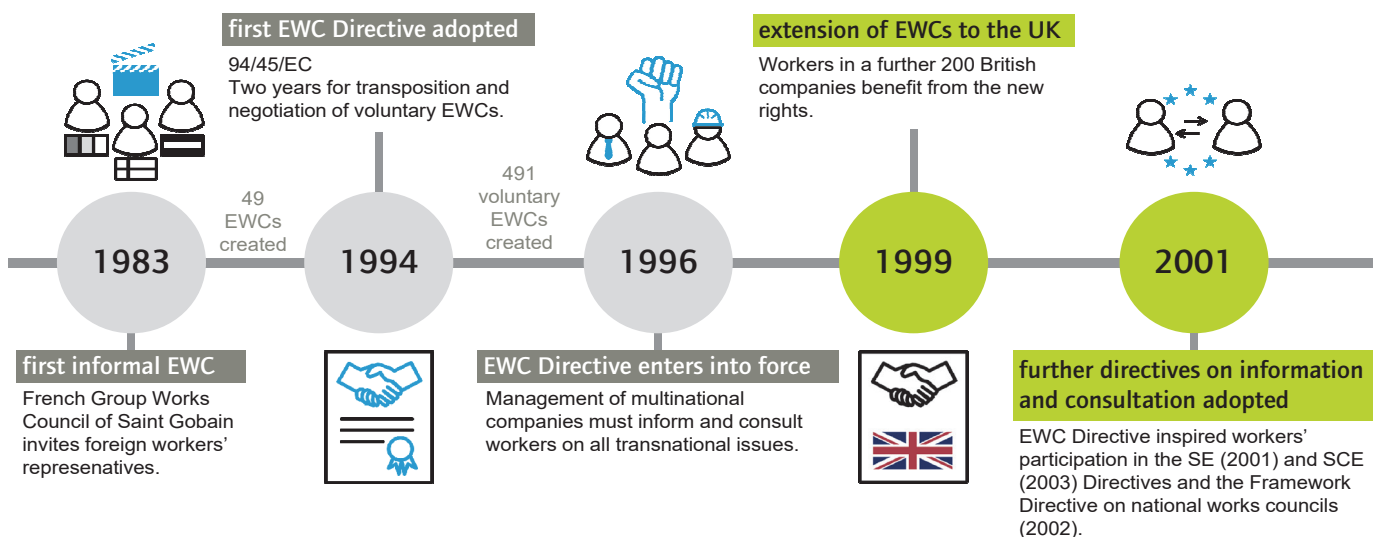
Remarkably, all companies working under the *societas europaea* (SE: European Company) statute which were involved in transnational restructuring did have an SE- Works Council installed. One of the main differences between an EWC and an SE- Works Council is that for the latter, negotiations about workers' involvement are obligatory for the establishment of the SE.

Evidently, policy could quite easily rectify the divide between those with transnational representation and those without by adding a similar obligation to the EWC policy framework.

The impending evaluation of the EWC Recast regulation (see Figure 4.12) could provide an excellent opportunity to close this gap.

## European Works Councils

Figure 4.11. Twenty years of EU legislation on European Works Councils (1)



Source: Jagodzinski (2016).

## Roses and thorns in legislation and practice

The 22 September 2016 marked two decades of binding legislation introducing the right to transnational information and consultation for workers in multinational companies (MNCs). This pioneering law (EWC Directive 94/45/EC) allowed workers' representatives to be informed and express views about managerial decisions that had a cross-border impact on workers.

This right is needed now more urgently than ever, as an increasing number of companies take decisions on a supra-national level without much regard for workers' interests and all too often bypassing national-level social dialogue.

Looking back over the creation of more than 1,300 EWCs, of which almost 1,000 are currently active, with over 20,000 delegates representing more than an estimated 17 million workers across all sectors, some conclusions can now be drawn and outlooks sketched.

EWCs have proven remarkable in many respects. Firstly, they were a bottom-up initiative of workers and thus represented a citizen-driven Europeanisation which is unique (see also Whittall *et al.*

2007). Secondly, they are not EU social policy window dressing, but are instead a real tool to protect workers' interests and rights in a globalised economy. Thirdly, positive experience with EWCs has inspired further pieces of EU legislation on workers' participation, such as that laid down in the European Company Statute (SE 2001), the European Cooperative Statute (SCE 2003) and at national/local level (Framework Directive 2002/14/EC). Fourthly, EWCs are the concrete embodiment of the EU Charter of Fundamental Rights with regard to workplace democracy and specifically the right to information and consultation. Furthermore, as research shows (Vitols 2009; Lamers 1998; Voss 2016) EWCs (can) contribute to company social performance and do not have detrimental financial effects on corporate economic performance.

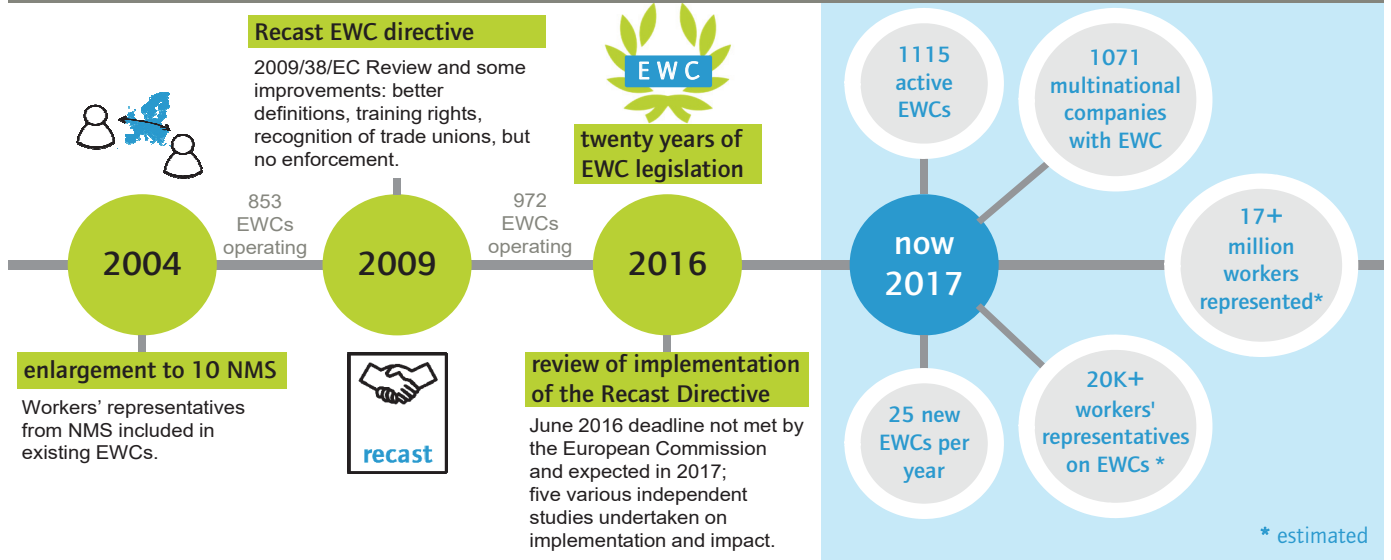
As does any rose, however, EWCs do carry some thorns. Firstly, the legal status of EWCs differs depending on whether they were set up before or after the entry into force of the Directive in September 1996. EWCs based on so-called pre-Directive Art. 13 ('voluntary') agreements remain outside the scope of any legal requirements and continue to represent 42% of the entire population. The improved EWC Recast Directive of 2009 does not fully cover them, and workers' representatives are worse off in this sense than their counterparts in those EWCs which are firmly based

on the Directive. Secondly, despite being outlined on paper, EWCs' rights are too often ignored and violated. A survey among EWC members (Waddington 2010) found that only a small minority of EWCs are informed before decisions are finalised (24%) or before they are made public (37%), while even a smaller proportion are consulted before these critical junctures are reached (20% and 30% respectively); worse still, 13% of EWCs are not informed and 30% not consulted at all. Moreover, EWCs are reportedly often refused access to information due to its alleged lack of transnational relevance. Finally, many EWCs lack the necessary resources: e.g. seven in ten EWCs meet only once a year, with only two in ten meeting twice a year (ewcdb.eu 2016; De Spiegelaere and Jagodziński 2015).

Lastly, many problems are due to insufficiently precise national legislation implementing the EWC Directive(s). The ETUI's recent study on the topic (Jagodziński 2015) revealed numerous shortcomings in national legislation. Some (albeit limited) hope can be placed in the pending European Commission's evaluation of the implementation of the Recast Directive announced for the spring of 2017. It remains to be seen if it will contain proposals for corrective measures to address the cleavages between various types of EWCs and national frameworks, as well as the persistent gap between rights and their enforcement.

## European Works Councils

Figure 4.12. Twenty years of EU legislation on European Works Councils (2)



## Evaluations concur: the EWC Recast falls short

The year 2017 will see the (delayed) launch of an important debate about the future of transnational workers' information and consultation (see also ETUC and ETUI 2016: 64-64). The European Works Councils Recast Directive of 2009 is under formal review by the European Commission. The Commission will then present a report, in which it may propose changes to the legislation.

Because EWCs are a pillar of workers' representation in MNCs and the most common institution of transnational information and consultation, various parties have undertaken efforts to evaluate the EWC Recast Directive and its impact on EWCs' performance.

Firstly, the ETUC surveyed EWC members and coordinators about their experience with EWCs (Voss 2016). The report underlined the achievements of EWCs (e.g. added value for MNCs and improving professionalism of EWCs), but found no evidence of a growth in the number of well-functioning EWCs. At the same time, clear shortcomings were identified with regard to establishing new EWCs,

the lack of opportunity for them to make a contribution to the company's decision-making, and a lack of basic resources and respect for rudimentary competences that serve to curb their capacity to defend workers' rights, for example in restructuring cases. However, the surveyed practitioners differed significantly with regard to whether the existing loopholes are the result of the Directive's vagueness or of weaknesses in its national implementation. One conclusion was common across the board, however: changes are necessary.

Another report focused on the views of managers dealing with EWCs in MNCs (Pulignano and Turk 2016; Waddington *et al.* 2016). The researchers interviewed 56 primarily HR managers; they concluded that from this perspective, EWCs are seen to be primarily institutions of information exchange rather than of employee influence and that they are thus not involved until the implementation stage of transnational restructuring, rather than at earlier phases of strategic decision-making. Importantly, irrespective of the reported cost of EWCs, a majority of interviewees thought that their benefits outweighed their cost (only 19% disagreed), and 70% of interviewed managers reported that the EWC was a useful means to promote corporate identity. It is noteworthy that the majority of interviewees did not see the need to revise the EWC Recast Directive.

Two evaluation studies were published by the ETUI. Firstly, an analysis

of national implementation acts across the EU (Jagodziński 2015) revealed that an excessive use of copy-paste from the Directive into national legislation leads to cursory implementation and inadequate regard for the actual enforcement of workers' rights. Secondly, building upon and deepening the insights from 'EWC Facts and Figures 2015' (De Spiegelaere and Jagodziński 2015), a statistical analysis of the impact of the Recast Directive (De Spiegelaere 2016) demonstrated that the improvements predominantly reproduced what had already been common practice in EWC agreements before 2009. In other words, rather than living up to expectations of it being an impetus for the establishment of more and better EWCs, the Recast Directive clearly delivered too little, and at too late a stage to have any significant impact on the EWC landscape and practice.

Many of the above points are also confirmed by a study of EWCs in transport commissioned in 2015 by the European Commission (ICF International 2015).

With such an abundance of analyses, the European Commission has plenty of evidence with which to review the EWC Recast Directive. This evidence suggests that corrective actions are required with regards to both national implementation and the quality and enforcement of the contents of the Directive itself (as well as that of the agreements negotiated on its basis).



## European Works Councils

Figure 4.13. European Works Councils and Brexit



Source: European Works Council Database (ETUI).

## Brexit: pulling the rug out?

In the wake of the portentous 2016 Brexit referendum, attempts to predict its possible consequences are emerging. Brexit may well pull the rug out from under one of the linchpins of company-level employment relations: European Works Councils (EWCs). In these councils, employee representatives from all over Europe meet with the company's central management to be informed and consulted about transnational company issues. They are thus an important source of influence and rights for UK workers in MNCs.

Drawing on ETUI data, we explore how and how many EWCs might potentially be affected by Brexit. We look at EWC representatives from the UK, EWCs working under UK law, and EWCs with company activities in the UK.

Firstly, the most immediate effect could be felt by the EWC representatives from the UK. According to the ETUI's European Works Council Database ([www.ewcdb.eu](http://www.ewcdb.eu)), an estimated 2,400 UK-based employee representatives might see their seat called into question if the UK steps out of the system underpinning their mandates. This is about 12% of all EWC representatives (see Figure 4.13b).

However, the UK has been out of the EWC system before, being exempt from the EWC Directive until 1999. In that period, however, only eight agreements excluded the UK explicitly; of these, three agreements simply referred to the fact that the UK was excluded from the scope of the Directive, with the immediate consequences being unclear, and three agreements provided for guest status for UK employee representatives. This means that only two agreements actually explicitly excluded the UK employee representatives from taking part. Moreover, many EWC agreements currently provide for seats for representatives from beyond the EU/EEA. If past experience is any guide, then relatively few, if any, UK representatives should see their seat called into question. However, it remains unclear on what legal basis, if any, these mandates would be based, which raises questions about the enforceability of their rights.

A second effect may be felt in those companies whose EWCs are based on the UK transposition of the EU Directive. If the UK decides to retract this legislation, these EWCs will lose their legal basis. In total, 138 currently active EWCs are based on the UK legislation, which represents 12% of the total (EWCs and SE-WCs) currently active (see Figure 4.13). Most of them are based in the metal (31%), service (27%) and chemical (19%) sectors, and about 43% are so-called 'pre-Directive' EWCs based on Article 13 of the original

EWC Directive. If the UK EWC legislation disappears, then these EWCs will need to renegotiate their legal basis according to the legislation of another EU Member State. In total, an estimated 2,800 representatives (of which 850 are UK representatives) are active in those 138 EWCs under UK legislation (see Figure 4.13a).

Finally, if discounting the UK share of total EU employment pushes the overall employment figures in a company below the thresholds required to establish an EWC (1,000 employees in all, of which at least 150 are in two different EEA countries), then these EWCs may face dissolution. 78% of all currently active EWCs cover activities in the UK (see Figure 4.13a). Unfortunately, the ETUI does not have sufficient data to estimate the number of EWCs that may become defunct after a Brexit. In any case, however, the EWC can still be continued on a voluntary basis.

In conclusion, Brexit may affect the mandates of UK employee representatives in existing EWCs, will certainly affect those EWCs which are based on the UK transposition laws, and might change the eligibility of some firms to have an EWC. Based on the available data, we conclude that there could be an impact on many EWCs and EWC representatives, but it will most likely be fairly limited.

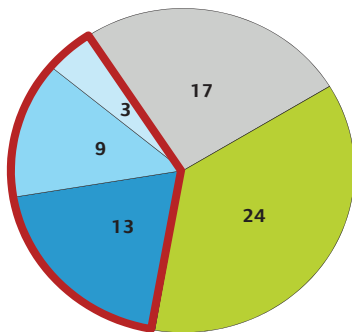
Much will depend on company-level solutions, and whether and to what extent Theresa May honours her promise to maintain EU workers' rights in UK legislation.

## Board-level employee representation

Figure 4.14. How does board-level employee representation (BLER) become European?

a. SEs by number of countries with BLER

■ no data    ■ one country    ■ two countries  
■ three countries    ■ four countries    ◊ European BLER



b. Inclusive national arrangements

Workers in foreign subsidiaries might be represented on the board of the parent company if...

<b>Norway</b>	...(1) a majority of employees request group-level representation and (2) employees and the management agree to include foreign subsidiaries in the collective arrangement.
<b>Denmark</b>	...(1) a majority of employees says 'yes' to BLER representation in a ballot triggered by employees, the TU or the works council, and (2) GMS decides to extend BLER to foreign subsidiaries.
<b>Sweden</b>	...Swedish local TUs decide to include delegates from foreign subsidiaries in the distribution of seats.
<b>Germany</b>	...German TUs decide to include representatives from foreign subsidiaries in the seats reserved to TU officials (workplace mandates are reserved to workers and rules within Germany).
<b>France</b>	... the GMS decides that the EWC or SE-WC is to appoint the second BLER, (first BLER always reserved to workers and rules in the French territory).

Source: ETUI (2017b) (18.01.2017).  
Note: 66 established SEs have BLER.

Source: Mulder (2017), Hagen (forthcoming), ETUI and ETUC (2015) and own research.  
Note: GMS: General Meeting of Shareholders; TU: Trade unions.

## How does BLER become European?

Board-level employee representation (BLER) continued to take on a European dimension slowly but steadily in companies registered under European company law (SE, CBM or SCE Directives) or, in some jurisdictions, under national law.

In the case of established European Companies (*Societas Europaea*, or SE), the ETUI has identified 66 which have provisions for board-level employee representation (ETUI 2017a). At least 25 of these SEs have BLER mandated in at least two countries (13 SEs count two countries, 9 SEs count three countries, and 3 SEs count four countries, as Figure 4.14a shows). Germany stands out not only for having the vast majority of SEs with BLER headquartered in its territory (53 out of 66), but also excelling in terms of Europeanisation: the 12 SEs with the strongest worker representation on boards in multinational companies (i.e. in at least three different countries) are based in Germany, except for one in Austria (ETUI 2017b).

Companies that emerge from a cross-border merger may see the Europeanisation of their BLER. The ETUI has identified 75 cross-border mergers between 2008 and 2012 where employee

participation issues arose in merger plans (Biermeyer and Meyer 2015). SEs may also be involved in cross-border mergers. Overall, however, it could often not be clarified whether an agreement had been struck by a Special Negotiating Body or if instead management had unilaterally applied the CBM Directive's standard rules.

However, when it is not European but national law which brings about the internationalisation of mandates to cover subsidiaries in other European countries, serious challenges may arise. How should the workers' side of the board in parent companies be comprised in such cases?

In the absence of universally applicable rules in Europe, national legislatures have adopted various solutions. Some remain silent, allowing in practice the inclusion of workers abroad through voluntary negotiations (e.g. Germany or Sweden). Others, such as France, Denmark or Norway, explicitly provide for the possibility to extend participation rights to workers employed by foreign subsidiaries, under certain conditions (ETUI and ETUC 2015: 65) (see Figure 4.14b).

In Denmark and Norway, such workers are granted the right to vote and to be elected to the board of the parent company (Mulder 2017). However, group board-level employee representation can only be established by negotiated group arrangements, which are seldom used in practice. In Denmark, only one company is known to have applied it, and only 24 Norwegian

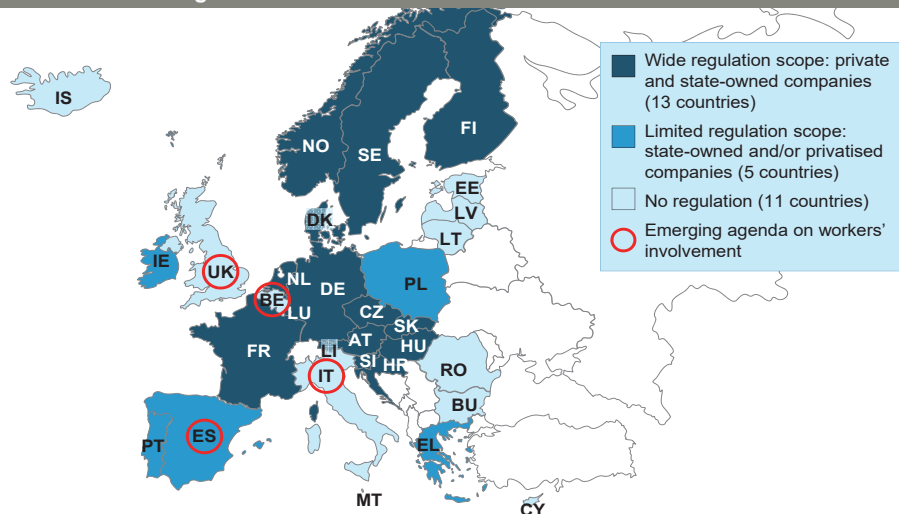
groups have been found to have made such arrangements (Hagen, forthcoming).

In France, when employees are entitled to at least two board representatives, the general assembly of shareholders can opt for an appointment procedure in which the second member must be appointed by the European (or SE-) Works Council, if any exists. This solution grants a European mandate to the member appointed, who can be employed either in France or in a foreign subsidiary. The Institut Français des Administrateurs has encouraged internationalised companies to open the election procedure to foreign subsidiaries as a means to rebalance representation between workers in France and abroad (IFA 2014).

However, insecurities arise from conflict between national laws and the lack of EU provisions on BLER. The European Court of Justice is currently considering the legal question of whether a Member State is obliged to explicitly include workers from foreign subsidiaries in the election procedures for the board of a parent company in order to comply with EU principles of non-discrimination on the grounds of nationality and the principle of workers' freedom of movement (Arts. 18 and 45 of the Treaty on the Functioning of the European Union) (C566/15 *Erzberger/TUI AG*). A decision on this potentially landmark case is expected in summer 2017.

## Board-level employee representation

Figure 4.15. BLER regulations and new agendas in EEA countries



Source: Kluge, Stollt and Conchon (2013), updated by Lafuente Hernández (2017).

### Converging views on BLER?

The regulatory picture of board-level employee representation has not changed much recently (Conchon 2015). Only one major change should be noted: as shown in Figure 4.15, Czechia has regained its place among the countries with widespread coverage of participation rights. A reform in 2012 removed the right of employees to be represented in joint-stock companies, but it has been reintroduced from January 2017. Employees are now entitled to one third of the seats in supervisory boards in joint-stock companies with over 500 employees. Under the new regulations, however, joint-stock companies can choose their governance structure and may seek to avoid dualistic boards.

Despite the absence of further regulatory changes concerning BLER rights, the issue has come to the fore of the political agenda for several actors. Debates on workers' participation seem now more alive than seen since the 1970s.

Indeed, the UK, Belgium and Italy, which traditionally lack board-level participation rights (Page 2011) have seen some developments in favour of the introduction of board-level employee representation.

In the UK, Theresa May announced in July 2016 her intention to involve employees and consumers in corporate governance. The TUC welcomed this initiative, expecting workers would get the right to sit and vote on company boards. In the end, the Green Paper on Corporate Governance Reform (November 2016) left stakeholders' involvement as an empty shell. Rather than mandating the appointment of employee representatives to company boards, three options are proposed, which prioritise unilateral management initiative over binding rules: (i) introducing consultative stakeholder advisory panels; (ii) assigning a non-executive director the responsibility of watching over stakeholders' interests; and (iii) strengthening companies' annual reporting requirements.

In Belgium, where unions and political parties have historically opposed workers' participation in company boards (Van Gies and De Spiegelaere 2015), the debate may be reopened. The Socialist Party announced its support for a new form of private company with mandatory board-level employee representation. A concrete proposal should be defined by March 2017 after an internal reflection process: it would draw on full parity rules and a bicameral board structure in which one of the chambers fully represents employees' interests (Ferreras 2012).

Italy also witnessed some evolution in the debate on workers' participation.

Italian unions have traditionally resisted employees' board-level participation rights but recently the three main confederations jointly declared BLER to be 'fundamental' to a more balanced industrial democracy. Their position does however depart from the German model of co-determination, and stresses strictly different roles for management/capital and labour (CGIL, CISL and UIL 2016).

The Spanish unions UGT and CCOO have also confirmed their support for workers' board-level participation rights. During the crisis, corruption scandals in savings banks revealed insufficient transparency and control in the Spanish model of workers' board-level representation. Stung by the damage caused to the reputation of trade unions and the near disappearance of BLER in Spain, close scrutiny and an internal debate led CCOO to declare a renewed interest in a BLER system resembling the German one (CCOO 2013 and 2016).

For its part, the ETUC has called for EU standard rules on articulated information, consultation and BLER rights in European company boards, building upon its 2014 resolution (ETUC 2016).

Despite important discrepancies, these positions reveal a converging agenda in Europe in which workers' board-level participation rights are a political priority.

## Conclusions

This chapter has taken a closer look at the social policy agenda in terms of its institutions and policies. For the European Social Dialogue, the waning support from the European Commission, the Member States and employers has left the inter-sectoral social dialogue largely bereft of any real output. The sectoral social dialogue, however, has seen an increase in activity, though this largely only reflects the establishment of more sectoral social dialogue committees. Whether this differentiation leads to a more effective implementation of agreed standards or approaches, or rather to their fragmentation across all sectors, will to a great extent depend on the cross-sectoral actors' ability to coordinate social dialogues across the board. At the same time, the weakened support from the Commission and the Member States can only be partially offset by the sometimes patchy engagement of the employers. It is in this context that the unions' resolve to pursue a strict, results-oriented agenda which has a clear focus on concluding binding agreements will play an essential role: *not talks for the sake of talking, but talking with a view to action* is needed now.

Our review of the state of play of social legislation initiatives in the Commission's 2017 work programme reveals that while there are a range of proposals stuck in either the preparatory or evaluation stages, there is nothing particularly new in the pipeline. Unless the Pillar of Social Rights indeed acts as a catalyst to move social legislation forward, the outlook is rather bleak. A promising exception to this may be the Commission's declared intention to strengthen the existing provisions to protect health and safety. The European Court of Justice, moreover, provides further grounds for optimism, as seen in its rulings which close the gap between the legal protections afforded to atypical workers and to those working in more typical forms of employment. It is to be hoped that the EU legislators follow suit in codifying these landmark decisions.

Turning now to workers' participation issues, it is appropriate to recall that pan-European benchmarks of workers' rights to have a voice in important areas

of working life date back decades, and have been continuously developed and refined over the years. Whether participation rights are embodied in the Treaties, in employment law, in company law or in health and safety protection legislation, EU law securing rights to information and consultation at the workplace and company level has at least provided the basis for comparable, if not entirely equal rights across the EU.

On the face of it then, it looks as though workers' participation rights have established a level playing field, which nonetheless respects national histories, customs and norms. A closer look, however, reveals that there is still far more differentiation than one might expect. Data on the presence of local actors and institutions of information, consultation and negotiation paint a rather bleak and divided picture: half of all employees lack any kind of collective interest representation through trade unions or works councils. Just as critically, most smaller workplaces lack any form of employee representation at all, even in countries in which information and consultation is generally well established. When we include a wider range of workers' participation instruments and mechanisms, such as board-level employee representation and collective bargaining coverage, we see an alarmingly wide divergence between the Nordic countries and such countries as the Baltic states, Bulgaria, the UK and Cyprus.

It should come as no surprise that the cross-border or European dimension of workers' participation does not offer a more homogenous picture than that seen at the local company level. The continued exemption of so-called 'voluntary' or 'pre-Directive' EWC agreements from the improvements codified in the 2009 EWC Recast Directive perpetuates the unequal treatment of workers, solely based on the history of their EWC negotiations dating back over two decades. In addition, the transposition of the Directive's rules into national legislation is marred by inconsistencies in its quality and coherence. Our review of several different evaluations of the Recast EWC Directive reveals a broad consensus about its shortcomings. The gaps in EWC coverage

revealed by our analysis of publicised cases of cross-border company restructuring should galvanise policymakers and practitioners alike to work towards the establishment of more EWCs. Finally, in the year that the uncertain effects of Brexit loom large, we explore the potential impact on workers' participation if and when the UK formally repeals the key legislation underpinning EWCs, SE-WCs and board-level workers' participation. There is, however, some reason to hope that the impact will not be as drastic as feared; European-scale companies and UK employers have in the past proven reluctant to exclude UK workforces from transnational arrangements.

Finally, we assess the state of play regarding the Europeanisation of board-level employee representation. There have indeed been interesting developments in the past years, which, while showing some positive prospects, also reveal certain legal, democratic and operational obstacles. This awareness of the opportunities and challenges of genuine Europeanisation dovetails nicely with an emerging convergence in discussions about reforming, maintaining or introducing BLER at the national level. There is still a great deal of variation between different national forms of BLER; despite the commitment of the parties involved to Europeanise this form of participation, the unregulated interface between systems based in national law and practice will remain problematic in the absence of encompassing EU legislation.

As is so often the case, we see a mixed track record in the area of workers' participation and social dialogue. On the whole, it seems to be a case of one step forward, two steps back, as important but small advances are undermined by setbacks or standstill in other areas.