



ETUI-REHS

# **Europe Space for workers' participation**

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## Introduction <sup>1</sup>

Financial markets are today dominated by the liberal notion that companies exist solely for the benefit of their shareholders and investors. According to the liberal approach, if companies function optimally as machines for wealth accumulation, society as a whole benefits.

This approach is increasingly losing political and economic legitimacy. In no country, not even in the USA, have companies benefited from aiming solely at short-term profits. High executive salaries and shareholder control alone have not resulted in either better economic performance or higher company value in terms of higher share prices over the long term.

This is increasingly putting the business world into a position in which it has to justify itself to the general public. Vague statements and unilateral actions relating to corporate social responsibility show that doubts concerning the benefits of the liberal system have been noted.

It should not be left to managers and investors – nor the European Commission – alone to define what companies do for society. Workers' participation is not a private affair in the hands of employers. It is a public matter which, if need be, must be politically imposed against the wishes of employers and investors. What is required today is the establishment of a framework in which other social groups than shareholders are able to organise and determine their interests in the company. Workers and their trade unions play a central role in this because they are affected twice over, as workers who would like to maintain their jobs over the long term and as a social group which would like to improve its life and income opportunities.

The time seems ripe for a **new model for the era which will succeed shareholder capitalism**. Participation will play a path breaking role in this. However, the trade unions cannot go back to the ideas and instruments of 'industrial democracy', the model of the 1970s and 1980s. Circumstances have changed: financial markets know no boundaries, and extremely demanding and enormously wealthy international investors and powerful multinational companies influence public life more than ever, including people's working lives. European policy would be well advised to establish a counterforce if the idea of the European social model is not to continue to lose ground.

If trade unions wish to play a major role in this struggle for the direction of the economy they must reach a better understanding of how and by what means globally active companies and investors have become drivers of social change. It will not be enough to plough the same old furrows. Trade unions have to be more creative in reflecting and developing acceptable demands and new institutional arrangements to civilise global financial markets. Trade unions must broaden their expertise as regards how companies and financial markets work and how they can be better controlled and influenced. The European Union provides a promising frame of reference for such efforts, on the understanding that in the age of the global economy this is not enough.

Fortunately, European trade unions do not have to start from scratch. They are able to justify and define their idea of Europe as a space for workers' participation very clearly

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in terms of both democratic and economic aims. Next they have to apply the instruments of social dialogue, information, consultation and participation in workplaces and in companies. They also need to convince other actors that social rights for employees constitute a good base for the economic success of companies. They must convince others that the exercise of employees' social rights constitutes a basis for companies' economic success. However, that should not mean that employees' rights are only justifiable if economic benefits are to be expected from them. The touchstone is whether basic European rights to information, consultation and participation, making employees citizens of the company, are also accepted by companies. They must make it understood that they too consider these as a fundamental component of the European economic model and accept them as part and parcel of everyday company life.

Another starting point is the fact that in a large number of member states there are legal rights of workers' participation, from the workplace to the highest administrative organs of the company. They have undoubtedly contributed to rather than hindered the success of companies from these countries, as well as their national economies. In addition, European directives on social dialogue, such as the European works council directive, as well as on European company law, such as the SE legislation or the directive on cross-border company mergers, regulate industrial relations in Europe on an everyday basis. There is undoubtedly a European consensus on their necessity, beyond all national and political differences.

It is not only since the formulation of the Lisbon strategy in 2000 that the construction of a system of European labour relations has been a core aim with a view to developing Europe as a common social and economic area. The ETUC congress in Helsinki in 1999 supported the idea of establishing a European bargaining area for the social partners. This was renewed at the ETUC congress in Prague in 2003. Beyond all political views and assessments, however, there is a solid consensus among the European trade unions concerning the effective utilisation of existing possibilities for directly influencing company decision-making and direction. This is regarded as one of the core ways of realising the Lisbon strategy.

Highly developed industrial relations with workers' participation at all levels, whether based on legal provisions and/or collective contracts and with the inclusion of the trade unions, serve as a good basis for combating the notion that only share ownership can make a good citizen out of a European citizen. It is the legally guaranteed space for workers' participation that helps make European democracy *and* the European economy strong. The citizens of Europe must be convinced of the seriousness of political intentions to enable them to influence their working life in the course of social transformation. It is against the common understanding of freedom and democracy to simply deliver them up to market forces.

In light of this, this paper will address four areas currently prominent on the European agenda. Their revision in trade union terms also requires the internal examination of traditional positions and emphases:

1. *The struggle between systems (the stakeholder vs the shareholder approach):* companies should be there for society, not just their owners: how can labour's voice in controlling companies and financial markets be strengthened?

2. *Restructuring and industrial change*: to what extent do European participation rights help workers to find improved prospects where they live while companies close down?
3. *A new role for European works councils in cross-border collective bargaining*: Can this workplace channel strengthen the possibilities of European collective bargaining?
4. *New realities of interest representation in the new member states of Central and Eastern Europe*: are they a Trojan horse for the Americanisation of labour relations in Europe or are they contributing to the consolidation of European standards of workers' participation in industrial relations?

**Workers' participation in Europe as a high priority, underlined by the ETUC congresses in Helsinki 1999, Prague 2003 and looking forward to Seville 2007**

The ETUC's Helsinki congress in 1999 described the possibility for employees to influence company decision-making at the highest level as a 'new right at work'. This component of European labour relations is combined with European works councils, coordinated European collective bargaining, further Europeanisation of the trade unions themselves, and further advanced social dialogue on employment and labour-related social issues.

The Prague congress of 2003 was strongly influenced by the Lisbon strategy. The question of how economic requirements of international competitiveness can be harmonised with the aims of the European social model (and environmental sustainability) played a more significant role than previously. The legal instruments of workers' participation achieved up to that point – above all European works councils and the directive on workers' participation in the administrative organs of future European companies (SEs), as well as the role of cross-border coordinated collective bargaining – were more strongly related to how the micro-level of company policy, promotion of innovation and structural transformation could be influenced and better organised.

Significantly, in light of the SE directive, the fundamental dispute about board-level participation which had dragged on for decades was settled. From now on, the action programme declared, the ETUC and the European trade union organisations would together strive for the highest possible level of workers' participation in SEs. The decision regarding possible mandates on supervisory boards or administrative boards as 'European mandates' seems very ambitious.

It is too early to assess the extent to which it has already been possible to implement this intention successfully. Since the SE legislation came into force October 2004 only a handful of SEs have been established of real significance for employees and trade unions (out of around 40 SEs altogether). However, initial observations indicate that both national trade unions and their European associations were involved in negotiations concerning the form of workers' participation through an SE works council and a possible presence at company level.

All in all the European representation of 14.5 million employees by European works councils (according to the figures of the ETUI-REHS's European works council database) achieved in the meantime is significant. They constitute a notable factor of influence on the economic strength of companies operating cross-border in Europe (including companies controlled from outside Europe).

Because economic competitiveness has become a decisive factor for jobs in Europe, and workers' participation – both national and cross-border – undoubtedly contributes to it, it would be consistent if the European trade unions carried forward the debate at their next congress in Seville in 2007 concerning the *form, contents and direction in which European labour relations should be developed*.

Regardless of the pending revision of the European works council directive with which European policy could finally prove its seriousness about workers' participation, how a *European standard for the role of workers' representation in the direct control of companies and financial markets*, beyond the SE, could be achieved is on the agenda. What is decisive is how the substructure of company and trade union interest representation could be improved in order to influence the general direction of company decision-making 'from the bottom' and, on the other hand, how company decisions can be made more beneficial to employees in their workplaces.

The basis of this idea is that European freedom of movement for employers and capital should not be disconnected from its social dimension. While employers and investors can increasingly take decisions without regard for borders and indeed are acquiring a basis in European law for this, employees continue to be limited to the national level in the exercise of their basic rights. However, it is indispensable that they too be able to build upon a comprehensive, far-reaching and consistent European framework. Their rights must also be harmonised at European level. So far, all that has been achieved is a patchwork of extremely diverse legal frameworks at national level juxtaposed with individual agreements reached at cross-border companies, for example, on European works councils, SE works councils and board-level participation at company level. This situation does not seem suitable as a European social and economic model.

### **The struggle between systems – companies should serve societies and not only shareholders – strengthening labour's voice in corporate control**

Currently, there is a battle over the character of the evolving European system of corporate governance. At issue is the fundamental choice between two different conceptions of the firm: the shareholder model where the purpose of the firm is to maximise value in the interest of shareholders, and the stakeholder model, where the firm has responsibility to a broader range of stakeholders.

Although the US neo-liberal economic model is currently seen by many as dominant, this will not always have to be the case for Europe's stakeholder economies. In reality, on examination of individual countries in the European Union the facts speak against the supposed superiority of the US model in terms of economic performance. On the whole, strong economies can be found where workers enjoy strong rights of representation in company boardrooms. This result contrasts strongly with the prevailing opinion that board-level participation impairs economic performance.

There are good arguments for supporting the development of a home-grown European model of corporate governance which pursues a healthy balance of economic and social goals. Board-level participation is a positive institution for Europe if there is no negative impact on company performance since it increases the utility of employees and supports the industry-based knowledge society as the only path appropriate to the European future. Insofar as board-level participation has proven successful in many different national contexts, it should be extended throughout Europe. Not only shareholders, but also workers, other citizens and the community at large have an interest in good corporate governance, as the ETUC resolution on corporate governance (March 2006) stressed.

<b>Facts: Economic performance of EU countries, according to strength of board representation rights</b>				
<b>Strength of board representation rights</b>	<b>Balance of Trade/ GDP 1999-2003</b>	<b>Gini-Coefficient (ca. 2000)</b>	<b>Strike Rate 2000-02 (Days per 1000 workdays)</b>	<b>BCI – Business Competitive -ness Index</b>
<b>Countries with strong rights (all Sectors covered, and more than 1 Representative)*</b>	<b>(+) 3.9 %</b>	<b>0.259</b>	<b>9.7</b>	<b>Rank 6.8</b>
<b>Countries with weak or no board representation rights**</b>	<b>(-) 2.0 %</b>	<b>0.321</b>	<b>104.8</b>	<b>Rank 19.9</b>

\* AU, CZ, DK, FI, GE, HU, LU, NL, NO, SL, SI, SE

\*\*BE, CY, EE, FR, GR, IC, IR, IT, LT, LIE, LV, MT, PO, PT, SP, UK

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In contrast, current European efforts in the field of company law and financial market control (see the European Commission's action plan on the modernisation of European corporate law of May 2004, recently revised) are oriented towards boosting developments in the wrong direction. This change in the balance of economic power threatens European integration. Moreover, within the European environment it seems strange to favour one particular company model, namely the Anglo-Saxon one.

The European company or SE may provide a good opportunity to implement an appropriate regime for governing a cross-border company, balancing the requirement of good economic performance with the social cohesion of European societies. Potentially more important – for both companies and their employees – may be the Directive on cross-border mergers (the so-called 10th directive) which will come into force in 2008 and, further down the line, the scheduled directive on cross-border transfer of the registered headquarters (the so-called 14th directive). From a workers' perspective the implementation of these directives may also provide a means of embedding multinational companies in societies.

## What do we want?

The ETUC and its affiliates are very much in favour of a highly productive European economy and a Social Europe, as laid down in the Lisbon agenda. Workers should be seen not only as parties to an employment contract, but at the same time as investors and citizens. After all, they share the risks arising from company choices.

- Against this background, proper institutional conditions for companies to foster long-term profitability and employment prospects, mechanisms to prevent mismanagement, and transparency and accountability with regard to investments and their returns are required. *What would a sound European corporate governance framework have to be like in order to attain these aims?*
- Would it not help to anchor corporate social responsibility if, for example, they were subject at the European level to the assessment of a *rating agency which would also evaluate them in accordance with their contribution to improving the quality of work, not only on the criterion of shareholders' returns?*
- Obligatory board-level representation of workers must be maintained and developed as a core element of good corporate governance. Not only should existing national rights be preserved but they should be extended throughout Europe. *Should this lead to consideration of a European framework regulation concerning the role of labour in controlling and directing companies and financial markets, as a further step towards harmonisation?*

## Restructuring – can European participation rights help people to improve local prospects if companies move away?

Companies sometimes have to relocate or close. Workers usually have to stay where they are. The resulting dynamics and tensions caused by these diverging tendencies must be linked and balanced if the Lisbon objectives and measures are to give people a positive perspective on their working life. The rights on information and consultation in good time and where it matters provided by European directives might improve EU citizens' recognition of the benefits arising from EU measures.

It is notable that current Commission policies reflect this. The aim of influencing processes of change in a desired direction by involving workers is embodied in two communications, one issued in early 2004 entitled 'Fostering structural change: an industrial policy for an enlarged Europe', the other issued in March 2005 on restructuring and employment.

Conceding an important role at cross-border level to worker interest representation – together with the trade unions – in shaping restructuring processes in a positive way is entirely in line with the ETUC's position. The trade unions do not wish merely to play a role in managing the social consequences of restructuring; they also want a pro-active role in anticipating restructuring.

This requires using the legal possibilities concerning information on the company's economic development in such a way that undesirable developments can be headed off before management decisions have been taken. Workers' interest representation in general cannot be confined to 'sweeping up the broken glass' – making use only of

information and consultation rights at national level – at the end of a long chain of decisions made far from the affected locations.

Restructuring needs an industrial policy that ensures workers and their representatives a voice in restructuring, including mergers and acquisitions. Workers' influence should not be restricted to the social dimension of restructuring.

### **What do we want?**

Further progress on extending or adjusting information and consultation rights within social dialogue has clearly come to a standstill because of the continuing reluctance of employers' organisations. However, there is considerable evidence that EWCs are making an increasingly significant contribution to dealing with restructuring. It makes a difference when managements are directly confronted with the potential social effects of their decisions by worker representatives participating in decision-making.

- Regardless of political statements and communications intended to influence them, trade unions *should insist on legal provisions at EU level on workers' information, consultation and participation, enabling them to maintain or establish an autonomous position* in relation both to EU policies and company management. The EU must implement measures to enable trade unions and workers' representatives to meet economic decision-makers 'at eye level'.
- Because of the extended functions of EWCs as a core element of corporate culture, is it appropriate to *consider them as a part of the corporate structure of an company and consequently to define this role also in EU company law?*
- *Should it be a priority to organise support for widening the remit of EWCs to include, for example, job creation, promoting training and skills improvement as elements of company strategy, or addressing the issue of offering tailor-made job opportunities to young people, the elderly or people with family obligations (for example, different kinds of part-time work) as an expression of corporate social responsibility?*

### **A new role for EWCs in transnational collective bargaining ?**

More and more frequently, transnational developments and considerations are guiding trade union collective bargaining at national level. Underpinning the European path of a competitive and highly productive industry-based knowledge society with innovative and cross-border collective bargaining is a very demanding task for the social partners. At the centre stands quality assurance via well qualified and motivated employees with a say in decision-making affecting their jobs and company investment in their future where it really counts.

Employers, however, tend to want to make decisions concerning working conditions and wages either alone or directly with individual employees. They are using the current competitive pressure in the economy to shift the balance of power in their favour. They frequently prefer the route of simple cost cutting, namely by laying off workers. They show no interest in striving towards genuine European collective bargaining.



Against this tendency employees and their trade unions must seek out and implement solutions which result in companies making a long-term contribution to society at the cross-border level. They must not allow themselves to be driven back to the national level and must ensure that company and trade union interest representation via collective agreements do not come into conflict.

It is questionable whether European works councils can play a greater role in this area or, from a trade union standpoint, whether they ought to, and whether this could improve the capacity for crossborder collective bargaining. So far exclusively sectoral European social partner agreements on individual topics have pointed the way.

The European Commission is proposing a new way forward with its Social Agenda 2005–2010. It would like to achieve a European framework agreement which gives European works councils the possibility of concluding valid collective agreements for cross-border companys. The justification for this is that, to the European Commission's knowledge, 95 content-oriented agreements have already been concluded in at least 65 multinational companys which would go far beyond the legal possibilities of a European works council. In two thirds of cases European or international trade union organisations are signatories of the agreements.

European employers reject this approach and would like collective bargaining to continue to be reserved exclusively for the national level. The ETUC, in contrast, in its Resolution of December 2005, welcomed the possibility of a transnational European framework for collective bargaining. The basic philosophy of the ETUC resolution was to acknowledge the Commission's proposal as offering opportunities and possibilities. A transnational framework for collective bargaining could be used to prevent European companys from playing workers off against each other during the process of restructuring. A transnational framework could also enhance the binding character of such agreements, while at the same time clarifying the principles governing the 'hierarchy' of current and expected transnational bargaining practice. In short, it could also present an opportunity to strengthen the European system of industrial relations. Of course, such a European framework may also have problematic aspects and that is why the ETUC resolution at the same time formulated clear conditions towards this proposal. The power and mandate to negotiate and sign transnational agreements must remain firmly in realm of trade unions. Transnational bargaining should respect and not interfere with the existing structure of collective agreements bargained at various levels. Thirdly, a non-regression clause must be specified and enforced.

Finally, it can reasonably be supposed that most of the existing European works councils are not prepared for such a new role. Their agreements frequently merely reproduce the formal minimum standards of the directive on information and consultation. *European trade unions have their hands full getting European works councils to function properly before entering into a new level of collective bargaining policy.*

### **What do we want?**

- *Should trade union strategy focus on trying to use the proposal for a transnational framework to strengthen the bargaining position of European workers, in particular during processes of restructuring? Or should its main thrust be to insist on a strict separation between the role of European works councils to be informed and*

*consulted on the one hand and transnational collective bargaining on the other hand?*

- *To what extent can European works councils be used as channels for trade union operations and should this function in particular be pushed more strongly than hitherto?* In this way they could in future help to realise European collective demands by means of cross-border action ‘from below’. Such a clear division of labour would have to be more firmly anchored in how actors understand their tasks at both levels.
- While European works councils are undoubtedly to be viewed as a tool of good company management for the purpose of improving mutual understanding between business and workers and as a forum for discussion of competitive innovation in the workplace, perhaps the European trade unions might take matters one step further and choose to regard EWCs also as an instrument for promoting the trade-union-led Europeanisation of collective bargaining?

### **New realities of interest representation in the CEE member states: Trojan horse for Americanisation or consolidation on the basis of the European model?**

Whereas industrial relations systems across Europe have recently experienced erosion in terms of both representation and institutions due to globalisation and individualisation, the new member states of Central and Eastern Europe have been obliged to introduce unfamiliar institutional settings into their industrial relations systems.

Although trade union freedom and collective bargaining autonomy are legally guaranteed in all new CEE member states, general mistrust and lack of legitimacy are major ongoing problems which hinder them from playing a more integrative social role. As regards workers’ participation, we should never forget that the term still has negative connotations in some CEE countries due to the malfunctioning of self-management in the past. It may often appear more inviting for a worker to go his own way than to seek collective representation.

No distinctive CEE model of industrial relations has developed under these circumstances. At first glance, the new member states are broadly compatible with the EU-15. However, there are major differences due to different historical origins. Whereas industrial relations systems in the EU-15 are the result of organic and continuous – path-dependent – change, the basic characteristic of IR systems in CEE member states is ad hoc development under pressure, to some extent top-down.

With the increasing integration of CEE countries into the EU, an exciting development is taking place whereby imported European structures (through EU directives and the practices of European multinationals) are becoming embedded in the local environment. Formally, the process of transposing relevant European directives on information, consultation and participation in the CEE member states has gone well. Taking the example of EWCs, transposition of the EU directive has run smoothly. However, this does not constitute evidence of real implementation.

A fairly high proportion of multinational companies have established an EWC. The involvement of workers’ representatives – or at least observers – in any given CEE country is linked to a higher trade union membership and collective agreement coverage

(with the exception of Slovenia). This could lead to the conclusion that developed institutions of domestic industrial relations may help in satisfying the requirements of EU directives. However, the opposite could be true. The required adoption of European provisions on information and consultation of workers could lead to greater legitimacy and acceptance of workplace representation locally. European trade unions must help to explain that a merely voluntary and bilateral relationship between individual workers and local management does not work sufficiently to the benefit of the worker.

More importantly, European trade unions should be aware that the practice of labour relations in the course of successful re-industrialisation in CEE member states could be used by employers as a means of undermining tried and tested standards of obligatory workers' involvement across Western Europe. Such new realities of interest representation in the CEE countries could then serve as a Trojan horse for the fragmentation and individualisation of interest representation spilling over into other European countries. On the other hand, arrangements for direct participation, which may be adapted from CEE countries, could be seen as a potential complement to institutionalised interest representation.

### **What do we want?**

It is obvious that developments are occurring which cannot simply be comprehended in terms of industrial relations. Nor does it seem appropriate to try to continue transferring EU-15 experiences into a hostile environment, nor assume that tried and tested institutions should be dismantled. However, a major, probably fundamental change is going on which should be seen as an opportunity, not a danger:

- *To what extent can EWCs and further relevant EU legislation be used as a channel for dialogue with the management of multinational companies to make clear in the long run the limitations of merely voluntary worker involvement in their CEE subsidiaries?* According to their experiences in other countries this will lead without fail to a fall in commitment, adversely affecting economic performance and consequently global competitiveness. It should be made clear that off-shoring production and services further East or South will also lead to a lack of legitimacy.
- *Would it serve to improve local industrial relations and social dialogue if the recent joint projects of European trade unions and European employers' federations were established as a permanent laboratory for exchange and study?* It might lead to a better understanding of how to balance interests and safeguard existing social interests at grassroots level, even in the virgin territory of non-unionised workplaces and especially among SMEs.
- *How can European trade unions further enhance their pro-active approach to the existence and proper functioning of institutions of local industrial relations, together with local authorities?*