

The Europeanisation of board-level employee representation in France

An emerging role for European
Works Councils?

Sara Lafuente

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etui.

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Contents

Abstract	4
1. Introduction	5
2. The legal layers of a complex system: the long and winding road towards Europeanising BLER in France	8
3. A look at BLER implementation: how far is BLER becoming European in France?	13
3.1 Compliant French companies, or the lack of a "circumvention" effect	14
3.2 Companies prefer having the S-EWC appoint the second BLER member	15
4. How are French S-EWCs adapting to corporate practice?	19
5. The French case: a "success" story – but with unanswered questions	22
6. Conclusions	26
References	29
Legal texts	31
Abbreviations	33
Annex 1 French S-EWC agreements mentioning employee participation rights in the board (EWCDDB last checked 11/3/2021)	34
Annex 2 List of companies in the sample of this study (information as of 1/3/2021).....	38

Abstract

In France, the legal obligation for private-sector companies to have, under certain conditions, one or two employee representatives on their boards goes hand in hand with the possibility for the company to decide to have its European Works Council (EWC) or SE Works Council (SE-WC) appoint the second member. This has become the preferred option for French companies. As the recent PACTE Law (“*loi “Plan d’Action pour la Croissance et la Transformation des Entreprises”*”) has lowered the board-size threshold obliging companies to have two employee representatives on their boards, it is expected that the number of companies affected will increase, and consequently, that of members appointed by EWCs or SE-WCs. This emerging Europeanisation brings opportunities but also legal and political uncertainties for the board-level employee representation (BLER) system in France, and for newly appointed board-level employee representatives, especially when these are non-French*, which is now *de facto* a possibility. EWCs and SE-WCs have generally not anticipated or addressed this issue in their agreements. Although internal rules of procedures have sometimes addressed practical problems, given the limited normative power of this instrument, this is clearly insufficient. National and European legislative action needs to focus on securing more democratic and transparent processes and adequate protections for representatives assuming European mandates.

Key words: board-level employee representation; Europeanisation; European Works Councils; French multinationals; PACTE Law.

* This Working Paper uses the term “non-French” or “foreign” in reference to those representatives whose employment relationship is governed by the laws of a country other than France. Conversely, it uses the term “French” or “domestic” in reference to those whose employment relationship is governed by French law. The representative’s actual nationality is irrelevant for this study.

1. Introduction

A key challenge for European industrial relations is to figure out how institutions of worker interest representation and social dialogue can legitimately keep pace with the transnational organisation of corporations. Largely discussed in the field of European Works Councils (EWC) (Hann et al. 2017), the question has been far less explored in the field of employee representation on corporate boards¹, with the exception of European Companies (SEs) (Lafuente Hernández 2019). However, case C-566/15 *Erzberger vs TUI AG* before the Court of Justice of the European Union (CJEU)² highlighted the legal and political relevance of the issue in multinational companies (MNCs) governed by national law. In this first case on codetermination rights, the CJEU had to decide whether German legislation complied with EU law, as it denied workers employed outside Germany the right to take part in the codetermination system of the German parent company. The exclusion raised questions about a potential breach of non-discrimination rules and the principle of free movement of workers. The question is relevant, as in a MNC, the board of the parent company normally takes the main strategic and financial decisions potentially affecting workers throughout the group.

As other countries in Europe, France has national laws entitling workers to have representatives with a right to vote on corporate boards. But the French case stands out in this respect. Not only have mandatory board-level employee representation (BLER) rights recently been expanded to private-sector corporate groups in a country traditionally little inclined to promote codetermination, but this expansion has come together with a potential new role for EWCs and SE-WCs³ to appoint one of the two board-level employee representatives. This can be considered as a step forward in the solutions explored to Europeanise employee representation in multinational companies, with Europeanisation in this case referring to an open and irregular process⁴ to adapt employee representation to the transnational level at which corporations increasingly operate.

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1. In this paper, unless otherwise specified, “boards” will refer both to either monistic boards of directors or the supervisory boards typical of dual corporate governance systems.
 2. For a critical analysis of the judgement and its implications of Case C-566/15, Konrad *Erzberger v TUI AG* [2017] ECLI:EU:C:2017:562, see Lafuente Hernández and Rasnača 2019.
 3. For readability purposes, I hereafter use “S-EWC” to refer to both EWCs and SE-WCs.
 4. I draw here on the dynamic conception of Europeanisation put forward by Featherstone and Radaelli (2003:8) and Marginson and Sisson (2006:8-9) in the context of European industrial relations.

In this vein, a notion of European mandates was fostered in policy and practice by the European Trade Union Confederation (ETUC) and European trade union federations, with a view to clarifying procedures and politically legitimising players representing workers in transnational company negotiations, but also on SEs corporate boards (Conchon 2011:38-39). The concept of a European mandate was particularly promoted by the European Trade Union Institute (ETUI) and its WPEurope Network in the context of SEs (Kluge 2008:129), with the challenge being to ensure that employee representatives covered the interests of the whole European (or even global) workforce in a corporate group and not only those of their own country. A qualitative approach to transnational mandates was thus developed in the context of SEs, going beyond one based purely on a quantitative seat allocation by country (Rehfeldt 2013). However, these reflections did not go as far as to suggest any changes in employee representation institutions or practices embedded in multinational groups governed by national law⁵.

In this sense, the French legal provisions are interesting: they allow the second board-level employee representative to be granted a European mandate by the S-EWC, and to possibly be non-French. French participation rights could in this way stretch to countries without codetermination. The recent PACTE Law may even allow more BLER mandates to become Europeanised, as it can be expected that more French companies will be obliged to have two employee representatives on their boards. The new role assumed by the S-EWCs of French companies infuses new legal uncertainties and political tensions, while at the same time offering opportunities for action by trade unions and worker representatives.

Exploring these questions, this Working Paper analyses how the original institutional solution providing for an S-EWC role in the appointment of BLER members has worked out. Taking account of the impact of recent corporate law changes, the paper looks at how it has been empirically implemented and addressed in French companies and their S-EWCs. The results reveal certain legal, political and practical implications for the French BLER system itself, as well as for the dynamics of S-EWCs and trade unions within French multinationals, advancing our knowledge on BLER Europeanisation and on the articulation between BLER and S-EWCs in MNCs governed by national law (Haipeter et al. 2019).

The research draws on primary and secondary data especially collected for this study and contained in an original database covering different variables for 132 French companies with an S-EWC. To explore implementation, I proceeded backwards methodologically, first identifying the sample of French-registered companies with an S-EWC. According to the ETUI European Works Council Database (ETUI 2021a), there are 132 such companies. For this sample of

5. For a further discussion on the conceptualisation of a European mandate for employee representation, and on the (limited) solutions found in national law and practice, see Lafuente, Forthcoming.

companies, data was then systematically collected and analysed on the basis of their most recent corporate statutes available in the French registry (Infogreffe 2021), their S-EWC agreements (ETUI 2021a) and corporate governance information available on their websites. No less than 41 French MNCs, including French SEs, were found to apply the Europeanisation option for BLER appointments based on French national law. The methodology was complemented by an analysis of legal texts, nine expert interviews and two group discussions with board-level employee representatives and S-EWC trade union coordinators involved in the appointment processes of French Europeanised boards⁶.

The findings demonstrate that, while French companies are quite active in assigning their S-EWCs the role of appointing the second BLER member, S-EWCs have rarely anticipated or addressed this issue in their agreements, apart from some negotiated exceptions. Internal rules of procedure address practical problems in certain *ad hoc* cases, but seemingly often at management initiative⁷. The paper argues that the articulation between the parent-company BLER and the S-EWC is an important, yet underexplored, opportunity for trade unions across Europe to gain insights into the decision-making of the top governing body. They can participate in the appointment of trustworthy members or propose candidates for an arena of potential use for transnational trade union action. For French trade unions, the possibility may admittedly alter pre-existing BLER system dynamics, though favouring the installation of (Europeanised) BLER in companies with no previous BLER.

The paper is structured as follows. The first section pinpoints the main legal changes potentially affecting BLER Europeanisation in France. Addressing the question of implementation, the second section presents empirical findings on the extent to which board-level employee representatives have been appointed by S-EWCs in France. The third section looks at how (far) S-EWCs tackle their new role in their agreements, while the fourth section identifies critical legal and political implications of this new role for S-EWC dynamics and its practical workings. The conclusions reflect on how greater certainty and transparency could be achieved for all parties involved in the (laudable) endeavour to Europeanise BLER.

6. For the most part transcribed, the interviews were conducted between 2016 and 2022. Group discussions took place in an EWPC online training on “*The challenges of the Europeanisation of board-level employee representation in French companies*” (23-24 March 2021) attended by 63 worker representatives with board, S-EWC or trade union functions.

7. As S-EWC rules of procedure are not systematically collected in the EWCD of the ETUI, they could not be analysed for this research.

2. The legal layers of a complex system: the long and winding road towards Europeanising BLER in France

In France, BLER⁸ rights have been institutionalised by successive and fragmented pieces of legislation, as summarised in Table 1. Mandatory BLER rights were first introduced in state-owned companies by Law 1983-675 of 26 July on the democratisation of the public sector and have since remained substantially unchanged: in companies with fewer than 200 employees, up to one third of board members (with a minimum of two), and in companies with 200 or more employees, at least one third of board members must be elected by staff in state-owned companies falling under this Law's scope⁹.

Subsequent legal changes or discussions on employee representation on company boards in France mostly related to the private sector or privatised companies (Conchon 2014:166). On the one hand, Ordonnance 86-1135 of 21 October introduced the possibility for private-sector companies to voluntarily include BLER in their statutes: up to four members or a quarter of the board (depending on its size) could be elected by staff. Companies using this voluntary system were therefore exempted when mandatory BLER, including new appointment ways, was subsequently dictated by law in 2013, as will be explained later.

On the other hand, specific rules were introduced for companies privatised under Law 93-923 of 19 July. First, Law 94-640 of 25 July obliged them to modify their statutes to allow BLER to survive privatisation, with two or three board members representing employees having to be appointed via staff elections in France. In this way, BLER rights were at first sight safeguarded, but only temporarily, as companies could unilaterally remove those rights

8. In this paper, we use the term BLER in reference to the distinct representation of employee interests with voting rights on company boards of directors or supervisory boards ("*administrateurs salariés*"). Under French law, such representatives are distinct from those representing shareholder employees with voting rights on the board ("*administrateurs salariés actionnaires*", in accordance with article L225-23 of the French Commercial Code) and from those representing the French works council or central works council with a mere consultative role on the board (articles L2312-72 to L2312-77 of the French Labour Code).

9. Later, the Ordonnance 2014-948 of 20 August on governance and transactions affecting the capital of companies with state participation ("*sociétés à participation publique*") introduced some specificities for commercial companies with direct or indirect ownership of the state or its public establishments. When controlled by state-owned companies or its public establishments, subsidiaries of at least 200 employees fall under the same one third rule (with a maximum of three members in those subsidiaries up to 1,000 employees). Staff elections remain the way of appointment.

from their statutes at a later date (Conchon 2014:170). An additional safeguard was subsequently introduced in article 33 of Law 2006-1770 of 31 December, to the effect that the statutes could not totally remove BLER and had to always keep at least one member representing employees on boards with fewer than 15 members (or two on boards with at least 15 members). That safeguard however had two caveats: first, for companies privatised under Law 86-793 of 2 July, it only applied to those which had opted to retain a provision for at least two board members representing employees in their statutes; second, the board members concerned could also be representatives of shareholder employees, meaning that BLER as such was in fact not safeguarded as an institution (Conchon 2014:171).

Last but not least, the Law 2013-504 of 14 June on safeguarding employment obliged certain French public limited companies¹⁰ with at least 1,000 employees in France or 5,000 worldwide¹¹ to have one or two worker representatives with voting rights on their boards, depending on board size. This obligation concerned private-sector companies, including SEs headquartered in France, which had not yet reached the required number of worker directors under the above-mentioned laws or ordonnances.

This last step was considered highly symbolic for industrial democracy in France (Conchon 2014), especially given that collective bargaining and information and consultation rights remained the cornerstone of employee participation, and not BLER (Géa 2020:106). The understandable excitement caused by the extension of mandatory BLER to private-sector companies diverted attention from a further interesting development in terms of the “Europeanisation” of employee representation. This new requirement came together with the possibility to not only consider the workforce worldwide for employee thresholds giving access to BLER rights in MNCs, but also to opt for an already existing European employee body (i.e. the S-EWC) to appoint the second representative, insofar as two employee representatives were to be appointed to the board. While such an appointment role is quite frequent in the case of European Companies (SEs)¹², this role is not foreseen in the EWC Directive, so multinationals falling under the scope of the EWC Directive do not normally establish such a role. An exception in this respect, French law boldly opens the door for S-EWCs to play an active role in appointing BLER members in French companies.

The S-EWC may appoint a representative as long as three preconditions are met: an S-EWC must be established in the company, a second employee representative has to be appointed to the board, and the General Meeting

10. For an exhaustive legal review of the scope of application, see Koehl 2020:239.

11. Previously higher, these thresholds were modified by Law 2015-994 of 17 August on social dialogue and employment.

12. The SE Directive defines “participation” as a right for worker representatives or the SE-WC to appoint or recommend members to the SE board. So, although SE agreements could choose differently, they usually adhere to the SE Directive and rely on the SE-WC to appoint the BLER members (Lafuente Hernández 2019).

of Shareholders (GMS) has to decide such. Indeed, article L225-27-1 of the French Commercial Code (*Code de Commerce*) defines four potential ways of appointing representatives, only one of which involves the S-EWC option. The way to be used is determined by the GMS. The available ways of appointment are: 1) by staff elections in France; 2) by the French (central or group) works council; 3) by the most representative trade unions according to French social elections; and 4) only in cases where a second member must be appointed and where an S-EWC exists, the first member can be appointed under any of the three first ways, while the S-EWC appoints an employee of the group (from France or abroad) as the second member¹³. The company must define the retained way of appointment in its statutes, and appoint the new member within six months following the GMS where the statutes were amended. These four alternatives did not apply, however, to companies where BLER already existed under previous laws or ordonnances. For those companies, staff elections in France continued to be the rule, as mandated by their originally applicable systems.

Whatever the case, when Law 2013-504 was adopted, the *Institut Français des Administrateurs (IFA)*¹⁴ encouraged MNCs to open their BLER appointment procedures to foreign subsidiaries in order to balance board representation between workers in France and abroad (IFA 2014). Corporate governance approaches driving the debate on corporate reform in France argued for including a plurality of interests and for distinguishing the social interests of a company from those of its shareholders (Segrestin et al. 2014; Hollandts and Aubert, 2019; Bourgeois et al. 2021), in line with the inclusion of employee interests on boards (Crifo and Rebérioux 2019) and international diversity in groups operating across borders.

Finally, Law 2019-486 of 22 May on the growth and transformation of enterprises (PACTE Law, the French acronym for: *loi "Plan d'Action pour la Croissance et la Transformation des Entreprises"*) introduced further changes with potential implications for BLER Europeanisation. First, in terms of scope, the PACTE Law reduced the scope of holdings exemptible from BLER obligations¹⁵. It also expanded the scope of mandatory BLER to mutual companies and other kinds of non-profit organisations with at

13. In other words, when a second board-level employee representative is to be appointed, that member can also be elected by the staff in France or appointed by the French (central or group) works council or by the French trade unions if the GMS so decides, replicating the way chosen for the first member, notwithstanding the existence of an S-EWC in the company.

14. The IFA was established in France in 2003, in the heat of corporate governance discussions and rapid expansion of self-regulatory practices in the USA and Europe that followed the Enron and WorldCom mismanagement scandals in 2001 and 2002 respectively (Conchon 2014:178). The IFA is an independent professional association of board directors which offers training courses and assessments, and promotes networking and more responsive governance practices in the public debate. See <https://www.ifa-asso.com/rejoindre-lifa/qui-sommes-nous/>.

15. Most listed holdings are now covered, regardless of whether they fall under the obligation to establish a works council or whether they already have a subsidiary subject to BLER obligations (article L225-27-1 and L22-10-7 of the French Commercial Code).

least 1,000 employees. Their statutes must be amended within 12 months following the closure of financial year 2022 to provide for at least two board-level employee representatives with voting rights on their boards. However, an impact in terms of Europeanisation is not to be expected in this case, as the two members can only be appointed by staff elections in France. Second, through lowering the board size threshold, the PACTE Law created further opportunities for S-EWCs to take up their potential new appointing role in the private sector. A second BLER member must now be appointed on boards exceeding eight (previously 12) non-employee members. The number of employee board seats could thus increase slightly. The companies concerned had to amend their statutes accordingly at their 2020 GMS, allowing new BLER members to take up their mandates within six months of the GMS. Third, the PACTE Law reinforced training rights for BLER members, extending paid training time from 20 to 40 hours per year.

However, the PACTE Law did not live up to the promising initial announcements and expectations (Notat and Senard 2018; Rehfeldt 2019). Coming in the wake of the 2017 labour law reforms, it facilitated privatisations and raised some employee thresholds with implications for the enforcement of labour rights (Lokiec 2019). Last but not least, it stayed behind the determined calls from unions, academics and think tanks for an improved “*codetermination à la française*” (Vernac and Segrestin 2018), so much so that more ambitious proposals have since found their way into the French Parliament (Potier and Melchior 2020)¹⁶.

To conclude this section, BLER rights in France constitute a “hotchpotch”. Different regimes coexist, involving different ways of appointing BLER members. While those applicable to the public sector, to privatised companies, to companies with voluntary BLER and, more recently, to mutual companies and other non-profit organisations rely on staff elections in France, the regime defined by Law 2013-504 for other private-sector companies introduced the option for S-EWCs to appoint one of the two BLER members. Despite their limited scope, these provisions, together with the expected increase in BLER numbers resulting from the enforcement of the PACTE Law, anticipated a measurable impact in terms of BLER Europeanisation. Yet, how many, and which, French-based companies took up this option? The next section addresses this puzzling question.

16. An information report submitted to the *Assemblée nationale* by deputies Dominique Potier from the Socialist Party and Graziella Melchior from *La République en Marche* proposed expanding BLER obligations by introducing two board-level employee representatives in companies with fewer than 500 employees, one-third in companies with more than 1,000 employees, and parity representation in companies with more than 5,000 employees. The proposal also called for extending BLER rules to a category of companies currently largely falling outside the scope of BLER obligations (i.e. “*sociétés par actions simplifiées*”) and for suppressing the legal rule prohibiting the combination of board and trade union representative mandates. It remains to be seen whether these proposals will translate into concrete legislative action considering the fragmented *Assemblée nationale* that resulted from the French parliamentary elections of June 2022 (see <https://www.vie-publique.fr/en-bref/285441-legislatives-2022-resultats-definitifs-et-composition-de-lassemblee>).

Table 1 Chronological overview of BLER institutionalisation in France

Date	Legal text	Scope	Nature of BLER rule	Main condition for BLER rule to apply	Number of BLER	Way of appointment	Consolidated regulation (last checked 10/4/2022)
1983	Law 83-675 of 26 July	Public sector	Compulsory	Less than 200 employees 200 or more*	2 members, up to 1/3 of the board At least 1/3 of the board	Election by staff of the company or company and its subsidiaries in France	Articles 4-28 of Law 83-675
1986	Ordonnance 86-1135 of 21 October	Private sector	Voluntary inclusion in statutes	--	1/4 of the board up to 4 members (or 5 members in listed companies)		Articles L225-27 to L225-34, L225-79 to L225-80 and L22-10-6 of the French Commercial Code
1994	Law 94-640 of 25 July (creates article 8-1 of Law 86-912 of 6 August, repealed in 2014)	Privatised companies	Compulsory inclusion in statutes	Privatised according to article 2 of Law 93-923 of 19 July	2 or 3 members		
2006	Law 2006-1770 of 31 December (article 33)	Privatised companies	Compulsory	Privatised according to article 4 of Law 86-793 of 2 July, and which kept at least 2 board members representing employees or shareholder employees in their statutes.	1 or 2 members (can also be shareholder employees)		
2013	Law 2013-504 of 14 June	Private sector	Compulsory	At least 1,000 permanent employees in France, or 5,000 worldwide**	1 or 2		1) Election by staff in France, or 2) trade union organisations in France, or 3) French (central) works council, or 4) any of the previous ways for the 1 st member, and the S-EWC for the 2 nd member, if two BLER members are to be appointed.
2014	Ordonnance 2014-948 of 20 August	Public sector	Compulsory	State-owned companies (>50% capital and at least 50 employees) and controlled subsidiaries of at least 200 employees Controlled subsidiaries between 200 and 1,000 employees	At least 1/3 At least 1/3 (maximum 3 members)	Election by staff	Articles 7 to 9 of Ordonnance 2014-948
2019	Law 2019-486 of 22 May (PACTE Law)	Mutual societies, unions, federations, and non-profit organisations	Compulsory	At least 1,000 permanent employees	At least 2	Election by staff	Article L114-16-2 Mutual Societies Code (<i>code de la mutualité</i>) Article L322-26-2 French Insurance Code (<i>code des assurances</i>).

* As modified by Ordonnance 2014-948 of 20 August. ** As modified by Law 2015-994 of 17 August. *** As modified by article 6 of Ordonnance 2020-1142 of 16 September.

Source: Author's own compilation, based on Conchon (2014), Vernac (2022) and own research.

3. A look at BLER implementation: how far is BLER becoming European in France?

Given the diverse criteria and exceptions defining the scope of application of mandatory BLER provisions in France, it is currently difficult, if not impossible, to determine how many French companies are obliged to have BLER in the first place, let alone two BLER members. French public limited companies must have BLER when they have a board and at least 1,000 permanent employees in France, or 5,000 worldwide, including their subsidiaries. Holdings or subsidiaries are obliged to have BLER insofar as they do not come under certain legal exemptions¹⁷. No official registry systematically collects such data, a problem also encountered in attempts to assess application of the EWC Directive (Köhler et al. 2015:53). Furthermore, the obligation to appoint a second BLER member in French companies (a precondition for the S-EWC to possibly have a role in appointing BLER members) depends, as said, on board size, the setting of which remains at the discretion of the company, within a legal range between three and 18 members. This margin of company discretion is higher in France than in other countries (e.g. Germany) where the number or proportion of board-level employee representatives and board size depend on more objective criteria, such as workforce size or registered share capital (Fulton 2020:6).

During the pandemic, French public limited companies were busy urgently adapting their statutes to the new PACTE Law rules, *inter alia* to the new legal requirements concerning BLER. The French government is required to issue a report in 2022 to assess the law's implementation and the effects of BLER on the economy, with a view to possibly increasing BLER to three members and including employees from foreign subsidiaries in the scope of the BLER system. The PACTE Law monitoring committee has already issued two interim annual evaluation reports (Baiz 2020 and 2021). In the absence

17. The scope of application of BLER is still significantly limited, as the legal provision only covers public limited companies (SAs), SEs and limited joint-stock companies ("*sociétés en commandite par actions*") but does not cover simplified joint-stock companies ("*sociétés par actions simplifiées*", or SAS) and other corporate forms, such as limited liability companies (SARL) or cooperatives. Some holdings are exempted from BLER obligations, if they fulfil three conditions: they are not obliged to establish a works council (namely, they have fewer than 11 employees, in reference to article L2311-2 *Code du travail*), they have subsidiaries already subject to BLER obligations, and they are not listed (or, if they are, 4/5 of their shares are held by just one shareholder). The latter condition was introduced by the PACTE Law. Finally, subsidiaries are exempted if their parent company already complies with the obligation. Again, see Koehl (2020:239) for a detailed review of the scope of application of the legal provision.

of better data sources, the second report signals the final assessment will rely on an *ad hoc* survey based on a representative sample (Baiz 2021:130), as the corporate database FIBEN (*Fichier bancaire des entreprises*) run by the Banque de France and initially foreseen as a reliable data source (Baiz 2019:105), had to be discarded for technical reasons. While the second interim report already identifies 35 CAC-40 companies and 83 SBF-120 companies with board members representing employees (Baiz 2021: 130), no attention is paid to how these members are appointed or whether companies assign an appointing role to their S-EWC. Yet, as said, the recent legal changes could bring about a significant Europeanisation of BLER in French companies.

To quantify this potential effect, we proceeded backwards, first identifying the 132 companies registered in France with an S-EWC according to the EWCD (ETUI 2021a). As a second step we analysed their corporate websites and most recent statutes as registered in Infogreffe. Company websites usually provide information on board size and composition in their governance section, while corporate statutes must specify how BLER members are to be appointed, i.e., whether the S-EWC appoints the second BLER member.

3.1 Compliant French companies, or the lack of a “circumvention” effect

According to the 92 company websites containing information on corporate governance and board composition, 83 (90.2 percent) have boards with more than eight non-employee members, meaning that they should have a second BLER member insofar as they come under the scope of BLER provisions. As Table 2 shows, of those 83 cases, 18 do not mention BLER in their publicly available information: either they list BLER members on the same footing as the other board members, or (most probably) they are outside the scope of BLER provisions or remain incompliant. More than two-thirds (57 cases) have already appointed their second BLER member, while eight companies continue to list only one BLER member in their public governance information. Admittedly, some of these companies might have appointed a second BLER member in the months following our analysis, as the new mandates were set to start within the six months following the 2020 GMS where the company statutes were amended. Although companies with boards with fewer than nine non-employee members are in the minority and would have no obligation to assign a second seat to labour on their boards, three of these companies do, probably on a voluntary basis, as a result of negotiations or in application of other laws.

Table 2 Companies by number of board-level employee representatives and board size

Number of BLER	Board size		Total
	≤8	>8	
One member	1	8	9
Two members	2	57	59
Nd	6	18	24
Total	9	83	92

nd: not determined.

Note: N=92, as, of the sampled 132 companies, board information could only be found for 92 companies on their websites.

Source: Author's analysis of corporate governance information available on company websites, last checked 28/2/2021.

In sum, French companies were proactive in appointing a second BLER member to comply with the new law, without reducing their board size, suggesting that they did not pursue a general circumvention strategy and thus confirming the findings in the PACTE assessment reports (Baiz 2020:178 and 2021:131). Admittedly, some French SAs might have transformed into SEs before 2013, possibly to escape potential future legal BLER obligations, or to “freeze” participation rights in their SE-WC agreement. A further circumvention strategy available to companies would be to transfer the registered seat to a country with no BLER obligations: such a transfer was identified for one specific SE established in France and then transferred to Belgium. But, conversely to the dynamics reported in Germany (e.g. Gieseke et al. 2021), no circumvention strategy based on a massive transformation of SAs into SEs was observed. One possible reason for this is that, under French law, BLER obligations are equally applicable to SAs and to SEs headquartered in France¹⁸. Moreover, the obligations are in any case so weak that the potential incentive for companies to circumvent them is insignificant.

3.2 Companies prefer having the S-EWC appoint the second BLER member

Let us now turn to how these second BLER members are appointed. As explained previously, the GMS is legally responsible for deciding which of the four different ways is to be used to appoint BLER members and must reflect this choice in the company statutes. Of the 132 companies in our sample, only 121 had their statutes available and updated between 2013 and 2020. Our analysis revealed that eight companies mentioned only how one BLER member was to be appointed, while 40 did not mention anything at

¹⁸. According to the transposition of the fall-back provisions of the SE Directive into French legislation.

all, suggesting that they were either outside the scope of BLER obligations or non-compliant. However, most companies (73) mentioned how a second BLER member (even a third one or more, as was the case in six companies¹⁹) was to be appointed, as listed in Table 3. This subsection focuses on those 73 companies.

Table 3 How are BLER members appointed when at least two are foreseen?

Way of appointment (art. L225-27-1 Code de Commerce)	First member	Second member	Number of companies
1 st way	Elections in France	Elections in France	13
2 nd way	French (central or group) works council	French (central or group) works council	13
3 rd way	French trade unions	French trade unions	6
4 th way	Elections in France	S-EWC	1
	French (central or group) works council	S-EWC	29
	French trade unions	S-EWC	10
	French delegation of S-EWC	S-EWC	1
<i>Subtotal</i>			41
Total			73

Note: N=73. Of the initial sample of 132 companies, only 73 mentioned in their statutes the way of appointing (at least) two board-level employee representatives. The table thus excludes those companies not stating the way of appointment in the statutes (n=41) or which only mention one BLER member therein (n=8).

Source: Author's analysis of most recent corporate statutes available in Infogreffe (2013-2020).

Most (41 companies, or 56 per cent) chose to assign the appointment role to the S-EWC, while 32 companies relied solely on French industrial relations institutions, such as the (central or group) works council, trade unions or staff elections in France. The findings reveal that the most frequent “worker representation duet” combines representatives mandated by the French group works council and by the S-EWC (29 companies), meaning that, overall, companies having to appoint two BLER members showed a clear preference for indirect appointment procedures. Having the first BLER member appointed by French trade unions and the second by the S-EWC was also quite common (10 companies). Conversely, the combination of staff elections for the first BLER member and an S-EWC role for the second was extremely rare (just found in one company). In almost all “staff election” cases, elections were used to appoint all the BLER members (13 companies). This can be explained by the fact that most of these companies had established their BLER under the legal rules applicable to state-owned or privatised companies, which, as already seen, set staff elections as the only possible way of appointment. Therefore,

¹⁹. These companies (i.e. four cases with three board-level employee representatives, EDF with six, and RATP with nine) established their BLER by staff elections in France as the sole way of appointment under previous obligations applicable to the public sector or privatised companies, meaning that they do not fall under the obligations of Law 2013-504 (as explained in the first section).

the procedure found in those 13 companies did not reflect a corporate choice or preference. However, it remains true that, on the one hand, the majority of companies entitled to opt for one of the four ways opted for an S-EWC role, i.e., for the sole way offering two different sources of political legitimation to the two mandates; and that, on the other hand, this S-EWC role appeared overwhelmingly linked to a preference for an indirect representation channel instead of staff elections to appoint the first BLER member.

As regards the provenance of those second BLER members appointed by S-EWCs, we were able to establish it for 31 individuals, based on the information on board composition available on the corporate websites (see Table 4). Most S-EWCs chose representatives from subsidiaries outside France (in 20 cases), although this was not mandatory. Most of these “foreign” representatives came from countries with no BLER regulation for the private sector. This could simply reflect the distribution of foreign countries where French companies operate, though could also indicate that candidates from countries with a tradition of BLER rights were discouraged from applying. Indeed, representatives from the latter countries – where labour boardroom mandates are intrinsically linked with other representative mandates in the company, such as a trade union shop steward or works councillor – might prefer to withdraw their candidacy when confronted with the French legal rule prohibiting them from combining a board mandate on the French parent company with mandates on the S-EWC or even in their home country²⁰. Whatever the case, we can confirm that involving the S-EWC in the appointment of the second BLER has contributed to extending BLER rights across borders. At the same time, counter-intuitively, several S-EWCs appointed French workers for the second BLER seat, despite having the option to do otherwise and despite the first BLER seat being already held by a French representative. This could be due to several factors, like French dominance of the S-EWC, a higher concentration of workforce in France, trade union or management political preferences, or a lack of better or interested candidates from outside France, possibly as a consequence of the French legal rule prohibiting a combination of mandates (“*cumul des mandats*”), as previously noted²¹. These are only hypotheses though, and further qualitative research should be conducted to uncover the reasons and rationale behind these choices on a case-by-case basis.

European Companies (SEs) deserve specific mention. Only 16 of our 132 sampled companies were SEs, reflecting the low impact of the SE Directive in

20. There are strong legal arguments supporting the idea that the legal rule prohibiting employee representatives from combining the board mandate with other mandates in the same company (article L225-30 of the French Commercial Code for private-sector companies) should not apply to mandates governed by foreign law (see Vernac 2022). However, in the absence of case law in this matter, companies all too often interpret the rule broadly, *de facto* making worker directors give up all their mandates, even those outside France.

21. Eiffage is one example, among others, where a French worker director was finally appointed by the EWC. Faced with the uncertainty of having to resign from other foreign mandates, a potential candidate from Germany withdrew his candidacy.

France – there were just 45 French SEs according to the European Company Database (ECDB) when the study was conducted (ETUI 2021b). However, most of these 16 SEs referred to BLER in their statutes, in most cases assigning the SE-WC the role of appointing the second board-level employee representative. As shown, in contrast to Germany, where SE conversions have often led to the freezing or circumvention of codetermination rights on the board (Gold and Schwimbersky 2008; Stollt and Kluge 2011; Keller and Rosenbohm 2020:32), in France, transformation into an SE has not generally been used to circumvent BLER obligations, considering the caveats and reasons put forward in subsection 3.1.

Table 4 Second BLER members appointed by S-EWCs, by country of employment

Category of country	Country of employment	Number
Headquarters	FR	6
Countries with BLER legislation for the private sector	DE	7
	NL	1
	CZ	1
<i>Subtotal</i>		9
Countries without BLER legislation for the private sector	BU	1
	Canada (Québec)	1
	ES	4
	GR	2
	PL	1
	PT	1
	UK	1
<i>Subtotal</i>		11
<i>Nd</i>	<i>nd</i>	5
Total		31

Source: Author's analysis based on board composition information available on company websites (last checked 11.4.2021).

4. How are French S-EWCs adapting to corporate practice?

While most of the sampled French companies have adapted their statutes to the PACTE Law, often opting for involving the S-EWC in the appointment of an additional board-level employee representative, many S-EWC agreements have not been adapted accordingly, as revealed by a text analysis of S-EWC agreements (original or renegotiated) signed between 2013 and 2020.

Indeed, of the 60 S-EWC agreements available in the EWCDDB for French companies, only 13 mentioned the issue of employee representation on the company's board, and of these, ten were signed before the PACTE Law was enacted. Just 12 out of the 60 were signed after its adoption, namely between 2019 and 2020.

This suggests two things. First, at best, that discussions took place in some S-EWCs: either they were merely informed of the new role they had to adopt, or negotiations were held to clarify appointment procedures or eligibility criteria for a second BLER member. Second, that such few discussions were mostly unrelated to the PACTE Law. Irrespective of whether the law had any effect on BLER, S-EWC agreement negotiations in 2019-2020 remained surprisingly insensitive to these effects. This may be due to a small time lag between S-EWC negotiations and the amendment of corporate statutes in 2020, meaning that the full impact of the PACTE Law on French S-EWC negotiations is yet to be seen. It could however also indicate that appointment of a second BLER member was not considered sufficient grounds to (re)open S-EWC agreement negotiations. Or the urgency of appointing the second BLER member may have ruled out the use of such a time-consuming and formalised procedure, with other instruments found to better suit needs, such as rules of procedure or S-EWC meeting minutes²².

Of the 13 S-EWC agreements mentioning the issue of employee representation on the company's governing body, three (all relating to SEs) either explicitly exclude BLER, or refer to BLER (namely, board representation not just in an advisory role but with voting rights) as a future option for worker participation, subject to the company coming under the scope of new legal obligations in the future. Finally, just ten S-EWC agreements specifically refer to BLER as being established in the company, with the S-EWC usually appointing the second

²². In further research on this matter, it would thus be advisable to systematically collect and analyse existing internal S-EWC rules of procedure.

member by simple majority²³. One of the ten agreements (Sopra Steria) had even to be excluded as it turned out to pertain to the parent-company governed by German law (an SE), and not to the French subsidiary for which the statutes had been analysed²⁴.

If mentioned at all, the eligibility criteria for this second S-EWC-nominated board-level employee representative vary. In two cases, she or he should preferably be a member of the European (or Global) Works Council. But otherwise the candidate is simply required to be an employee of the group within the EU or is chosen based on diversity and proportionality criteria.

Very few S-EWC agreements specify the duration of mandates²⁵, the right of BLER members to attend S-EWC meetings or how to apply the French Commercial Code rule on incompatibility of mandates with regard to board-level employee representatives. Procedures for proposing or rejecting candidates are completely absent, though it should be borne in mind that these questions might have been addressed in internal S-EWC rules of procedure or informal agreements.

Looking specifically at SEs, although they represented only a minority of the analysed company S-EWC agreements (just 9 out of 60), they were overrepresented in the group where agreements mentioned BLER (8 out of 13). Similarly, SEs accounted for half of the ten cases establishing BLER and regulating it in their SE-WC agreements. This is not surprising: in contrast to companies falling under the EWC Directive, SEs are obliged by the SE Directive to discuss and negotiate worker participation in their SE agreements before the company is even established, including board participation rights. So, if an SE has to establish BLER, it must address this issue as part of the SE-WC agreement's mandatory content. Moreover, as mentioned earlier, the SE Directive defines "participation" as a right for the SE-WC to appoint or recommend members to the board.

While our analysis of S-EWC agreements suggested that S-EWCs were only rarely involved in the appointment of BLER members in large French companies, the analysis of corporate statutes and websites for the same companies proved otherwise. Reconciling these two findings, it seems that there could be a time lag in S-EWC agreements formally addressing this issue or that the issue could be treated elsewhere, for example in internal rules of

23. For the relevant clauses of the S-EWC agreements analysed, see Annex 2.

24. This example illustrates the methodological – and also political – challenge facing researchers and worker representatives to identify the employer concerned and keep pace with complex transnational corporate structures. Collecting information on the specific legal entities establishing an S-EWC remains crucial both for research and collective action. When an S-EWC and BLER are present in different legal entities of the same group, the articulation between the two becomes more difficult (Lafuente et al. 2022).

25. Although the duration of a mandate can be stipulated in a company's statutes, including it in the S-EWC agreement could be an additional way of protecting worker representatives against unilateral managerial changes, especially as the duration of BLER mandates tends to be shorter than that of other board members.

procedures, the minutes of meetings or even internal rules of procedure of the board²⁶. However, as such documents were not systematically collected or analysed in our study, we have no definitive finding. Preliminary research based on informal exchanges and interviews with representatives and trade union coordinators indicated that internal rules only rarely dealt with the issue of BLER appointments and S-EWC roles, and that there was little systematic trade union guidance on how to formalise these rules and protections, both in terms of content and institutionalisation. The pressure put on S-EWCs governed by French law to take up this new appointing role can however be expected to encourage negotiations to establish fairer and more transparent procedures and to secure rights for these new BLER mandates in French MNCs.

26. This could be verified for some of the companies. The legal robustness and transparency of such instruments to regulate transnational BLER elections could in any case be questioned.

5. The French case: a “success” story – but with unanswered questions

Looking at the institutional framework, the French case can be considered a relative success in terms of BLER Europeanisation, especially when compared with other Member States where legal or political possibilities to Europeanise BLER in multinational companies exist but have only been applied restrictively by social players²⁷. However, this first impression conceals certain relevant legal, political and practical implications for those involved and for institutional dynamics.

Legally speaking, in the absence of overarching EU rules on BLER in MNCs, the regime applicable to BLER relies exclusively on national law, with neither the EWC Directive nor its French transposition foreseeing a role for EWCs in appointing BLER members. French law remains silent on who can propose candidates for board seats on behalf of employees, on how candidacies can be confirmed, and on how the EWC arrives at its decision. In the case of SEs, French law is somewhat more detailed in its transposition of the SE Directive, though still does not cover all such aspects²⁸. National law could also do more to protect foreign BLER members, as their room for manoeuvre is limited when they are not granted equal and necessary resources and protections to adequately fulfil their functions. Rights to translation and interpretation, considered key to the proper functioning of S-EWCs, are totally absent from the regulation regarding BLER. This loophole could work as a filter restricting access for candidates and making it difficult for some to adequately fulfil their representative function. It is already questionable how these rights, but also rights to training or time-off, can be taken up by BLER members employed outside France vis-à-vis their foreign employer not legally bound by French law.

27. Only two cases in Germany, two in Sweden and two in Denmark were found to have incorporated a transnational dimension in their BLER (Lafuente Forthcoming), while 24 cases were identified as having installed BLER at transnational group level in Norway (Hagen 2016).

28. As fall-back provisions applicable when an SE agreement has not been reached, articles L2353-31 and L2353-32 of the French Labour Code leave it to the SE-WC to determine the conditions of participation, referring to the general rules of the Commercial Code for the appointment of board members, but requiring the SE-WC to allocate seats proportionally across Member States in line with workforce distribution, or assigning, as far as possible, at least one seat to the Member States that had participation rights before constitution of the SE.

These legal questions come together with political problems. The application of the French rule prohibiting BLER members from combining representative mandates in the same company disincentivises politically active worker representatives to run for office on the French board, as a board mandate entails giving up relevant representative mandates elsewhere. It is not rare to find cases where the problem of a lack of candidates was pragmatically solved by technically appointing candidates proposed by management, without any real democratic discussion among worker representatives. While facilitating the appointment process for all concerned, such pragmatism questions the independence of the mandating procedure and points to an indirect discrimination of trade union representatives (Vernac 2022). The incompatibility rule also causes uncertainty among foreign BLER members, who are often asked by management to resign their S-EWC mandate and possibly other representative mandates in their foreign subsidiary (works council or trade union mandates in the company)²⁹. This logic radically deviates from a key feature of codetermination systems in Northern Europe's 'coordinated market economies' (Hall and Soskice 2001): the possibility to combine mandates is there considered as a way of ensuring representation continuity and interlinking workers' interests within the company, but also of preventing BLER members from feeling isolated or manipulated by shareholder or management interests (Gold 2011).

From a management perspective, having a second employee representative appointed to the board by the S-EWC and thus endowed with a transnational mandate and legitimacy seems an astute way to advance board diversity, increasingly valued in business circles. Such a procedure is also less costly than staff elections, though has other implications for labour, in terms of loss of direct political legitimacy and lower BLER member visibility among staff, as election campaigns help promote workplace democracy. But the managerial choice for S-EWCs has at times been used for other ends. It should be borne in mind that French S-EWCs usually have a joint management-worker composition³⁰. Under such circumstances, management can maintain greater control over the selection of the second BLER member³¹. Moreover, given trade union pluralism and competition in France and depending on the social dialogue situation and power relations in a company, the S-EWC option can become a strategic weapon to weaken labour voice and ensure more docile

29. For a detailed critical legal assessment of this rule, its scope and applications, see Vernac 2022.

30. Although S-EWC agreements can stipulate otherwise, the composition of French S-EWCs usually reflects the fall-back rules enshrined in the French Labour Code (i.e. articles L2343-5 and L2353-7), according to which an S-EWC is made up of the CEO, two of her or his assistants with a consultative role, and the worker representatives.

31. In some of the cases analysed, it was reported that the company's Human Resources department was involved in the pre-selection of candidates, in the selection of criteria, in filtering CVs, conducting joint interviews with S-EWC members, or even organising the call for candidates via the group intranet, thereby questioning the full autonomy and control of S-EWC worker representatives over the appointment. In some case, candidates had to finance their travel to the headquarters for the interview, thereby technically excluding workers from outside Europe from the possibility to become candidates and helping management retain a certain control.

or less protected worker representatives on the board, while excluding more antagonistic socio-political unions³². Worker representatives and trade unions are sometimes pressured by management to compete for board seats, with such competition possibly amplified when different countries are involved³³.

As the research also highlighted, the inclusion of foreign representatives on French boards can help transfer BLER experience to countries without codetermination rights. The SE Directive was expected to have such an effect, though its potential was overestimated (Keller and Werner 2012:636; Davies 2003:84). National legislation as in France has proven more effective than the SE Directive on this respect, both in terms of Europeanising mandates via having the S-EWC appoint BLER members, and in terms of giving worker representatives from countries other than France access to a board seat³⁴. Worker representatives and trade unions outside France can use this opportunity to gain voting rights in their MNC's seat of power and access to privileged information. Though still viewed with caution, several newly appointed foreign BLER members perceive such board participation as a potential steppingstone towards enhancing trade union action, as acknowledged by a representative from the Spanish trade union Comisiones Obreras (CCOO) recently appointed by his EWC to the board of the French parent company:

“It is something new and interesting for the trade union. From the perspective of the Spanish trade union delegation, we value the role we can play from the board, how we can use it for trade union action (...) we were curious, because our French colleagues said it was worth nothing, but they had never used it before either.” (Excerpt from interview, 22 July 2021)

The interviews conducted with board-level employee representatives and S-EWC coordinators confirmed that the dynamics of Europeanised BLER in French private-sector MNCs remain at an experimental stage and are not yet stabilised. Both management and BLER members (French and non-French) are in the process of mutual step-by-step learning.

As reported in studies focused on EWCs (Haipeter et al. 2019), Europeanised boards bringing together worker representatives from different industrial relations cultures require extraordinary effort to be invested to gain mutual

32. I am grateful to Udo Rehfeldt for this observation based on reported experiences of CGT members. In our sample, this could potentially have concerned the ten companies combining trade unions and S-EWCs as ways of appointing BLER members, but also those cases where a strongly unionised French (central or group) works council had to hand over the appointing role to a less unionised S-EWC for selecting the second BLER member.

33. Indeed, several conflictual situations were reported in the focus groups. As illustration, see the case of Air France-KLM, where a disagreement between the EWC and the Dutch works council about the appointment of the board-level employee representative from the Netherlands was brought before a French Court (Up in the Sky 2021).

34. As previously mentioned, France has just 45 SEs, of which just 13 have conducted negotiations on BLER rights (ETUI 2021b).

trust, cooperation, shared understandings (in particular about what a “European mandate” actually means), and a capacity to work together as a collective representing the European workforce. The findings highlight a fundamentally political question: including foreign representatives on boards may weaken the political role of BLER members as delegates, while reinforcing their role as trustees “at the expense of trade union or [mandated] employee interests” (Hagen 2016:4). Transnational representation obviously adds to the distance between representatives and their constituencies. But the risks for BLER members to overemphasise their trustee role or become tied into shareholder projects (Gold 2011) could be reduced through making adequate conditions and resources available to BLER members, and through developing strong coordinated trade union policies and collective action strategies around this role.

6. Conclusions

Following adoption of the PACTE Law, more French companies are expected to be obliged to appoint two employee representatives to their boards, though little is known about how many, which ones and how the representatives will be appointed. The institutional solution proposed by the French law is an interesting attempt to interlink different levels of industrial relations, and the findings presented in this paper demonstrate it has been used effectively by French companies: when an S-EWC existed, companies preferred the S-EWC option for appointing a second BLER member rather than using more traditional ways of appointment based on the French industrial relations' system. Moreover, S-EWCs preferred appointing non-French members to this second board seat, even though they were not obliged to do so. This can be interpreted as a positive sign on the road towards developing BLER as an institution for transnational worker interest representation.

However, the research has revealed that this new S-EWC role and how it is used has a number of underlying legal, political and practical implications. Worker autonomy in the selection of candidates can be compromised by excessive legal and managerial interference, while non-French BLER members remain insufficiently equipped with resources and guarantees to fulfil their representative function and to bring employee voice to the board, with consequent risks in terms of isolation or even manipulation of the members, as well as in terms of weakening (some) trade union positions in BLER dynamics. The new role for S-EWCs also entails additional political pressure for these bodies, and the risk of competition between French and non-French trade unions for employee board seats. In such context, ETUI and EWPC training courses can become a tool for representatives to counter the risks of isolation and competition, through exchange of experiences and network building.

Yet, this regulation in France can also be seen as a new 'political opportunity structure' (Tarrow 1991) for trade union action within French MNCs, deserving further attention and elaboration by national and European trade union federations in training programmes and trade union action policies. The opportunity to appoint a second BLER member to the board of the parent French MNC has even triggered the introduction of BLER in some companies, opening the door for both French and non-French representatives to jointly learn and experiment with a potential new arena to deploy and coordinate multi-level strategies.

The shortcomings exposed in this paper cannot be overcome solely by S-EWC agreements or French legislation. S-EWCs are not keeping up with the rapid pace of corporate change in their negotiations and discussions, all too often leaving the initiative to management. The study shows that, even when S-EWCs are involved, they often fail to provide adequate solutions to the problems arising from transnational BLER appointments. As for French law, the entry of foreign representatives onto French boards raises legal and political challenges that no national law is able to fully and adequately address, as argued elsewhere (Lafuente Hernández and Rasnača 2019).

Even so, French law could foresee more resources for BLER members appointed by S-EWCs (translation and interpretation, rights to visit European sites and constituencies or to formally communicate with the S-EWC and attend their meetings, for instance), as well as some basic rules on how the S-EWC should appoint BLER members to ensure greater transparency, fairness and equal opportunities for worker representatives across the group, while granting autonomy to the workers' side of the S-EWC in appointing BLER members³⁵.

On the other hand, due to the new role assigned to the S-EWC and its potential extended application, both Law 2013-504 and the PACTE Law may have triggered either the establishment of S-EWCs in companies without any transnational body for information and consultation or S-EWC renegotiations³⁶. In the latter case, worker representatives would gain from new clauses clarifying such aspects as how candidates are to be nominated, eligibility criteria, the appointment procedure within the S-EWC, the relationship between the S-EWC and the appointed board-level employee representative to support effective coordination (e.g. by allowing confidentiality exemptions between them insofar as compatible with legal requirements, including provisions for joint (preparatory) meetings, or introducing an observer seat for the board-level employee representative at S-EWC meetings), and conditions and procedures for the withdrawal or replacement of a mandate (e.g. nomination of deputies to fill vacant seats). Other aspects refer more specifically to the BLER mandate, namely the rights and obligations involved. In the absence of other rules, S-EWC agreements could enhance training and time-off rights granted in the French law, include rights to translation and interpretation in board meetings, or even clarify the scope and limits of the French legal ban on combining mandates.

Nevertheless, overarching EU legislation remains the most appropriate regulatory level to effectively remedy the shortcomings identified in this

35. This could include *inter alia* requirements such as secret ballot, election by qualified majority, balanced representation, minimum number of candidates, and/or preestablished procedures for the submission and acceptance of candidacies without managerial interference.

36. Admittedly, S-EWC renegotiations may be less likely if alternative and simpler channels remain at the disposal of the parties to find *ad hoc* solutions to implementing the new appointing role, such as S-EWC internal rules of procedures or the minutes of S-EWC meetings.

research: conflicting laws, a lack of transparency and foreseeability in nomination and appointment procedures, as well as a lack of protections for foreign BLER members in a multinational company operating in the EU. An interlinked framework of information, consultation and board-level employee representation, similar to that proposed by ETUC (2016) and now recently taken up by the European Parliament (European Parliament 2021), but with coverage expanded to multinational companies and their workers across the European Economic Area, would be a more appropriate way of supporting a sounder, fairer and more effective European policy on democracy at work.

References

- Baïz A. (2019) Comité de suivi et d'évaluation de la loi Pacte. Rapport méthodologique, Paris, France Stratégie. <https://bit.ly/3n1Bdwd>
- Baïz A. (2020) Comité de suivi et d'évaluation de la loi Pacte. Premier rapport, Paris, France Stratégie. <https://bit.ly/3FSbzCE><https://bit.ly/3FSbzCE>
- Baïz A. (2021) Comité de suivi et d'évaluation de la loi Pacte. Deuxième rapport Septembre 2021, Paris, France Stratégie. <https://bit.ly/35iNtU8>
- Bourgeois C., Hollandts X. and Valiorgue B. (2021) La Loi Pacte : Enjeux et perspectives pour la gouvernance des sociétés françaises, *Revue française de gouvernance d'entreprise*, (22-23), 4-29.
- Conchon A. (2011) Board-level employee representation rights in Europe. Facts and trends, Report 121, Brussels, ETUI.
- Conchon A. (2014) Les administrateurs salariés en France : contribution à une sociologie de la participation des salariés aux décisions de l'entreprise, PhD Thesis, Paris, CNAM.
- Crifo P. and Rebérioux A. (2019) La participation des salariés. Du partage de l'information à la codétermination, Paris, Presses de Sciences Po.
- Davies P. (2003) Workers on the board of the European company?, *Industrial Law Journal*, 32 (2), 75-96.
- European Parliament (2021) European Parliament resolution of 16 December 2021 on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive (2021/2005(INI)). https://www.europarl.europa.eu/doceo/document/TA-9-2021-0508_EN.html
- ETUC (2016) ETUC position paper. Orientation for a new EU Framework on information, consultation and board-level representation rights. <https://www.etuc.org/sites/default/files/document/files/en-position-wblr.pdf>
- ETUI (2021a) European Works Councils Database. <http://www.ewcdb.eu/> Checked 28/2/2021.
- ETUI (2021b) European Company Database. <http://www.ecdb.worker-participation.eu/news.php> (Checked 4/7/2021)
- Featherstone K. and Radaelli C. M. (2003) The politics of Europeanization, New York, Oxford University Press.
- Fulton L. (2020) Codetermination in Germany. A beginner's guide, *Mitbestimmungspraxis* 32, Düsseldorf, Hans Böckler Stiftung.
- Géa F. (2020) Loi PACTE : quelle contribution au renouveau du droit du travail ?, *Revue de droit du travail*, (2), 99-110.
- Gieseke F., Misterek F. and Sick S. (2021) 4 von 5 grossen SE vermeiden paritätische Mitbestimmung, Hans Böckler Stiftung, 17.11.2021. <https://www.mitbestimmung.de/html/4-von-5-grossen-se-vermeiden-19608.html>
- Gold M. (2011) 'Taken on board': an evaluation of the influence of employee board-level representatives on company decision-making across Europe, *European Journal of Industrial Relations*, 17 (1), 41-56.
- Gold M. and Schwimbersky S. (2008) The European company statute: implications for industrial relations in the European Union, *European Journal of Industrial Relations*, 14 (1), 46-64.
- Hagen I.M. (2016) 'You can't argue with numbers'. Transnational representation with a Norwegian perspective, Paper presented at the '40th anniversary' WZC Conference, Berlin, 12 May 2016.

- Haipeter T., Hertwig M. and Rosenbohm S. (2019) Employee representation in multinational companies. The articulation of interests in multilevel action fields, Cham, Palgrave MacMillan.
- Hall P.A. and Soskice D. (2001) Varieties of Capitalism. The Institutional Foundations of Comparative Advantage, Oxford, Oxford University Press.
- Hann D., Hauptmeier M. and Waddington J. (2017) European Works Councils after two decades, *European Journal of Industrial Relations*, 23(3), 209-224.
- Hollandts X. and Aubert N. (2019) La gouvernance salariale : contribution de la représentation des salariés à la gouvernance d'entreprise, *Finance Contrôle Stratégie*, 22 (1). <https://doi.org/10.4000/fcs.3256>
- IFA (2014) Les administrateurs salariés dans la gouvernance : une dynamique positive, Paris, Institut français des administrateurs.
- Infogreffe (2021) French Trade and Companies Register. <https://www.infogreffe.com/web/guest/greffe-tribunal/registre-entreprise-societe.html>
- Keller B. and Werner F. (2012) New forms of employee involvement at European level – the case of the European Company (SE), *British Journal of Industrial Relations*, 50 (4), 620-643.
- Keller B. and Rosenbohm S. (2020) The European Company: Original expectations and deficiencies of implementation, *European Journal of Industrial Relations*, 26(1), 23-39.
- Kluge N. (2008) Workers' participation in BASF SE and the European debate on corporate governance, *Transfer*, 14 (1), 127-132.
- Koehl M. (2020) La participation des salariés dans les organes de direction : l'introuvable cogestion, *Revue de Droit du Travail*, (4), 237-245.
- Köhler H.D., González Begega S. and Aranea M. (2015) Three decades of European Works Councils: a quantitative evaluation, *Warsaw Forum of Economic Sociology*, 6:1 (11), 49-74.
- Lafuente Hernández S. (2019) Negotiated board-level employee representation in European companies: Leverage for the institutional power of labour?, *European Journal of Industrial Relations*, 25 (3), 275-289.
- Lafuente S. (Forthcoming) The stealthy transnationalisation of board-level employee representation in national law and practice: a case for pan-European legislation, Brussels, ETUI.
- Lafuente S., De Spiegelaere S. and Jagodzinski R. (2022) Friends in high places: relations between European works councils and board-level employee representatives. Policy Brief 2022.02, Brussels, ETUI. <https://bit.ly/3Maxgjt>
- Lafuente Hernández S. and Rasnača Z. (2019) Can workers' rights ever catch up? The Erzberger case and EU cross-border reality, *Industrial Law Journal*, 48 (1), 98-116.
- Lokiec P. (2019) Coup de griffe sur les seuils sociaux, *Dossier Loi Pacte, Droit Social*, 1- Janvier, 6-9.
- Marginson P. and Sisson K. (2006) European integration and industrial relations. Multi-level governance in the making, New York, Palgrave MacMillan.
- Notat N. and Senard J.D. (2018) L'entreprise, objet d'intérêt collectif, . <https://bit.ly/3p8ArA3>
- Potier D. and Melchior G. (2020) Rapport d'information n°3648 déposé en application de l'article 145 du règlement, par la commission des affaires économiques sur le partage de la valeur au sein des entreprises et ses conséquences sur leur gouvernance, leur compétitivité et la consommation des ménages, session 9 décembre. <https://bit.ly/3wWnE7L>

- Segrestin B., Levillain K., Hatchuel A. and Vernac S. (2014) L'objet social étendu : une voie pour réaligner le droit et la théorie des parties prenantes, *Finance-Contrôle-Stratégie*, 17(3). <https://doi.org/10.4000/fcs.1528>
- Stollt M. and Kluge N. (2011) The potential of employee involvement in the SE to foster the Europeanization of labour relations, *Transfer*, 17 (2),181-191.
- Rehfeldt U. (2013) The Europeanisation of employee involvement in SEs: lessons from ten case studies, in Cremers J., Stollt M. and Vitols S. (eds.) *A decade of experience with the European Company*, Brussels, ETUI, 165-187.
- Rehfeldt U. (2019) Board-level employee representation in France. Recent Developments and Debates, *Mitbestimmungsreport 53e*, Düsseldorf, Hans-Böckler-Stiftung.
- Tarrow S. (1991) *Struggle, Politics and Reform: Collective action, Social Movements and Cycles of Protest*, 2nd ed., Cornell University, Ithaca (N.Y.), Center for International Studies,
- Up in the Sky (2021) Conflict over bestuurszetel Air France-KLM, Up in the Sky, 7.10.2021. <https://www.upinthesky.nl/2021/10/07/conflict-ontstaan-over-bestuurszetel-air-france-klm/>
- Vernac S. (2022) Le régime français relatif à l'interdiction de cumul des mandats d'administrateur salarié et de représentant du personnel, Brussels, ETUI.
- Vernac S. and Segrestin B. (2018) *Gouvernement, participation et mission de l'entreprise*, Paris, Hermann.

Legal texts³⁷

- Code de commerce (French Commercial Code).
- Code du travail (French Labour Code).
- Code de la mutualité (French Mutual Societies Code).
- Code des assurances (French Insurances Code).
- Loi n° 83-675 du 26 juillet 1983 relative à la démocratisation du secteur public (Law 1983-675 of 26 July on democratisation of the public sector).
- Loi n° 86-912 du 6 août 1986 relative aux modalités des privatisations (Law 86-912 of 6 August on privatisations modalities).
- Loi n° 93-923 de 19 juillet 1993 de privatisation (Law 93-923 of 19 July on privatisation).
- Loi n° 94-640 du 25 juillet 1994 relative à l'amélioration de la participation des salariés dans l'entreprise (Law 1994-640 of 25 July on the improvement of employee participation in firms).
- Loi n° 2006-1770 du 31 décembre 2006 pour le développement de la participation et de l'actionnariat salarié et portant diverses dispositions d'ordre économique et social (Law 2006-1770 of 31 December on the development of participation and employee share ownership and on different economic and social provisions).
- Loi n° 2013-504 du 14 juin 2013 relative à la sécurisation de l'emploi, modifiée par loi n°2015-994 du 17 août 2015 relative au dialogue social et à l'emploi (Law 2013-504 of 14 June on safeguarding employment, modified by Law 2015-994 of 17 August on social dialogue and employment).

37. All consolidated and past versions are accessible at <https://www.legifrance.gouv.fr/>

Loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises (dite « loi PACTE ») (Law 2019-486 of 22 May 2019 on growth and transformation of firms (PACTE Law, for its acronym in French).

Ordonnance n° 86-1135 du 21 octobre 1986 modifiant la loi n° 66-537 du 24 juillet 1966 sur les sociétés commerciales afin d'offrir aux sociétés anonymes la faculté d'introduire dans leurs statuts des dispositions prévoyant que des représentants du personnel salarié siègeront avec voix délibérative au sein du conseil d'administration ou du conseil de surveillance (Ordonnance 1986-1135 of 21 October, modifying Law 1966-537 of 14 July, on commercial companies, to offer public limited companies the possibility to introduce provisions in their statutes to foresee worker representation with voting rights on their board of directors or supervisory boards).

Ordonnance n° 2014-948 de 20 août 2014 relative à la gouvernance et aux opérations sur le capital des sociétés à participation publique (Ordonnance 2014-948 of 20 August on governance and transactions affecting the capital of companies with state participation).

Abbreviations

BLER	Board-level employee representation
BU	Bulgaria
CGT	Confédération Générale du Travail / French General Confederation of Work
CJEU	Court of Justice of the European Union
CZ	Czech Republic
DE	Germany
ECDB	European Company Database
ES	Spain
EU	European Union
EWC	European Works Council
EWADB	European Works Council Database
FIBEN	Fichier bancaire des entreprises / Banking database on companies
FR	France
GMS	General Meeting of Shareholders
GR	Greece
IFA	Institut Français des Administrateurs / French Institute of Board Directors
MNC	Multinational company
NL	The Netherlands
PACTE	Plan d'Action pour la Croissance et la Transformation des Entreprises / Action Plan for the Growth and Transformation of Firms
PL	Poland
PT	Portugal
SA	Société Anonyme / Public limited company in France
SARL	Société à responsabilité limitée / Limited liability company in France
SAS	Société par actions simplifiées / Simplified joint-stock company in France
SE	Societas Europaea / European Company
SE-WC	SE Works Council
S-EWC	EWC or SE Works Council
TU	Trade union
UK	United Kingdom
WC	Works council

Annex 1

French S-EWC agreements mentioning employee participation rights in the board
(EWDCB last checked 11/3/2021)

EWC Agreement	Date	Clauses related to BLER matters
AKKA Technologies SE (Currently excluded from BLER obligation under French law, as transferred its seat to Belgium.)	2015	"Part C: Participation within the board of directors of AKKA Technologies SE. The Management and the SNB have during the negotiations on the establishment of the SE Works Council exchanged views on the terms and conditions for the participation of employees' representatives within the board of AKKA SE. Following these exchanges, the management did not wish to set up a mechanism for representation; however, it agrees to consult at mid-term with the Works Council of the European company on the opportunity of introducing such a mechanism."
Bolloré SE	2019	"IX. Participation. Under article 2k of the Directive 2001/86 EC, participation consists in the influence of the employee representative body and/or the employee representatives in the affairs of a company: - by exercising their right to elect or appoint some of the members of the company's supervisory or administrative body, or - by exercising their right to recommend and/or oppose the appointment of some or all the members of the company's supervisory or administrative body. On the signature date of this agreement, two (2) employee-elected directors participate with voting rights in the Bolloré SA boards of Directors. All parties agree that effective the next mandate of these employee board members which begins on November 22nd 2020, one (1) of them will be appointed by the Group Committee in accordance with French Regulations. The other will be elected by the Bolloré European Companies Works Council among its members, by a majority of votes cast, in the event that there are several candidates, in accordance with the Statutes of Bolloré SA, for a term of three (3) years. If no such candidate is found among the members of the Bolloré ECWC, they could decide to designate an employee of one of the companies included in the scope of this agreement as defined in article II. B."
CapGemini SE	2017	"14. Terms and Conditions of employee participation in the governing body of the Company (...) the draft bylaws of the Company post conversion into a European Company (...) reproduce at Article 11 the provisions which existed (...) before conversion, and notably: (...) the representation of employees on the board of Directors of the Company by two employee board members, one of which is appointed by the French Trade Union who obtained most votes at the first round of the professional elections mentioned at Articles L2122-1 and L2122-4 of the French Labour Code organised by the Company and the direct and indirect subsidiaries of the Company whose registered office is located in France, and one of who is appointed by the International Works Council. The parties agree that the provisions of the former bylaw have been taken over by the new ones and hereby want to complete these provisions in order to set out the practical conditions of the designation, by the International Works Council, of its Board Member representing the employees."
Dassault Systèmes SE	2015	"Art.27: (...) Dassault Systèmes SA is managed by the following bodies: The Chief Executive Officer, and a Board of Directors composed to date of 9 directors. The participation of employees within these management bodies, within the meaning of Article L-2351-6 of the French Labour Code, will be in compliance with the French legislative and regulatory provisions applicable in this area. As of the date of this agreement, employee participation in the management bodies is understood according to the provisions of Article L225-27-1 of the French Commercial Code relating to the appointment of directors representing employees on the Board of Directors, the conditions for the exercise of which will be defined in compliance with the applicable rules, insofar as and as soon as the criteria for the application of these provisions are met."*
Faurecia SE	2018	"V. Employee participation in the board of directors. 16. Directors representing employees. The transformation of Faurecia into a European Company has no impact on the presence of directors representing employees on the Board of Directors. In accordance with Faurecia's legal and statutory provisions, the FE2C must renew one of the two directors representing employees on the Board every four years. The director appointed by the FE2C must have held an employment contract for at least two years with one of Faurecia's direct or indirect subsidiaries, with its registered office in France or abroad."*

EWC Agreement	Date	Clauses related to BLER matters
Imerys	2018	"3.6. Board of Directors. In order to involve the employees in the governance of the Company, administrators who are also employees of the Group are appointed to the Board of Directors, pursuant to Articles L225-27-1 et seq. Of the French Commercial Code. Taking into account the number of Imerys employees on the date this agreement is concluded, the number of these employee administrators is two. As the Imerys European Works Council is the representation body covering the largest geographical field of application, it is agreed that the candidate for the second administrator post be appointed by this body through voting by secret ballot in plenary session. The candidate shall be appointed by a majority of the votes cast by the members present."
Sanofi-Aventis	2017	"In order to guarantee the representation of employees on Sanofi's Board of Directors, and in the absence of any legal provisions on that point, the aforementioned agreement provided for the appointment of five staff representatives in an advisory capacity on Sanofi's Board of Directors, chosen among the members of the European Works Council. Since Law n°. 2015-994 of 17 August 2015 on social dialogue and employment known as "Rebsamen" Law, Sanofi's articles of association must include a provision providing for the appointment of two employee representatives with voting rights sitting on the Board of Directors. This legal obligation means that the agreement on the establishment of the European Works Council of 24 February 2005 needs to be amended." (...) Article 7. "Election of employee representatives to the Sanofi-Aventis Board of Directors" is deleted. (...) This amendment shall take effect on the day after the date of the General Meeting of Shareholders during which the amendment to the articles of association determining the method used for the appointment of employee directors in an advisory capacity was adopted." Note: The previously existing provision for appointing five representatives in advisory capacity disappeared and was not replaced.
Schneider Electric SE	2014	"4.3. Participation of employees. Schneider Electric Industries S.A.S is the legal entity that manages, either directly or through the entities that it owns or controls, all operational activities of Schneider Electric. As a consequence, the European Works Council shall be represented on the Board of Directors of Schneider Electric Industries SAS by five members of the Core Council appointed by the European Works Council during the plenary session. In addition to these five members, the Secretary of the European Works Council will also attend the Board of Directors of Schneider Electric Industries SAS. The members of the European Works council who are representatives on the Board of Directors shall have advisory capacity. These members must submit to the same confidentiality rules as the Board Directors of Schneider Electric Industries SAS. The representatives on the Board of Directors must be chosen among the permanent members of the Core Council, except the Coordinator appointed by IndustriAll. Given the participation of French Central Works Council representatives on the Board of Directors of Schneider Electric Industries SAS and in order to ensure an even balance, the Core Council member representing France cannot be appointed to the Board of Directors of Schneider Electric Industries SAS. In the event that new legislation should obligate Schneider Electric SE to include employee representatives on its Board of Directors, the above provisions shall be subject to further negotiations. Rules governing the functioning and confidentiality inherent to the participation at the Board of Directors' meetings shall be set out in the European Works Council's Internal Regulations."
Teleperformance SE	2015	"7. With no system of worker participation being in place within the Company at the time of its conversion, it is not legally required to set up such a system within the European Company."
Total SE	2020	"Article 9 - Employee participation in the Board of Directors Total. In accordance with French law and Total's Articles of Association, the Total European Works Council shall appoint its employee representative to the Board of Directors by a simple majority vote of the members. To be nominated as an employee representative on the Board of Directors, the candidate must: 1) be an employee with a contract with Total or a subsidiary of the Group; 2) and have at least two years of seniority in the Group. Within the framework of this agreement, the parties agree that the employee representative shall be appointed from the countries of the European Union and the European Economic Area.**"
Veolia Environnement	2015	"6.1.4 Meeting of the Bureau with Management. (...) The Board Director representing the employees appointed by the Veolia European Works Council will also be invited by the Bureau to attend the meetings of these same bodies."

EWC Agreement	Date	Clauses related to BLER matters
VINCI	2018	<p>"3.5. Board of Directors. In order to involve employees in VINCI's governance, directors who are also employees of the Group are appointed to VINCI's Board of Directors, pursuant to Article L225-27-1 of the French Commercial Code and Article 11.3 of VINCI's Articles of Association. The number of these employee directors is two at the date of conclusion of this agreement. The law provides for different methods of appointing these directors by the employee representatives (elected or appointed). As the VINCI European Works Council is the representative body with the widest geographical scope, management wishes to give it an active role in the Group's governance. Consequently, and pursuant to Article L225-27-1 of the French Commercial Code and Article 11.3 of the aforementioned Articles of Association, the candidate for the second position of director will be appointed by the European Works Council in a secret ballot in plenary session. The candidate shall be appointed by a majority of the votes cast by the members present. On this occasion, the members of the VINCI European Works Council undertake to attach particular importance to the diversity of the countries represented and to a representation as proportional as possible to the number of employees within this body. The European federations (EFBWW and FECC) will be informed by the Group's management of the date of renewal of the term of office of the director representing the employees on the Board of Directors at least three months before the Board of Directors decides on its deliberations. The terms and conditions of the appointment procedure shall be set out in the internal regulations of the European Works Council."*</p>
Vivendi SE	2019	<p>"9. Employee participation in the SE's management body. Within the meaning of Article 2 k) of Directive 2001/86/EC, participation means the influence of the SE Committee on the affairs of Vivendi, by exercising its right to appoint a member of the Supervisory Board of the Company. At the date of this agreement, one employee representative on the Supervisory Board of the Company has been appointed by the Works Council. His term of office is 3 (three) years and will expire on 18 December 2020. This member, appointed pursuant to the provisions of Article L225-79-2 of the French Commercial Code and Article 8 of Vivendi's bylaws, has the same status, powers and responsibilities as the other members of the Supervisory Board. The Parties agree that a second member representing the employees shall be appointed by the SE Committee, for a term of 3 (three) years, in application of the same provisions as those applicable to the first member representing the employees, as soon as the number of members of the Supervisory Board elected by the General Meeting of Shareholders exceeds the legal threshold (note 1: as of the date of this agreement, the legal threshold is 8 (eight) members of the Supervisory Board (excluding the member representing the employees and the member representing the employee shareholders). The appointment of the second employee representative will take place within six months of the Company's Annual General Meeting, which will be held in 2020 to amend the Articles of Association to provide for his appointment by the SE Committee. The second employee representative will be appointed in the following manner: The candidacies and profession of faith will be sent to the Group's Human Resources Department, which will organise the vote by secret ballot within a maximum period of 1 (one) month following the deadline for submission. The vote will take place by a single-round majority vote. The candidate with the highest number of votes will be elected, bearing in mind that blank and invalid votes and abstentions will not be taken into account for the calculation of the majority. In the event of a tie, the candidate with the highest seniority in the Group shall be elected. It is agreed that an electronic vote, respecting the confidentiality of votes, may be organised if necessary. The term of office of the members representing the employees shall end early under the legal conditions. They are subject to the rules of incompatibility provided by law. In the event of a vacancy in the seat of the second member representing the employees, in particular in the event of the termination of his salaried functions within the Vivendi Group, his seat shall be filled by a new appointment in accordance with one of the above procedures, within a period of three months. In the event that the number of members of the Supervisory Board elected by the General Meeting of Shareholders becomes less than or equal to the legal threshold, excluding the member representing the employees and the members representing the employee shareholders, the term of office of the second member representing the employees shall expire at the end of the Management Board meeting noting that this condition is no longer met. In the event that Vivendi no longer meets the legal conditions in terms of the number of employees in France or abroad, the terms of office of the 2 (two) members representing the employees shall expire at the end of the Management Board meeting noting that this condition is no longer met."*</p>

EWC Agreement	Date	Clauses related to BLER matters
<p>Up (former Chèque Déjeuner) (Not covered by BLER obligations of Law 2013-504.)</p>	<p>2014</p>	<p>"Article 4 - Relationship with the national employee representation bodies. (...) "Pursuant to its articles of association, the company Le Chèque Déjeuner, the Group's parent company, founded as a Société Coopérative et Participative (Cooperative and Participatory Company), has employee representatives within its Boards of Directors. Due to this, the latter are likely to be aware of transnational information which may affect the interests of workers before the members of the European Works Councils. The signatory parties to this agreement agree that the Group's above-mentioned special conditions, in particular its mode of governance, do not contravene the relationship agreed between the European Works Council and the local bodies mentioned above. (...) The content of this information shall focus in particular but not exclusively on: (...) Developments in the Management bodies; Developments in the composition of the Board of Directors."</p>
<p>Sopra Steria SE (The SE and SE-WC are headquartered in Germany and governed by German law, so the BLER hereby mentioned are different from the two board-level employee representatives mentioned in the statutes of Sopra Steria (French subsidiary) of 2018. Those are appointed by the French group works council.)</p>	<p>2018</p>	<p>"Part III: CO-DETERMINATION ON THE SUPERVISORY BOARD OF SOPRA STERIA SE. 1. Membership of the Supervisory Board of Sopra Steria SE.</p> <p>1.1. Sopra Steria SE has opted for the dualistic system.</p> <p>1.2. As long as Sopra Steria SE has a maximum of 3,000 employees - calculated according to the rules of the Mitbestimmung- The Supervisory Board of Sopra Steria SE consists of two employee representatives and three shareholder representatives. For each commenced 3000 employees, the number of seats on each side increases by one. In any event, the Supervisory Board shall consist of a maximum of nine members, of which four are employee representatives. In any event, until 31.12.2018, the Supervisory Board shall consist of two employee representatives and three representatives of the owners, i.e. a total of five persons.</p> <p>2. Procedure for defining the proposal for appointment of employee representatives and their early dismissal. The parties agree that the procedure for defining the proposal for the appointment of employee representatives and any substitute members, as well as the procedure for early dismissal of employee representatives and any substitute members, is to be determined in accordance with the statutory provisions on co-determination (paragraph. 35ff SEBG)".</p>

Note: * Excerpts translated from French with DeepLPro as of 28/3/2022.

Annex 2

List of companies in the sample of this study (information as of 1/3/2021)

Data source	EWCDB		Corporate statutes				Websites
	Company	EWC creation	Date Statute	BLER members	1 st member appointment	2 nd member appointment (and successive appointments, if applicable)	2 nd member's nationality
1	A. RAYMOND GROUP	2017	2014	nd	-	-	-
2	Accor	1994	2020	2	French TU	EWC	-
3	Air France KLM	2010	2019	2	French Group WC	EWC	NL
4	Air Liquide	2000	2021	2	French Group WC	EWC	FR
5	Alstom	1996	2020	2	French Group WC	EWC	ES
6	Altran	2018	2016	2	French TU	French TU	-
7	Amphenol	2005	-	-	-	-	-
8	Antalis	2003	2020	1	French TU	-	-
9	Arkema	2007	2020	2	French delegation of EWC	EWC	FR
10	Atos SE	2012	2020	2	French TU	EWC	BU
11	Auchan	1996	2020	nd	-	-	-
12	Avril	2015	2019	2	Elections FR	Elections FR	-
13	AXA	1996	2020	2	French Group WC	EWC	DE
14	Bel Group	2019	2020	1	French Group WC	-	-
15	Benvic Europe	2018	2020	nd	-	-	-
16	BNP Paribas Fortis	2003	2020	2	Elections FR	Elections FR	-
17	Bolloré SE	2019	2020	2	French Group WC	EWC	nd
18	Bonduelle	2005	2017	1	French Group WC	-	-
19	Bouygues	2012	2020	2	French Group WC	French Group WC	-
20	Burelle	1996	2020	nd	-	-	-
21	CapGemini SE	2017	2020	2	French TU	GWC	UK
22	Carrefour	1996	2020	2	French Group WC	EWC	FR
23	Cémoi	2012	2014	nd	-	-	-
24	Chargeurs International	1996	2021	nd	-	-	-
25	Chèque Déjeuner	2014	2020	nd	-	-	-
26	Club Méditerranée	1996	2019	nd	-	-	-
27	Coface	2008	2020	nd	-	-	-
28	Compagnie des Alpes	2015	2020	2	French Group WC	EWC	-
29	Compagnie Laitière Européenne	1998	2019	nd	-	-	-
30	Convertteam	2007	2015	nd	-	-	-
31	CPI Group	2007	2019	nd	-	-	-
32	Crédit Agricole	2008	2020	2	Elections FR	Elections FR	-
33	Crédit Lyonnais	1994	2020	2	Elections FR	Elections FR	-
34	Danone	1996	2020	2	French WC	EWC	DE
35	Dassault Systèmes SE	2015	2020	2	French TU	French TU	-

Data source	EWADB		Corporate statutes				Websites
	Company	EWC creation	Date Statute	BLER members	1 st member appointment	2 nd member appointment (and successive appointments, if applicable)	2 nd member's nationality
36	Decathlon SE	-	2019	1	French WC	-	-
37	Driver Services	2005	-	-	-	-	-
38	Edenred	2014	2020	2	French Group WC	French Group WC	-
39	Eiffage	2016	2020	2	French Group WC	EWC	-
40	Electricité De France	2001	2020	1/3	Elections FR	Elections FR	-
41	Elior	2005	2020	2	French WC	French WC	-
42	ENGIE	2001	2020	3	Elections FR	Elections FR	-
43	Eramet	2000	2020	2	French WC	EWC	FR
44	EssilorLuxottica	2000	2020	2	French WC	French WC	-
45	Euronext	2002	2019	nd	-	-	-
46	Europcar Group	2014	2020	2	French WC	EWC	-
47	Faiveley	-	2020	nd	-	-	-
48	Faurecia SE	2018	2020	2	French TU	EWC	PT
49	FCI	2006	-	-	-	-	-
50	FSD (Financière Snop Dunois)	2008	2018	1	Elections FR	-	-
51	Galeries Lafayette	2003	2020	2	French WC	French WC	-
52	Gefco	2015	2020	2	French Group WC	French Group WC	-
53	GeoPost	2008	2017	nd	-	-	-
54	Global Closure Systems	-	2020	nd	-	-	-
55	GOSS International	2006	-	-	-	-	-
56	Gras Savoye	2009	2020	nd	-	-	-
57	Groupama Holding	2000	2019	nd	-	-	-
58	Groupe Adeo	1996	2019	2	French WC	French WC	-
59	Groupe Fnac	2016	2020	2	French TU	French TU	-
60	Groupe SEB	1996	2017	2	French Group WC	EWC	FR
61	Groupe SMA	2018	2017	1	Elections FR	-	-
62	Hachette	1996	2020	1	French WC	-	-
63	Hamelin	2013	2014	nd	-	-	-
64	Idemia	2018	2020	nd	-	-	-
65	Imerys	2010	2020	2	French Group WC	EWC	ES
66	Inergy Automotive Systems	2002	2020	nd	-	-	-
67	Keolis	2010	2020	3	Elections FR	Elections FR	-
68	Kering	2012	2020	2	French Group WC	EWC	-
69	Korian	2019	2020	2	French TU	EWC	DE
70	Lactalis	2019	-	-	-	-	-
71	Lafarge	1994	2020	2	French WC	EWC	-
72	Lagardère	1996	2020	2	French WC	French WC	-
73	Lectra	2001	2020	nd	-	-	-
74	Legrand	2000	2020	2	French Group WC	French Group WC	-

Data source	EWCDB		Corporate statutes				Websites
	Company	EWC creation	Date Statute	BLER members	1 st member appointment	2 nd member appointment (and successive appointments, if applicable)	2 nd member's nationality
75	Lennox International	2009	-	-	-	-	-
76	Lesaffre	1997	-	-	-	-	-
77	LISI (former GFI Industries)	2009	2020	2	French WC	EWC	-
78	L'Oréal	1996	2020	2	French TU	EWC	nd
79	LVMH SE	2014	2020	2	French Group WC	EWC	-
80	Lyreco	2018	2017	nd	-	-	-
81	Manoir Industries	2005	2020	nd	-	-	-
82	McCain Foods	2004	2019	nd	-	-	-
83	Merial	1999	-	-	-	-	-
84	Michelin	1999	2020	2	French TU	French TU	-
85	MONTUPET	2006	2019	nd	-	-	-
86	Mutavie SE	2009	-	-	-	-	-
87	Orange	2010	2020	3	Elections FR	Elections FR	-
88	Orpéa	2020	2020	2	French Group WC	French Group WC	-
89	Otis	1996	2018	nd	-	-	-
90	Pernod Ricard	1999	2019	2	French Group WC	EWC	ES
91	Plastic Omnium SE	-	2020	2	French Group WC	EWC	nd
92	Primagaz	1996	2020	nd	-	-	-
93	PSA Peugeot Citroen	1996	2020	2	French WC	EWC	-
94	RATP*	2015	-	9	Elections FR	Elections FR	-
95	Renault	2016	2020	3	Elections FR	Elections FR	-
96	Rexel	2005	2020	2	French TU	EWC	nd
97	Sabena technics	2010	2019	nd	-	-	-
98	SAFRAN Group	2008	2020	2	Elections FR	Elections FR	-
99	Saint-Gobain	1988	2020	2	French WC	French WC	-
100	Sanofi-Aventis	2001	2020	2	French TU	EWC	DE
101	Savencia	1996	2020	nd	-	-	-
102	Schneider Electric SE	2005	2019	2	French TU	French TU	-
103	SCOR Group SE	2007	2020	2	Elections FR	Elections FR	-
104	Sequana	2003	2018	1	Elections FR	-	-
105	SNCF	2012	2019	4	Elections FR	Elections FR	-
106	Société Générale	1996	2020	2	Elections FR	Elections FR	-
107	Sodexo (Partena)	1998	2020	2	French TU	EWC	Canada (Québec)
108	Sopra Steria Group	2014	2018	2	French WC	French WC	-
109	Spie	2001	2020	2	French Group WC	EWC	DE
110	Steelcase	2010	2020	nd	-	-	-
111	STEF - TFE	2005	2020	2	French WC	EWC	-
112	Suez Environnement	2013	2020	2	French Group WC	EWC	ES

Data source	EWADB		Corporate statutes				Websites
	Company	EWC creation	Date Statute	BLER members	1 st member appointment	2 nd member appointment (and successive appointments, if applicable)	2 nd member's nationality
113	Tarkett (Sommer-Allibert)	1996	2020	2	French Group WC	French Group WC	-
114	Teleperformance SE	2015	2020	2	French Group WC	EWC	GR
115	Tereos	2010	2016	nd	-	-	-
116	Thales	2002	2020	2	French TU	French TU	-
117	Total SE	2020	2020	2	French Group WC	EWC	FR
118	Trèves	2005	2019	nd	-	-	-
119	Unibail-Rodamco SE	2009	2020	nd	-	-	-
120	U-Shin	2014	2019	nd	-	-	-
121	Valeo	1999	2020	2	French Group WC	EWC	PL
122	Vallourec & Mannesmann Tubes	2000	2020	2	French Group WC	EWC	DE
123	Valneva SE	2015	2015	nd	-	-	-
124	Veolia Environnement	2005	2020	2	French Group WC	EWC	CZ
125	Veolia Transdev	2012	2017	nd	-	-	-
126	Verallia	2016	2020	2	Elections FR	EWC	nd
127	VINCI	2002	2020	2	French TU	EWC	DE
128	Vivendi SE	2020	2020	2	French Group WC	EWC	GR
129	Wabtec	-	2019	nd	-	-	-
130	Worldwide Flight Services	2012	2017	nd	-	-	-
131	XPO Logistics	2019	2017	nd	-	-	-
132	Yves Rocher (Laboratoires)	2001	-	-	-	-	-

- : not available

nd: not determined

* Statutes not available for analysis, but information on number of BLER and ways of appointment could be verified on corporate website and via expert sources.

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