

## 7. WORKERS' INVOLVEMENT, CSR AND CORPORATE GOVERNANCE

It is hardly difficult to predict that we will witness, in the near future, a debate that seeks to redefine a number of basic ideas concerning the purposes and social role of a company. However, workers' involvement will, of necessity, continue to play a central role in this debate in the interest of both democracy and the economy, as social dialogue conducted by the exercise of rights to information, consultation and participation of the workforce is a central element of the European social model. Nonetheless, workplace representation and workers' participation in businesses throughout Europe and in globalised multinational companies are given a rough ride by stakeholders, investors and, not least, multinational companies themselves, as they seem to have become more influential than national governments when it comes to the definition of basic working conditions.

Democratic societies with social market economies cannot be based on companies' unilateral understanding of a liberal market economy. They are dependent on the commitment of their citizens and, in the framing of European policies, social cohesion is, to this end, just as important as competitiveness and economic performance. This has been confirmed by the Lisbon Treaty 2007 which unequivocally accords the goal of full employment equal status with the need for competitiveness. Legally enshrined standards – backed up by the provisions of Directives, for example, on European works councils, on standards of information and consultation, or on involvement in the European Company (SE) – make workers into 'citizens in their workplaces'. European company law underlines the strong and obligatory role of workers' representation. Legislative provisions such as these also operate to the benefit of economies, insofar as they help to promote a qualitative and highly productive approach based on a well qualified workforce.

Such a position does not only represent appreciation of the way in which workers' ideas can play a beneficial role in companies. Even more important is the fact that an organized mode of conflict resolution and of balancing different interests stimulates social peace.

Against this background, the value of which is endorsed by decades of experience, trends develop in the European Union towards more economic liberalism and individualism and less protection for workers' rights to information, consultation and participation.

There can of course be no doubt that structural change has fundamentally changed business and social life in Europe. But is this to be taken to mean that all the mechanisms of social cohesion and conflict resolution that were beneficial to former industrial societies have been automatically overridden by the new modes characteristic of the so-called "post-industrial knowledge society"? Will a future policy approach based exclusively on the wellbeing of the individual prove adequate? Is the only promising path one that promotes individual "employability" without taking into account collective labour standards and rights of worker involvement?

This section seeks to develop awareness of already existing institutional arrangements, to the value and appropriateness of which the history of recent decades bears ample testimony. There can be no doubt that these deep-rooted European institutional practices have a continuing role to play in shaping the modern world in a manner that does not ignore social interests.

### Themes

- 7.1. Information and consultation rights for workers in the European Union
- 7.2. Interest representation on health and safety at the workplace
- 7.3. European Works Councils (EWC)
- 7.4. Workers' involvement in the European Company (SE)
- 7.5. Women on company boards
- 7.6. [www.worker-participation.eu](http://www.worker-participation.eu) – A new online resource
- 7.7. Conclusions

## 7.1. INFORMATION AND CONSULTATION RIGHTS FOR WORKERS IN THE EUROPEAN UNION

### FRAGMENTED LEGISLATION TO BE HARMONISED

The rights pertaining to information and consultation of the workforce under Community law are currently some of the most fragmented in the EU legislative body. In total, more than 15 Directives deal with information and consultation in some kind of a general or specific sense. Currently, three major European Directives form part of the social *acquis* in this regard: (i) the Directive on European works councils (EWC); (ii) the Directive on employee involvement in the European Company (SE), and (iii) the European framework Directive on information and consultation. Besides this general frame, a range of Directives secure the right of information and consultation of workers in specific situations, such as in relation to health and safety at the work place, or in case of collective redundancies, transfer of undertaking, mergers, takeover, etc, as shown in Figure 1.

Although the EWC Directives and the SE/SCE Directives are aimed at improving employee involvement rights in Community-scale companies, this framework was in 2002 completed – in order to plug the loopholes in Community law – by the general framework for informing and consulting employees. This was designed to close the kind of legal gaps that had been used by Renault to close down the Vilvorde plant and it had the effect of broadening the scope of the right to information and consultation to all EU member states, a development of particular relevance for countries (such as the UK and Ireland) where no such rules previously existed. The existing Directives are a clear expression of the willingness at European level to make employees citizens in their places of work. The same intention is reflected in the EU Charter of fundamental rights (referred to in the Reform Treaty) which gives information and consultation rights the status of a basic right of European citizens.

However, such fragmentation creates confusion and legal insecurity for both workers and their representatives as well as for management, compounded by the fact that most Directives are poorly implemented. To give some examples, although these Directives have a common subject, many of their components vary. For example, and in addition to the fact that their legal basis is different ('employment' Directives being based on former article 100 of the EC Treaty, whereas the Directive on European works councils is the first to be based on article 2(2) of the Social Policy Agreement, which did not require unanimity), thresholds for the application of the 'collective dismissals' Directive are assessed in relation to the establishment, i.e. a work unit employing at least 20 people, and not in relation to the undertaking, deemed to be a decision centre according to Court of Justice case law (Judgment in Rockfon, ECJ 17 December 1995, C-449/93). In the 'transfer of undertakings' Directive, it is a case of an economic entity being transferred, identified as being an undertaking which, according to the interpretation of the Court, is an activity or set of material, intellectual and human resources placed in the service of an economic purpose (Spijkers judgment, ECJ 18 March 1986, C-24/85/EC).

# 7.1. INFORMATION AND CONSULTATION RIGHTS FOR WORKERS IN THE EUROPEAN UNION

## FRAGMENTED LEGISLATION TO BE HARMONISED

**Figure 1**

### EU Directives securing the right of information and consultation

<b>1</b>	The Community Charter of the Fundamental Social Rights of Workers: Points 17, 18, 19; Article I-9
<b>2</b>	<b>Reform Treaty</b> Articles: I-9, II-87
<b>General framework for information and consultation of employees</b>	
<b>3</b>	2002/14/EC establishing a general framework for informing and consulting employees in the European Community
<b>4</b>	94/45/EC of 22 September 1994 on the establishment of a European Works Council for the purposes of informing and consulting employees
<b>5</b>	2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees
<b>6</b>	2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees
<b>Transfer of undertakings</b>	
<b>7</b>	77/187/EC, 98/50/EC and 2001/23/EC on Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses
<b>8</b>	75/129/EEC, 92/56/EEC and 98/59/EC on collective redundancies
<b>Mergers and takeovers</b>	
<b>9</b>	90/434/EEC and 2005/19/EC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States
<b>10</b>	2004/25/EC on takeover bids
<b>11</b>	2005/56/EC on cross-border mergers of limited liability companies
<input type="checkbox"/>	Directives guaranteeing participation rights
<b>Health and safety</b>	
<b>12</b>	89/654/EEC, 89/655, 89/656/EEC and 90/269/EEC Minimum safety and health requirements for the workplace
<b>13</b>	89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work
<b>14</b>	90/270/EEC Minimum requirements for work with display screen equipment
<b>15</b>	90/394 Risks related to exposure to carcinogens at work)
<b>16</b>	90/679/EEC Risks related to exposure to biological agents at work
<b>17</b>	92/57/EEC Minimum requirements at temporary or mobile construction sites
<b>18</b>	92/58/EEC Minimum requirements for the provision of safety and/or health signs at work
<b>19</b>	92/85/EEC Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding
<b>20</b>	92/91/EEC Minimum requirements for improving the protection of workers in the mineral- extracting industries through drilling
<b>21</b>	92/104/EEC Minimum requirements for improving the protection of workers in surface and underground mineral-extracting industries
<b>23</b>	93/103/EC Minimum requirements for work on board fishing vessels
<b>24</b>	98/24/EC Risks related to chemical agents at work
<b>25</b>	2002/44/EC Risks arising from physical agents (vibration)
<b>26</b>	2003/10/EC Risks arising from physical agents (noise)
<b>27</b>	2004/40/EC Risks arising from physical agents
<b>28</b>	2006/25/EC Risks arising from physical agents (artificial optical radiation)

Source: ETUI-REHS (2007)

## 7.1. INFORMATION AND CONSULTATION RIGHTS FOR WORKERS IN THE EUROPEAN UNION

### FRAGMENTED LEGISLATION TO BE HARMONISED

Moreover, whereas the ‘employment’ Directives relate to serious and specific situations such as collective dismissals and the transfers of undertakings, the European works councils Directive is broader in that it covers the development of the activities of an undertaking, whether economic and social, financial and technical, as well as any event substantially affecting the interests of the employees. The European works council Directive thus extends to transnational undertakings the right of workers’ representatives – as that right is derived from the ‘employment’ Directives – to be informed and consulted in exceptional circumstances. The scope of the ‘employment’ Directives is still national, whereas the ‘European works council’ Directive hypothetically concerns only undertakings or groups with a Community dimension. Lastly, the latter Directive leads to the introduction of an institution for the representation of workers through a new body created by Community law, whereas the ‘employment’ Directives refer to national representative bodies.

For the abovementioned reasons, the latest resolution of the European Parliament of 10 May 2007 urges the Commission ‘to take initiatives with a view to reviewing and updating Community legislation concerning information and consultation of workers, in order to ensure a coherent and efficient framework of law, guarantee legal certainty and improve the realisation of the social dialogue between the national and the European levels’. Consequently, the European Commission, on the basis of an experts’ report, produced under the supervision of Professor Ales, on the implementation of Directive 2002/14/EC (not yet published), intends in 2008 to undertake a harmonisation / codification exercise of the Information and Consultation Directives in the context of its simplification Rolling programme 2006-2009 (point 75 ‘to simplify {by recasting} the Directives on information and consultation of workers (conditional) in light of 2007 report on Directive 2002/14 and further discussions with member states’). It is clear that procedure and outcomes in relation to this action point are still uncertain.

## 7.2. INTEREST REPRESENTATION ON HEALTH AND SAFETY AT THE WORKPLACE

### ... IMPACTS THE QUALITY OF PREVENTION POLICIES

Representation for workers' health and safety is central to any workplace health and safety policy. The presence, or otherwise, of such representation tends to be the main determinant of whether or not a company adopts and implements a prevention policy. A string of surveys in different EU member states highlight this key role of workers' safety reps. A recent French survey underscores how workers' safety reps positively impact the quality of prevention policies. On a like-for-like basis (workplace size and sector, employee and job characteristics), the presence of safety representation more than doubles the probability of employees being given training or information on work-related risks within the previous twelve months. It also more than doubles the probability of employees being given written safety instructions. And where there is such representation, the probability of the employee following the written instructions to the letter is 20% higher. An Italian survey came up with much the same findings. Company risk assessments in which workers' reps were involved were comprehensive and consistent in more than 75% of cases, compared with 62% of firms in which they were not.

The Framework Health and Safety Directive of 1989 places strong emphasis on consultation of workers' reps. It does not specify what practical form that representation is to take, for this is to be determined by national laws and practices. Yet this reference back to national circumstances clearly does not leave member states free to flout the basic democratic right to have representatives who can act in health and safety matters. And yet this is precisely the plight of large numbers of workers in most European countries. In most cases, the obstacle is legislation which sets an excessive threshold for such representatives to be appointed or elected. Where such a threshold exists in EU countries, it can range from five workers as in Sweden to 50 workers as in Belgium and elsewhere. The spread of contingent employment is another obstacle that leaves millions of temporary agency workers with no specific health and safety representation, even though they are often at greater risk. An employer's ability to derecognize a trade union is a specific obstacle in the United Kingdom. Although reliable statistics are lacking in many countries, there can be no doubt of the fact that large numbers of workers are denied any form of health and safety representation.

A handful of European Union countries have found new ways of making good the lack of representation. Some, for instance, have workers' area safety reps responsible for all small companies in a specific sector in a district or town. The most longstanding and well established such scheme is in Sweden, where the area rep system has been running for more than 30 years. There are at present close to 2 000 area reps, most employed in their own workplace and performing their rep duties part-time. These reps visit between 60 000 and 70 000 workplaces a year for a total coverage of between 250 000 and 300 000 workplaces. This is markedly better than the labour inspectorate manages.

The lack of a legal framework or funding issues make for more hit-and-miss experiences in the other European Union countries, although Italy and France have run worthwhile schemes.

The development of coherent health and safety strategies at both Community and member state level can only point up how closely linked workplace democracy and an effective prevention policy are.

## 7.2. INTEREST REPRESENTATION ON HEALTH AND SAFETY AT THE WORKPLACE ... IMPACTS THE QUALITY OF PREVENTION POLICIES



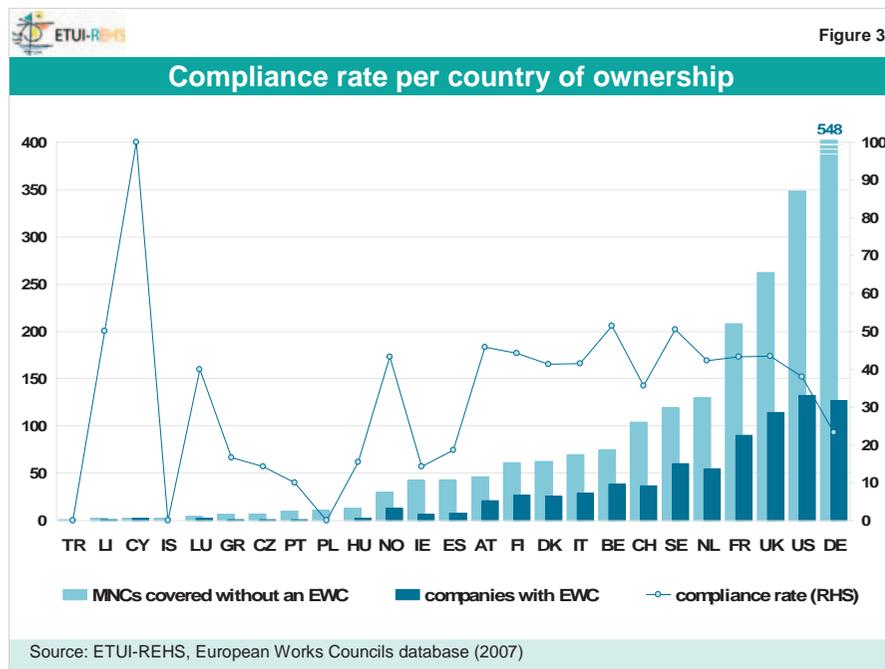
Figure 2

### Workers' safety representation in some European Union countries

	minimum size of workforce for workplaces which must have safety reps	reps' right to stop work in the event of serious or imminent danger	joint decision making power in certain areas	remark
DE	5		yes	This is a duty of the general worker representation body (works council)
BE	50		yes	
BG	50			
DK	10	yes		
ES	6	yes		
EE	10	yes		
FI	10	yes		
FR	50			
HU	10			
IT	all firms			In practice, reps are mostly found in firms employing more than 10 workers
NL	15		yes	
PL	10	yes		There are also union-appointed worker inspectors who can enjoin the employer to adopt preventive measures.
UK	no minimum depends on recognition of a trade union by the employer			
SE	5	yes		

Source: ETUI-REHS, EPSARE-project (2007)

## 7.3. EUROPEAN WORKS COUNCILS QUANTITATIVE DEVELOPMENTS

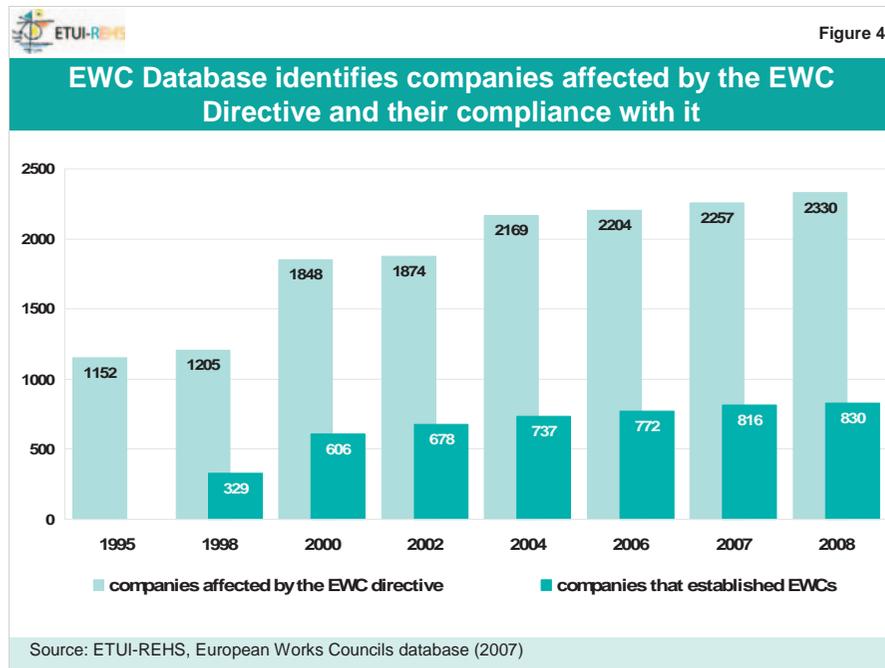


In 2007, following the integration of a reference to the Charter of Fundamental Rights into the Reform Treaty acknowledging, among other things, the right to information and consultation of employees, stock-taking activity in the field of workers' involvement in the company becomes an activity of special importance.

Even though in political terms a big step has been taken, in the field of practice of European Works Councils comparatively little progress has been made. Currently, there are 842 EWCs established in 830 multinational companies (MNCs). Against the background of the total number of transnational companies covered, these figures amount to a compliance rate of 35.6%. Traditionally countries in which the highest number of international enterprises abide by the EWC Directive are the United States, Germany, the United Kingdom and France. At the same time, national leaders in terms of highest proportion of headquartered companies that fulfilled the obligation to establish an EWC are Belgium (51.4%), Sweden (50.4%), Liechtenstein (50%), whereas nine further EU countries (Austria, Finland, UK, France, Norway, The Netherlands, Italy, Denmark, Luxembourg) attain compliance rates above the average of 35.6%. Among EU member states where, among companies headquartered there, employee information and consultation has traditionally been strong, Germany, somewhat surprisingly, is missing (compliance rate of 23.2%). This finding is the outcome of improved research on international enterprises in this country which has led to identification of many new firms active transnationally and which fall within the scope of the EWC Directive.

## 7.3. EUROPEAN WORKS COUNCILS

### QUANTITATIVE DEVELOPMENTS

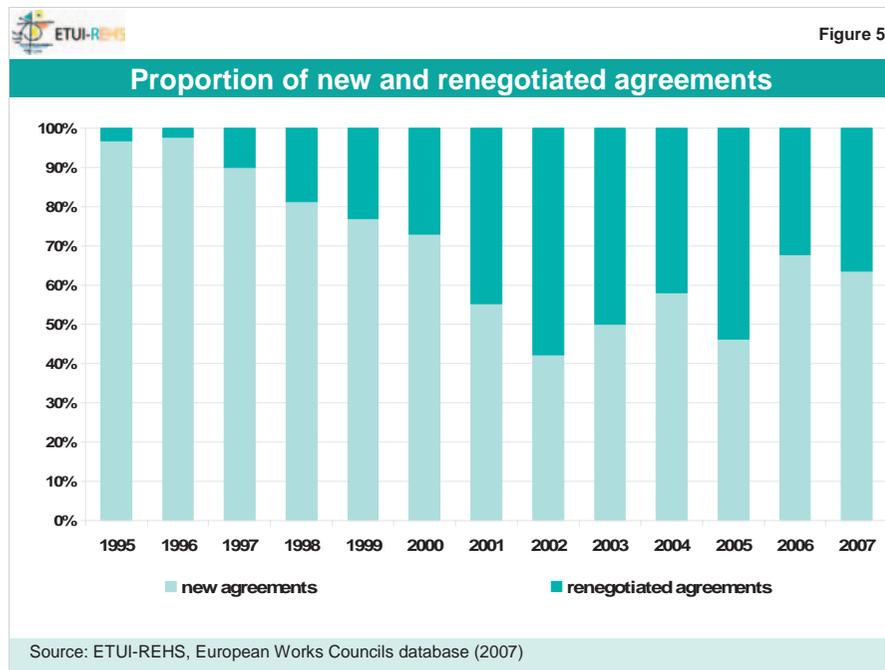


2007 is also the first year of EU membership for Bulgaria and Romania. Our knowledge of EWC involvement in these two countries is very limited. Firstly, there are, at the present time, no known multinational companies headquartered in either of these countries that fall within the scope of the Directive 94/45/EC. Secondly, there are only 18 EWC members from these countries (9 from Bulgaria, 9 from Romania) sitting on EWCs of eight foreign multinational companies (3 firms with Bulgarian participation, 5 with Romanian). The scope of inclusion of employee representatives from these countries is further limited by the fact that they began to participate in EWC work no earlier than 2006 (one case: Assa Abloy EWC with Romanian participation). Thus, it may be inferred that the involvement of workers' representatives from these countries had a much weaker impact than the comparable enhancement of scope of the EU Directive as a result of the 2004 EU enlargement. Lack of information on big multinational companies headquartered in Bulgaria and Romania covered by the Directive 94/45/EC conveys hence some, albeit fragmentary, information on the strength and inclusion of national economies of these new EU member states into the Community common market. It seems it is even weaker than in the case of two other monitored countries aspiring to become EU members, namely, Turkey and Croatia. In the case of Croatia, employee representatives are active in EWCs in 11 foreign companies, whereas Turkish nationals have seats on 18 different EWCs. Additionally, there is one Turkey-based company falling within the scope of the EWC regulation and one Croatian counterpart. Bulgarian and Romanian employees' inclusion in EWCs looks even weaker when compared to 186 EWC bodies on which representatives from the ten new member states (NMS) which joined the EU in 2004 participate.

Progress in the EU10 NMS which joined the Community in 2004 is also disappointingly slow. Only one new EWC was created in the Czech Republic in 2007, giving in total a meagre three EWCs based in EU10 (two others in Hungary). Similarly, the number of multinational companies covered has not risen, nor has the composition of the enterprises changed.

## 7.3. EUROPEAN WORKS COUNCILS

### QUANTITATIVE DEVELOPMENTS



As can be seen from Figure 5, the pace of creation of new EWCs in general is steady, though slow. It has already proved an established trend that there are more new companies identified as falling within the scope of the EWC Directive than new EWCs created yearly. This is highly disappointing, given that a legal obligation to establish an EWC was introduced over a decade ago and managements of companies have had the time to become familiar with this employee representation instrument. Unfortunately, in 1500 companies EWCs have still not been introduced. This consistently rising number of covered, yet non-compliant companies contributes to a constantly expanding gap between enterprises that respect and practise workers' rights to information and consultation and those which disregard them. In other words, employees of multinational companies are divided into those lucky enough to work in firms abiding by EWC laws and those whose employers do not recognise the right to information and consultation as a standard. This imbalance is hardly redressed by the fact that in general terms more employees (15.3 million) are represented in EWCs, compared to some 8.3 million who are deprived of this fundamental right even though they work in companies covered by Directive 94/45/EC.

The slow pace of creation of new EWCs cannot be explained by other potentially weakening factors such as a strong tendency to renegotiate existing EWC agreements or a high rate of mergers and takeovers among companies with EWCs. In fact, over the years only a very limited number of EWC agreements have been amended (Figure 5), no more than eight having been renegotiated in 2007. Similarly insignificant on the general trend was the influence of companies with EWCs that were transformed into European Companies (SEs) (these are deducted from the general number of companies with an EWC, which influences the EWC compliance rate; 5 in 2007, 4 in 2006, 1 in 2005). On the other hand, there are some, albeit only 28 EWCs for which negotiations have been ongoing.

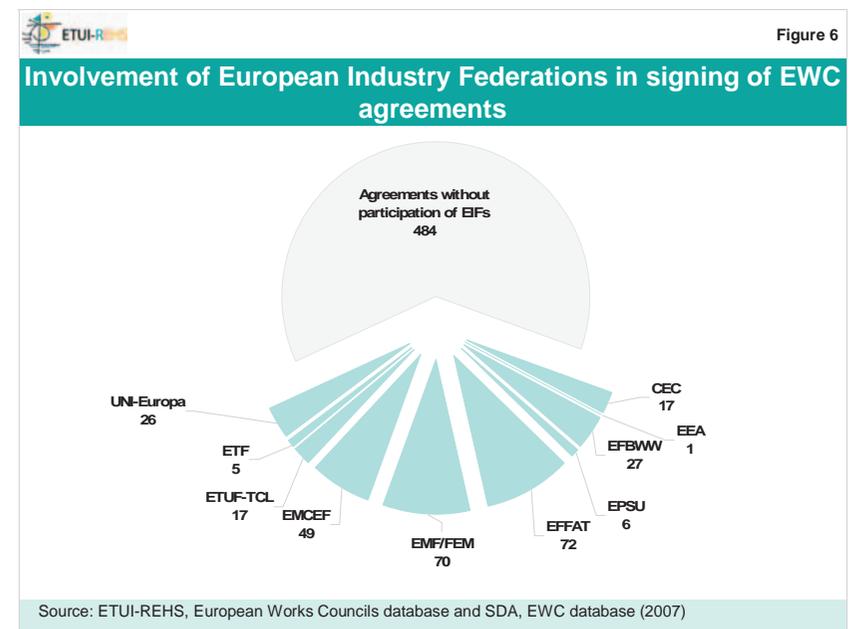
In conclusion, it may be stated that, in quantitative terms, no significant progress was recorded for 2007. Moreover, the EU accession of Bulgaria and Romania has had a disappointingly insignificant influence on the composition and number of new EWCs.

## 7.3. EUROPEAN WORKS COUNCILS REVISION OF THE DIRECTIVE 94/45/EC

When considering the slow pace of creation of new EWCs and, more importantly, the difficulties they encounter in fulfilling their tasks, reasons for this lack of success can, among others, be sought in the legal anchorage of these bodies. The EWC Directive has been awaiting revision and possible amendments since 1999. Until 2007 the European Commission did not regard this issue as a priority, even though in September 2006 the European Economic and Social Committee renewed its appeal to scrutinize the EWC Directive and remedy its shortcomings (see *Benchmarking Working Europe 2007*: 91). It seems, however, that the Commission needed additional pressure from other institutional actors in order to set about meeting the obligation it laid down in Art. 15 of the Directive 94/45/EC. An important impetus came from the European Parliament which, on 10.05.2007, adopted a resolution on strengthening European legislation in the field of information and consultation of workers (PE 389.460) in which it urged the European Commission to intensify its efforts to revise the EWC Directive.

This consistent spurring on led to a long overdue reaction from the Commission in the form of an announcement of a working plan for 2008 in which mention is made of a legislative proposal for the revision of the Directive. It is a very ambitious plan to complete a revision of any legislative act on the EU level within one year and the case of EWCs is one of the most contentious among the European social partners. According to art. 138 (2) EC Treaty, the European Commission, by means of a communication, will formally open a second stage of social consultations and will invite the social partners to negotiations – which should lead to an agreement – on the shape of the future revised Directive. Looking, however, at the record of statements on the need for revision of the EWC Directive, it seems negotiations might be very tense and to find a common position for the European social partners (ETUC and BUSINESSEUROPE, together with CEEP and UAPME) will represent a big challenge. The ETUC has strongly lobbied for a timely and thorough revision of the Directive, whereas BUSINESSEUROPE (and some of its affiliates) has consistently stressed that revision was not the right solution and that one should focus the efforts on analysis of good and bad practices and implement solutions on an individual evolutionary basis for each EWC. If the social partners jointly or separately refuse to negotiate, the Commission will be obliged to act as legislator and prepare a draft of the revised bill that will subsequently be submitted to the European Parliament which will then deal with the proposal using the codetermination procedure (Art. 251 EC Treaty). Depending on the scope of the amendments introduced by the European Parliament, the procedure of agreeing a common position with the Council of the European Union might take up to a few months and it is thus not certain whether the European Commission will indeed be able to deliver on this point of its work programme for the next year.

Research on operation of EWCs reveals some interesting trends in their practice which, being not anchored in the provisions of the Directive, indicate evolution of those bodies. Firstly, the role of trade union organisations has been increasing: out of a total of 1255 EWC agreements ever signed, 379 (30%) were co-signed by one of the European Industry Federations (EIFs). This number is even higher if one takes into account the so-called substantive agreements in which EIFs performed a coordinating role. These activities of EIFs have been performed without a legal foundation and were recognised by the negotiating parties only on voluntary basis.



## 7.3. EUROPEAN WORKS COUNCILS

### REVISION OF THE DIRECTIVE 94/45/EC

Figure 7

**Data referring to points proposed for the revision of Directive 94/45/EC**

selected points for the revision		no. of effective EWCs	share of all active EWCs
<b>frequency of meetings per year</b>	one	578	68.6%
	two or more	150	17.8%
	preparatory meetings	705	83.6%
	follow-up meetings	252	29.9%
	additional extraordinary meeting	585	69.4%
<b>expert assistance</b>	participation in preparatory and/or plenary meetings	440	52.2%
	not foreseen in agreements	143	17.0%
<b>training</b>	recourse to training in	362	42.9%
	language training	170	20.2%
	training on economic issues	101	12.0%
	training on financial issues	65	7.7%
	training on social issues	78	9.3%

Source: ETUI-REHS, European Works Councils database and SDA, EWC database (2007)

With regard to frequency of meetings, to hold EWC sessions twice a year has become a common standard to a greater extent than in the past. While in 69.5% of cases EWCs meet only once a year, more than 18% hold two regular sessions annually. More importantly even, more than 70% of all EWC agreements foresee a possibility of organising an extraordinary meeting additional to a regular EWC session, which goes beyond the standards of the Directive 94/45/EC (provision for such meetings is found in the Annex to the Directive ‘Subsidiary requirements’). Similarly, analysis shows that some 85% of EWC agreements currently in force provide for a preparatory meeting, while a further 30% of agreements provide for follow-up meetings of the EWC (EWC Database at ETUI-REHS 2007 / SDA database on EWCs 2007). Both these regulations go beyond the standards set in the EWC Directive.

Likewise, lifelong learning and raising skills of employee representatives are becoming an increasingly significant issue for EWCs. The increase in the importance of these topics is reflected by the fact that more than 43% of EWC agreements in force guarantee an entitlement to some form of training. In concrete terms, more than 20% of EWC agreements grant employee representatives the right to language training, and approximately 12% and 10% respectively provide such opportunities in regard to economic and social issues.

The above figures show some of the dynamics of the profile and functioning of EWCs. In the current context of the renewed debate on the revision of the EWC Directive, the evidence presented above might deliver some stimuli for attempts to reflect those changes in the process of the announced amending of the Directive 94/45/EC. It seems important that those trends be recognised and taken into account in the future wording of the revised Directive if the latter is to become an effective tool in responding to the current and future economic challenges. Finally, inclusion of the developments in EWCs’ practice could represent a vehicle for transmitting the achievements and positive experience of the most advanced EWCs to others which have not yet succeeded in using their potential to the full.

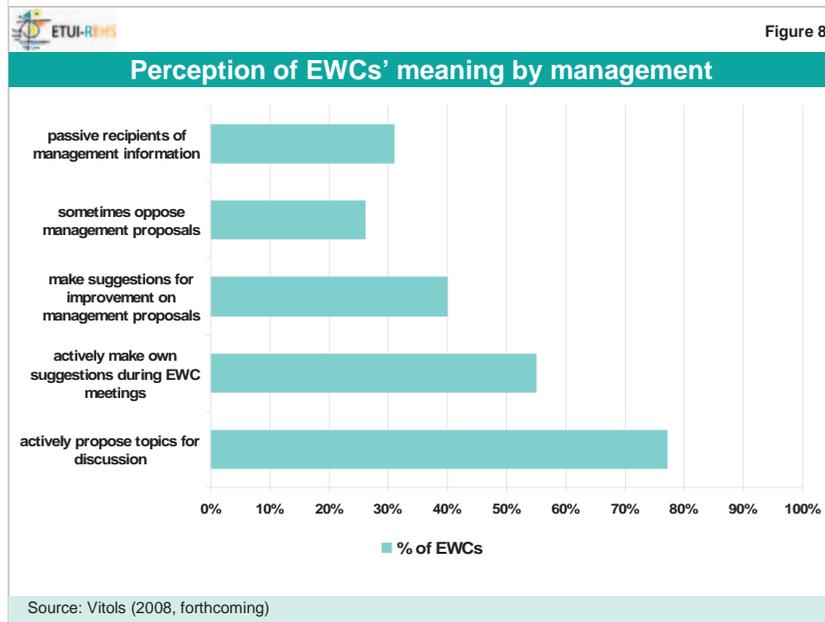
The effects of being employed by a cross-border operating company increasingly shape every working day in Europe. Workers claim their right to a stake in company decisions affecting their workplaces and yet taken at a remote distance from their own daily jobs and lives, for, to workers, such decisions can seem both opaque and irrational. They and their families feel concern about their future prospects because for them to move is not so easy as for the companies which can close down operations and reopen them at an alternative location offering better opportunities for returns on investment.

Whereas the challenges facing market-oriented companies and demanding international investors are global in nature, they also have to be dealt with locally, and not only by sweeping away the rubble left behind after the social damage has already taken place.

Accordingly, the key question – and not only for workers – might be how to achieve an ongoing process of innovation that would guarantee profitable proceeds despite comparatively high labour costs. Companies interested in sustaining competitiveness cannot afford to focus exclusively on technical innovation or cost reduction. The question is rather how to find an intelligent and ambitious way of implementing, on an everyday basis, appropriate procedures that would ultimately result in attractive products and services.

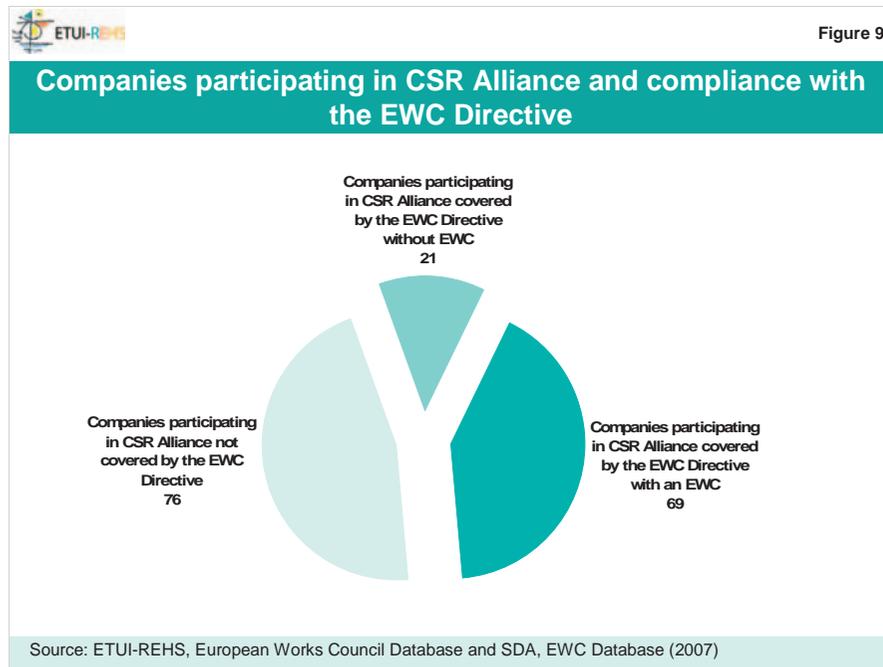
In other words, companies in Europe are reliant upon effective agreements with a highly qualified workforce that supports innovation and change. This is one of the reasons why the political consensus in Europe has long realised the importance of a reasonable and stable position for workers' interest representation, in accordance with the type of provisions contained in European Directives on information, consultation and participation. In some of the best-case scenarios, such representation leads to the creation of European Works Councils (EWC) which come to form an essential element of good corporate governance.

Issues pertaining to company restructuring, such as takeovers and mergers, plant cutbacks or closures and relocation, as well as decisions on company innovation, are frequently discussed subjects at EWC meetings. While 75% of EWC representatives feel that information received from management is poor, or supplied only after the decision has been taken, or not at all (Waddington 2006), replies from human resource managers – asked, in another survey, for their opinion on the real role of EWCs in decision-making and implementation – suggest the need for friendlier treatment of EWCs (Vitols 2008, forthcoming). These executives believe that EWCs should be given the opportunity to play an active and constructive role. Evaluating the practical experience to date, no policy-maker in Europe can ignore that, after more than ten years of existence, EWCs in numerous trans-national companies clearly foster the preservation of social freedom by seeking acceptable solutions for everybody concerned while at the same time contributing to improved productivity and competitiveness (Pulignano and Kluge 2007). Since it is obvious that social and at the same time competitive Europe needs functioning EWCs, it is equally obvious that their capabilities must be upgraded urgently by a strengthening of their legal position.



Corporate Social Responsibility (CSR) has gradually evolved from a subject pertaining to the general interest of various stakeholders at large to an issue for a particular kind of stakeholder, namely, employee representatives on the European level, including the EWC. This subject has become increasingly recognised as one of the important items on the EWC agenda and as yet another means of influencing company management. In some companies EWCs go as far as to participate in the negotiation of transnational framework agreements and are invited to comment on codes of conduct. Although both codes of conduct and international framework agreements (IFAs) tend to be embedded in companies' CSR strategies, it seems that some CSR issues have been revised in the direction of more binding commitments from multinationals in negotiating IFAs with trade union organisations, according to a recent study by the Dublin Foundation (Schömann *at al.* 2008). Insofar as codes of conduct and ethical charters remain the main vehicles of CSR strategies, the processes tend to be unilaterally designed and implemented by management. More exceptionally (labour) standards are negotiated with trade union organisations and lead to IFAs which tend to be less general in nature and allow for some CSR goals to be better targeted or for a particular sphere to be addressed (Daugareilh 2008).

In particular, IFAs represent a partnership-based approach to dealing with the challenges of industrial relations, which clearly leaves room for engagement of EWCs. The role of EWCs has been recognised also by the European Commission in its communication on CSR (2006) which stated that EWCs have a constructive role to play in CSR, and by the Dublin Foundation's study which identifies EWCs as one of the main drivers of these agreements. Unfortunately, some big multinational companies which advertise their CSR policies and interest in this tool by not establishing EWCs, demonstrate by this two-faced approach that they do not recognise dialogue with employees as an aspect of corporate social responsibility.



In order to ascertain the extent of this phenomenon, firstly, an analysis of a CSR initiative called ‘CSR Alliance’ – currently associating 166 enterprises – was undertaken. Among the multinational companies belonging to this worldwide CSR organization 90 (55%) are covered by the provisions of Directive 94/45/EC. Among the companies covered by the EWC Directive 69 (76.6%) have established an EWC or a procedure for informing and consulting employees, whereas 21 (23.4%) have still not complied with this requirement. The compliance rate with the EWC Directive among these companies is above average for large multinational companies employing more than 10 000 employees in EEA (63.21% in 2007) and even slightly above the best average attained by chemical firms of this size (73%). It is indeed a good result, considering that not all of these companies do in fact have more than 10 000 workers, while many of them operate in sectors where the average compliance rate is much lower. Looking at the other side of the coin, it appears worrying that 21 companies covered by the Directive have not yet implemented a decent information and consultation policy with the employees as an inherent part of their CSR strategies (in three of them EWC negotiations are ongoing). This comment is especially applicable in the case of seven such companies which are listed by the *Financial Times* as being among the 500 European or global biggest enterprises. An interpretation of this shortcoming may be that employees are still not recognised as eligible stakeholders and that CSR can sometimes be instrumentalised primarily as a tool of public relations rather than as an expression of true concern about social responsibility.

Another renowned CSR initiative is Global Compact founded and run under the auspices of the United Nations. This programme comprises several thousand participants from all over the world and covers both big multinational companies as well as individual production plants and SMEs below 250 employees. Among 107 companies from geographical Europe (non-EU countries included), active in any sector and belonging to the group of 'companies' (enterprises above 250 employees) participating in Global Compact, 16 companies covered by the Directive 94/45/EC have not yet fulfilled the EWC requirement. A level of 15% of non-compliance should not be regarded as a satisfactory result, since many of Global Compact companies are often beyond the scope of the EWC Directive and thus are not recorded in the EWC database of the ETUI-REHS. For this reason, the non-compliance rate among them is in fact higher. Nonetheless, the discrepancy between declared interest in CSR and non-inclusion of employee rights in CSR strategy is again visible and significant.

Thirdly, in relation to the CSR puzzle it is appropriate to mention the International Textile, Garment & Leather Workers' Federation and its monitoring of textile companies' activities. Of 45 European companies (again not only EU member states) that signed a code of conduct (listed on [www.itglwf.org](http://www.itglwf.org)), 7 do not have an EWC. The non-compliance rate is again rather low here (15.5%) but what is arguably significant is the fact that, among the companies without an EWC, some big and famous brands can be identified.

Summing up, an investigation into some of the most renowned CSR initiatives associating multinational enterprises reveals that CSR and employee participation do not always go hand in hand. Nonetheless, the compliance rate among covered companies associated with CSR projects is higher than the average for enterprises covered by the EWC Directive at large, which may imply that the fact of affiliation to some CSR initiative is likely to heighten 'friendliness' towards information and consultation with employees. This is, however, only an initial inference requiring more empirical research.

Finally, the relationship between EWCs and CSR can be placed in the context of the overall economic performance of companies. From an analysis of a list of the top 500 European enterprises published by the *Financial Times* ([www.ft.com](http://www.ft.com)) annually (last issue: June 2007) it emerges that 283 firms of this group are recorded in the ETUI-REHS database, as covered by the EWC Directive. Of those covered, 80 still do not have an EWC (28%), which gives an overall compliance rate in this group of 72% (203 companies have an EWC). Again, this result is higher than the compliance indicator for all covered companies (2330) accounting for 36% across all sectors and sizes of company. These results corroborate the trend observed already in the past, namely that employee-rich companies (above 10 000 employees; compare: Kerckhofs 2006: 33) are in general a more EWC friendly environment than smaller companies.

Analysis of the Europe's Top 500 by the *Financial Times* adds a financial argument to this conclusion: by listing leading enterprises in terms of market value, it proves that among those of Europe's top performers which are covered by the Directive on EWC the compliance rate is substantially higher than the average for all companies covered. The other side of the coin is, however, that the remaining 28% of covered firms with highest value in Europe regard the exchange of information and consultation with employees as insignificant.

## 7.4. WORKERS' INVOLVEMENT IN THE EUROPEAN COMPANY (SE)

### IMPLICATIONS FOR RAISING WORKERS' VOICE WITHIN COMPANY DECISION-MAKING IN EUROPE

For more than three years now, the European Company Statute has been 'on the market'. Since the past *Benchmarking Working Europe* report the total number of SEs has more than doubled (see next page). Well-known companies such as Allianz, BASF, Porsche, Elcoteq, Fresenius or Strabag have decided to set themselves up as an SE. This shows that the SE structure has evolved into a dynamic field and has been accepted by company management as a tool for organising cross-border activities in Europe. This is all the more significant in that the obligatory mechanism for negotiations on employee involvement – comprising the establishment of a transnational information and consultation body (SE Works Council) and board-level representation – obviously has not prevented these companies from making use of this new European arrangement to replace the national company statute.

Figure 10

Overview of SEs with operations and employees*					
company	branch	registration	seat	corporate governance**	employees concerned
Allianz SE	insurance	13.10.2006	Germany	two-tier	133.846
Fresenius SE	medical care	13.07.2007	Germany	two-tier	100.000
BASF SE	chemicals	14.01.2008	Germany	two-tier	> 60.000
Strabag Bauholding SE	construction	12.10.2004	Austria	two-tier	32.682
Porsche Holding SE	automobiles	13.11.2007	Germany	two-tier	11.500
Hager SE	distribution, electricity	15.06.2007	Germany	two-tier	9.500
Elcoteq SE	electronics	01.10.2005	Luxembourg	one-tier	7.450
MAN Diesel SE	metal industry	31.08.2006	Germany	two-tier	6.625
Donata Holding SE	fragrance	21.03.2006	Germany	one-tier	3.922
PCC SE	chemicals, energy	05.02.2007	Germany	one-tier	3.756
Conrad Electronic SE	retail	18.08.2006	Germany	one-tier	2.314
Conrad Holding SE	retail	18.08.2006	Germany	one-tier	2.314
Surteco AG	paper / plastics	20.11.2007	Germany	two-tier	2.109
Plansee SE	metallindustry	11.02.2006	Austria	one-tier	1.422
SCOR Global Life SE	insurance	25.07.2007	France	one-tier	total 801
SCOR Global P&C SE	insurance	03.08.2007	France	one-tier	total 801
SCOR SE	insurance	25.06.2007	France	one-tier	total 801
Mensch und Maschine Software AG	IT	12.08.2006	Germany	one-tier	350
Alfred Berg SE	banking	30.09.2005	Sweden	one-tier	322

SE Works Council and participation	SE Works Council only	participation only	no SE Works Council, no participation
------------------------------------	-----------------------	--------------------	---------------------------------------

\* "Top-20" (employee numbers) / \*\* One-tier : administrative board / Two-tier = management board and supervisory board

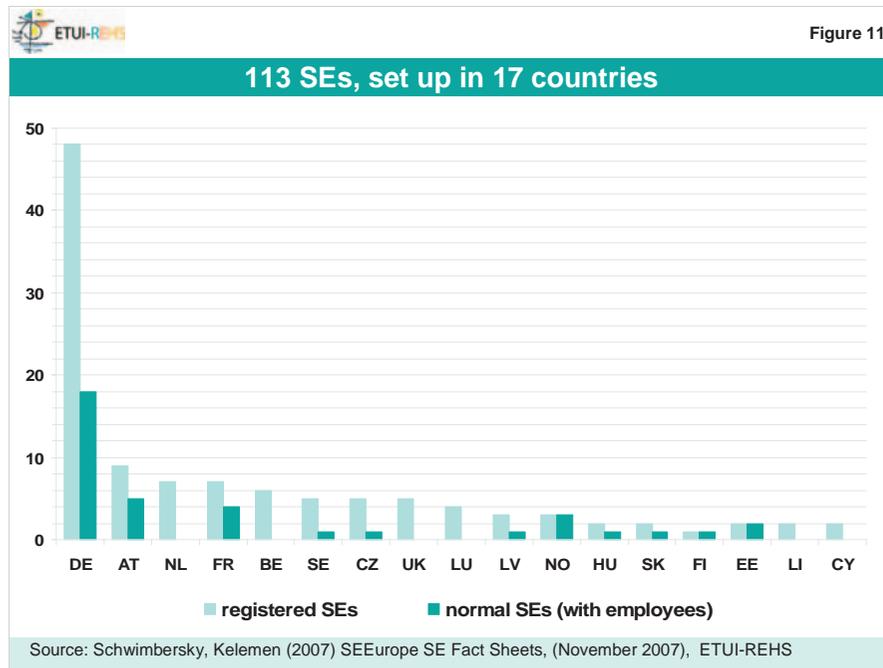
Source: Schwimbersky, Kelemen (2007) SEEurope SE Fact Sheets, (November 2007), ETUI-REHS

Workers' involvement is a European fundamental right. Therefore the mechanism of the SE Directive on worker involvement (2001/86/EC) seems to offer the right conceptual approach. A company which is operating on a European scale (as is by definition the case of an SE) also needs to place at the disposal of its workforce adequate tools and procedures at European level to have a say in the company's running. The same argument is true of numerous companies which currently do not fall under the EWC Directive, because they have fewer than 1000 employees, but which are transnational nonetheless.

By and large, an interim assessment of the first three years would conclude that the SE has advanced worker involvement from a European perspective. Nevertheless, reference should be made to a specific development in Germany where a number of companies seem to have used the SE to circumvent the introduction (or to freeze the current extension) of board-level representation or to reduce the number of worker representatives by reducing the supervisory board size as such. This is all the more problematic because the current Directive 'freezes' the minimum standard of board-level representation for the future. As a consequence of this conceptual shortcoming, an SE which subsequently falls under a (higher) national board-level representation regime would no longer have to grant its employees this legal right. This situation is problematic also because it confirms the fears of many citizens that the EU is causing a shrinkage of social rights instead of contributing to their advancement and further development.

## 7.4. WORKERS' INVOLVEMENT IN THE EUROPEAN COMPANY (SE)

### A CONTINUOUSLY GROWING NUMBER OF EUROPEAN COMPANIES (SEs)



By the end of 2007 the SE Database of the ETUI-REHS (Schwimbersky and Kelemen 2007) counted 113 registered SEs. The unquestioned pioneer in the use of the European Company Statute is Germany where more than 40 % of the SEs have their registered office. In total, in 17 of the 30 possible countries (EU27 plus Iceland, Liechtenstein and Norway) SEs have been registered. This proves that the SE has evolved into an issue of relevance to (almost) all member states. It also has to be kept in mind that, even if a country is not directly concerned by an SE foundation on its territory, its employees can be involved in negotiations and the ensuing interest representation. In the example of Allianz SE, employee representatives from a total of 24 countries will now have a seat on the newly created SE Works Council.

A phenomenon already reported in the last edition of *Benchmarking Working Europe* is the appearance of SEs without any employees and/or operations. This trend has persisted. These 'virtual SEs' are problematic because by definition no negotiations on worker involvement could have taken place. As the SE Directive deals only with the initial situation (i.e. the moment of foundation), it is legally unclear what happens if, at a later stage, employees are transferred into the so far 'empty SE' (no employees) or if a 'shelf SE' (no employees, no operations) is bought by another company having employees. While legal doubts persist as to whether this practice is in line with SE legislation (it was surely not intended by the European legislator), the responsible national registries obviously accept this practice. The ETUC has drawn the attention of the European Commission to this potential danger and the Commission has replied positively by announcing a further discussion with member states on this issue. In the meantime the first 'shelf SEs' have been bought by other companies and therefore evolved into SEs with a workforce. At least to date no misuse has taken place. In the most prominent case of Donata Holding SE, which was a renamed 'shelf SE', negotiations on employee involvement have been conducted and an SE Works Council has been set up.

## 7.4. WORKERS' INVOLVEMENT IN THE EUROPEAN COMPANY (SE)

### STRONGER POSITION OF WORKERS PROVIDED BY SE AGREEMENTS

Worker involvement in the European Company (SE) provides information, consultation and participation by agreement. The pioneers are serving as models for all the other companies that will subsequently apply this new European legislation. The five first most important SEs were born in Germany, Austria and France and in total employ more than 250 000 workers.

Distinctively, SEs are governed by a central, now European management. In all cases described here SE statutes were accepted by General Shareholder Meetings on the basis of the obligation to allow workers' voices to be heard in company boardrooms. Worker representatives thus now, unlike in former days, have the opportunity to acquire influence on management decisions at trans-national level. By agreement, in most cases, the composition of the workers' delegation has become European. Workers' representatives, while enjoying the same rights and obligations as representatives of the owners, have been appointed autonomously, in most cases by the SE works council. Worker participation at board level has achieved a broader scope thanks to SEs. Larger numbers of employees than those coming from countries with provision for board-level representation under national law are able to use this additional channel for interest representation.

Figure 12

	board level representation: scope of agreement	boardroom: EU composition	SE-WC: above standards	trade unions - presence
ALLIANZ SE	yes 26 EU/CH/NO	yes 	yes 2 meetings	yes 1 SVB** member SE WC presence
BASF SE	yes 22 EU/CH/NO	yes 	yes 3 meetings	yes 2 SVB member SE WC presence
FRESENIUS SE	yes 22 EU/CH	yes 	yes „generally“ 1 meeting	yes „up to“ 2 SVB members
MAN DIESEL SE	yes 10 EU	yes 	yes „at least“ 1 meeting	yes 2 SVB members SE WC presence
SCOR SE	yes 9 EU/global	yes 	yes 4 meetings	yes SE WC presence
STRABAG SE	yes EU/EU-candidates/EEA	no 	yes 2 meetings	

\* SE WC = SE Works Council    \*\* SVB = Supervisory board

Source: ETUI-REHS, SEEurope network (2007)

In relation to potential efficiency, insofar as they provide proper rights and working conditions for the SE works council, most of the SE agreements are exemplary. These bodies will meet more frequently than most EWCs; as a matter of course they can receive unlimited support from experts or by means of specific training paid for by the employer; the right to be consulted is understood as being more than simply accepting management decisions without further dialogue. According to some of the agreements, the SE works councils have the means to inform workers at national or local level directly. Moreover, in exceptional cases, concerned workers can ask the SE works council for support directly. No individual worker may be excluded from his rights in cases where an interest representation has not been established at his place of work.

Last, but not least, employers have obviously found it more advantageous to accept the close link between representation by works councils and by trade unions. Indeed, trade union officials may form part of the representation at board level. In particular, representatives of the European Industry Federations have the opportunity to participate in all meetings of the SE Works Council.

## 7.5. WOMEN ON COMPANY BOARDS

### WOMEN IN DRIVING SEATS OF COMPANIES THROUGHOUT EUROPE

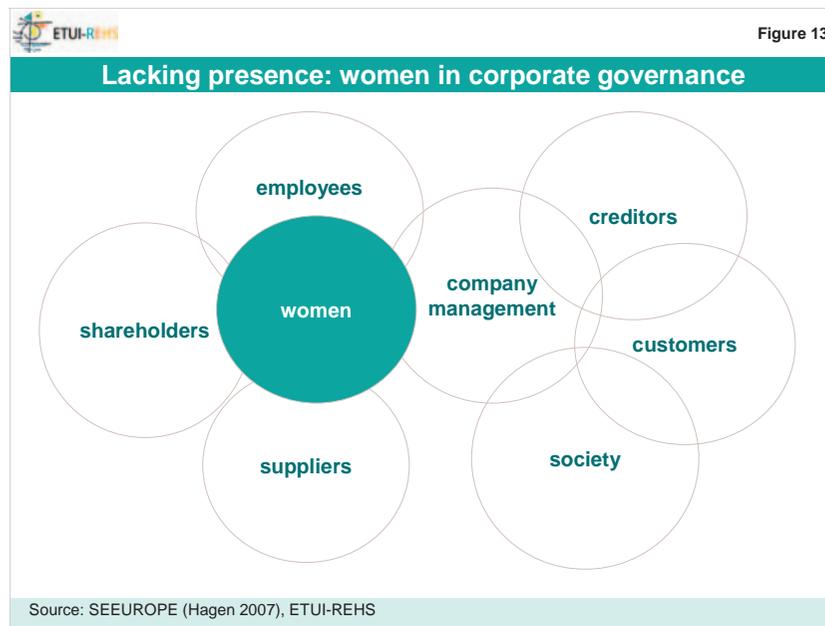
Interestingly, a non-EU member state like Norway seems to be the forerunner in achieving equal opportunities for entering the higher echelons of companies. Since 1 January 2008 Norwegian legislation requires Norwegian public limited companies to have 40% female participation on their board. Companies failing to meet this requirement are threatened by serious sanctions like losing the right to do business. However, as of November only a very limited number of the companies concerned failed to meet this requirement.

Can any impact or learning in Europe be expected from the Norwegian situation from a workers' point of view? Where are triggers to be found for making female presence in European corporate governance more common?

Equality needs to be pursued for its own sake rather than seeking pseudo-economic arguments in favour of women's presence in company boardrooms where they will, after all, generally be performing the same duties as men. Currently, the poor presence of women is worse than embarrassing: although figures show only 8% (DK), 16% (SE) and 27% (NO – all companies) participation of women in boardrooms in Scandinavian countries (2006), these countries are highly advanced forerunners in comparison to other European countries where forensic skills are required to trace the extremely few women who have made their way up into top positions. For example, in Germany only 96 out of 2850 members of supervisory boards (3%) and 15 out of 759 executives of large companies (> 2000 employees) (2%) are women (Gerum 2007). Only 5% of Austrian managers of the 200 largest companies are female, although 10% have gained access to supervisory boards.

The proportion of female supervisory directors would be lower if the composition of workers' representation were not taken into account. In all the countries described, worker participation in board rooms is a reality. Within the workers' delegations female representatives held 28.5% of seats in Norway, 20% in Denmark, 18.5 % in Austria and 16% in Germany. Limits to further extension are caused by internal rather than by other reasons. If works councils and also trade unions are not themselves concerned about a proper extension of female representatives, it will be difficult to recruit appropriate candidates. Consequently, steps for solving the problem have to start at the bottom of trade union organisation and workplace representation. This requires foresight which seems not yet to be common in business life throughout Europe.

Consequently, legal provisions aiming to create equal opportunities do matter. Had legislation not already been introduced in Norway a long time ago, the situation there would not be as advanced and receptive to further progress as is the case today.



## 7.6. WWW.WORKER-PARTICIPATION.EU - A NEW ONLINE RESOURCE

### THE GATEWAY TO INFORMATION ON WORKER PARTICIPATION ISSUES IN EUROPE

European industrial relations can be seen as a jigsaw puzzle, where specific features of national industrial relations fit together with cross-border European elements. New EU legislative developments, like the European Works Council Directive and the European Company Directive, are increasingly driving processes towards a more comprehensive model of European industrial relations, as they provide tailor-made arrangements for companies that operate across national borders. The way the different pieces of the jigsaw fit together is becoming more obvious and visible. [www.worker-participation.eu](http://www.worker-participation.eu) aims to help users see the bigger picture.

The new web service provided by ETUI-REHS – and developed with the support of the German trade-union-related Hans Böckler Foundation – underlines the importance of workers' participation. It brings together a comprehensive range of information, and provides empirical evidence on how workers' participation anchors Social Europe at workplace level and contributes to better economic performance and sound corporate governance. This approach differs from the currently dominant view that focuses solely on transparency to the benefit of a single stakeholder group – the shareholders.

With more and more companies operating Europe-wide (or even globally), the transnational level of employee representation is becoming increasingly important. Company management, employee representatives and unions are increasingly dealing with cross-border questions of worker participation at different levels. This website seeks to meet the increasing need for accurate and easily accessible information by giving its users access to what is happening across Europe in the field of employee rights to information, consultation and board-level representation. Information on the following topics is available on the site:

- EU27 Industrial Relations Backgrounds
- European Works Councils (EWC)
- European Company (SE) / European Cooperative Society (SCE)
- European Information, Consultation & Participation framework
- Corporate Governance & EU Company Law
- European Social Dialogue
- Financial Participation (in preparation)

From the first section, which provides key information on national industrial relations backgrounds, it is quite clear that regulations on worker involvement and trade unions exist in all member states and, despite the existing differences, represent the foundation and pre-condition for European regulation in this field.



Globalisation is challenging working life. Yet the individualisation of values that is supposed to go hand in hand with rapid transformation of the economy does not automatically contradict or cancel out the collective arrangements with which we are already familiar. To regard as obsolete all the mechanisms that helped to balance yesterday's challenges could turn out to be faulty logic. There can be no denying that the organised voice of workers has enabled a smooth and ongoing transformation of industrial structures that has in turn contributed to the further development of corporate arrangements. The real question is how to find the most appropriate ways of adjusting the measures and tools we have already at our disposal.

In the field of worker involvement a significant basic corpus of legislation has been achieved at European level. The Directives and actions concerned have invariably been the result of political compromises, between the social partners as well as between different opinions and practices characteristic of different EU member states. Enlargement has extended the set even further.

- The EU Directive on information and consultation provides standards for the procedures and interest representation bodies concerned at national level. This ensures the probability that in the future most workers will be not excluded from exercising their fundamental rights to information and consultation.
- Decent working conditions could well prove one of the future core features that will make European industries both sustainable and attractive to a qualified workforce.
- The functioning of effective labour representation in the field of health and safety might turn out to be a prerequisite for achieving the desired comparative advantage for Europe.

- EWCs are already playing a crucial role in maintaining social balance in restructuring processes which, more frequently and increasingly than in the past, are taking place at cross-border level. Agreement between EWCs and management is becoming increasingly relevant.
- Corporate Social Responsibility might not work sufficiently if it consists solely of voluntary action on the part of companies. If CSR is to be a label designating the particular quality and awareness of companies in Europe, it has to be monitored and developed by all the groups involved in a company, and particularly by its workers.
- Presence in the boardrooms of European Companies (SE) might prove a means of enabling worker representatives to direct companies towards increasing sustainability.

However, there are also a lot of good reasons for continuing to promote existing arrangements by further developing their legal basis at European level. High priority, in this regard, must be accorded to the revision of the EWC Directive. Moreover, there has to be a consensus that the SE legislation will not be used to ignore or circumvent worker involvement via the creation of 'empty SEs'.