

Chapter 14

The EWC directives and the SE legal framework: symbiosis and mutual reinforcement brought to a halt?

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1. Introduction

This chapter examines the development of the SE legal framework with regard to its relationship with the European Works Councils (EWC) directives. Both of these, together with Directive 2002/14/EC on information and consultation, are considered the pillars of worker involvement in the legal framework for employee participation in Europe. Therefore an analysis of their mutual relationships, influences, common features and similarities offers the opportunity to consider them in a common context. In fact, the SE Directive 2001/86/EC (adopted in 2001) was inspired by the EWC Directive 94/45/EC of 1994, which during the recast process in 2008 benefited from achievements and experiences with the SE Directive, which might now have impact on prospective legislative changes in the SE framework. Consequently, the relationship between the EWC and SE directives can be labelled as a ‘mutually beneficial interaction or symbiosis’.

This chapter will thus demonstrate how the original EWC Directive 94/45/EC contributed to adoption of the SE regulations in 2001. Subsequently it will examine how the SE Directive 2001/86 inspired some modifications included in the recast EWC Directive 2009/38/EC. In the latter context it shall also show how the experience and standards set by the SE Directive were used as leverage in debates over the future recast EWC Directive. Moreover, an evaluation made of whether the achievements of the new recast Directive 2009/38/EC surpass the standards of the SE regulations in order to draw conclusions about the potential offered by the new EWC directive for the revision of the SE framework. In this context, an evaluation of the recasting of the EWC directive from the point of view of the efficiency of modifications introduced therein can serve to learn some lessons relevant for the revision process of the SE directive.

2. What came first: the chicken or the egg?

The following part does not consider the entirety of the history of the SE legislation (see the chapter by Schwimbersky and Gold in this volume for this), but instead focuses on selected events that demonstrate the close mutual links, symbiotic growth and influence between SE and EWC developments over time.

The relationship between the legislation on European Works Councils (EWCs) and worker representation in the European Company (Societas Europaea, or SE) dates back to considerably before the 1990s, when the EWC directive was adopted (1994) as one of the pillars of the European employee information, consultation and participation framework. Discussions about a Community-wide legal form for enterprises, including worker representation, started in the 1960s. These discussions included ideas about introducing SEs and forms of transnational worker participation as part of a broader goal of creating unified European company law. This was seen as both beneficial for (reduction of transaction costs for multinational companies) and required by economic integration. It is argued that, at that time, 'a unified European company law without strong provisions for workforce participation was considered politically impossible' and that 'the acceptance for institutionalisation of industrial citizenship rights in corporate governance was regarded as the price European business had to pay for the economic benefits of company law harmonisation' (Streeck 1997). Despite a seemingly favourable context in the 1960s and the belief that some form of European corporate status and transnational worker representation would be the most effective way for multinational companies to deal with a variety of different national participation regimes, no concrete legal initiative resulted until the 1970s.¹

Aside from the Commission's memorandum in support of legislation on a European Company in 1966, the first concrete proposal for a Statute for a European Company came in 1970 (OJ C 124 of 10.10.1970). This first draft is already a good display of the strong inter-linkages between work-

1. It should be noted that the topic of the SE was discussed e.g. at an International Congress of Notaries in Paris in 1960. In 1965, the French government issued a memorandum proposing to introduce legislation on a European Company by means of a treaty among the EC member states. This proposal was taken up by the Commission which, in 1966, published a memorandum in support of this idea.

er representation in the European company and transnational worker representation in the form of EWCs: the latter were supposed to become information and consultation organs, on top of the co-determination rights exercised by employee board-level representatives. The Commission's proposal of 1970 was rejected, just as its modified version in 1975 was. Despite the common recognition that such a legal status would be beneficial for companies operating in a unified Europe, it seems the political readiness of the Member States of the EC to make the necessary compromises was lagging behind.

The lack of political willingness amongst the Member States to adopt a common European legal status for enterprises was circumvented, however, by spontaneous, bottom-up initiatives of worker representatives in multinational companies. As early as in 1983, following the second wave of legal reforms called *lois 'Auroux'*, the French group works council in Saint Gobain extended its membership by inviting worker representatives from other countries where the company operated. Soon thereafter, in 1985, the first formal agreement establishing such practice was signed in Thomson, another French multinational company (Kerckhofs 2006: 8). Other enterprises soon followed and, by the end of 1990s, there were at least 12 EWCs in place, with more forthcoming.

It is difficult to decisively conclude whether the spontaneous development of EWCs had any influence on the dynamics of legislative initiatives of the Commission on the proposal for an SE. However, it seems more than probable if one looks at the dates of various SE proposals and memorandums. In 1988, soon after the establishment of the pioneering EWCs, the Commission came up with a new Memorandum on the SE Statute (EC-Bulletin 3/88). This offered a more flexible choice between different participation systems as one of the means to complete the internal market. In the next year a new legislative proposal for the SE was introduced by the Commission, which for the first time split the issue of establishment of the company (covered by a Regulation) and the question of representation of workers' interests and information and consultation rights (covered by a Directive). The legislative attempts of the Commission could still not be completed through the adoption of a binding legal framework for European Companies, but a positive stimulus came again from the EWCs.

The European Commission rightly recognised the potential of the spontaneous development of pioneering EWCs. It used them to show that a

narrow national approach to industrial relations in the European Community is obsolete and no longer sufficient and also bears the risk of negative consequences for workers in the wake of transnational restructuring processes. These observations led the Commission in December 1990 to submit a proposal for a *Council Directive on establishment of European Works Councils in Community-scale undertakings for the purposes of informing and consulting employees*, which took its final form in September 1991 (COM(91)345 final of 16/08/1991). Due to unanimity requirements in the Council it was soon rejected, yet the concept was not abandoned. As the number of voluntary EWCs increased it became more probable that the legislative deadlock would be broken sooner or later. Once the Maastricht treaty of 1992 reformed the voting rules on social issues in the Council, another (and this time successful) proposal for the EWC directive could be submitted by the Commission in 1993. The adoption of the EWC directive 94/45/EC of 22 September 1994 was a momentous event in the quest for European workers' representation (even though the social partners could not reach a compromise on the Commission's proposal). At the moment of adoption of the directive there were approximately 50 EWCs in place; in the two year window of opportunity open for voluntary negotiations another 466 were created (ETUI database of EWCs, www.ewcdb.eu).

Such an outburst of formations of transnational bodies of workers' representation in multinational companies could not have gone unnoticed for the participants of the debate on SEs and the related question of workers participation. The possible impact on the SE debate seems to have a twofold character: the sheer number of a total of nearly 500 EWCs created in a relatively short period of time and representing millions of workers showed the number of potential beneficiaries of any legislation in this area; and, equally important, the example of a successful break of a political deadlock in the European debate and progress legislation on corporate governance represented by the EWC directive 94/45/EC had the potential to act as a stimulus for the quest for SE legislation.

Further progress in the work on the SE and a directive on worker participation was marked shortly after the entry into force of the EWC directive by the adoption of the final report on worker involvement in Europe (May 1997) of the so-called Davignon Group. The report's conclusion that the national systems of workers' involvement were too diverse and thus excluded harmonisation served as an argument to opt for a solution strikingly similar to the one adopted in the EWC directive 94/45/EC. The

report proposed namely that priority should be given ‘to a negotiated solution tailored to cultural differences and taking account of the diversity of situations’ and in case of failure of negotiations standard rules would apply (Davignon Group Report 1997: 17). It comes as little surprise that the Davignon Group report explicitly used solutions adopted in the EWC legislation and made quite a few references to the positive experience of EWCs; when the report was published there had already been a history of over a decade with more than 500 of such bodies in operation. In this sense, once again the EWC Directive (additionally reinforced by the British opt-in in 1997 which demonstrated the universal character and compatibility of worker participation rights under various systems of industrial relations and traditions) made an important contribution to progress on SE legislation on worker participation. With the latter realized in 2000 by means of adoption of the European Company Statute at the Council in Nice, the 40-year-long debate on the topic was successfully concluded in form of the Council Regulation 2157/2001 (OJ L 294) and Council Directive 2001/86/EC (OJ L 294/22, 10.11.2001) regulating worker participation.

As was demonstrated above, the fact that the information and consultation part of the SE directive 2001/86/EC copies the EWC model of directive 94/45/EC highlights the fact that the history of EWCs and worker participation in SEs was strongly interlinked and mutually reinforcing. In fact, one could venture the thesis that it could have taken much longer for the SE initiative to be concluded if the legislative framework and practical advantages of EWCs had not been available.

3. The impact of the SE directive on the policy of trade unions with regard to the revision² of the EWC directive

The mutual influence between worker participation in the SE and EWCs continued beyond the adoption of a legal framework for SEs. As was indicated earlier, Directive 94/45/EC was pushed through the legislative

2. The term ‘revision’ is the most common reference used with regard to modifications to the EWC directive 94/45/EC, however, the correct terminology is either to refer to it as ‘review’ (used in 94/45/EC) or as ‘recast’ (the factual procedure adopted to modify the directive). For more information see Jagodzinski 2009.

process without a common agreement between the social partners, who refused to negotiate back in 1994. Due to the latter fact and because the experience with EWCs was limited the original EWC directive contained a provision on its review (art. 15; for more information see Jagodzinski 2009). The review of the EWC directive was a much delayed process with a history of multiple demands by various actors starting from the moment of the Commission's statutory obligation to launch the revision (1999) (ibid.). The positive role of the SE directive 2001/86/EC must be emphasised among the many factors that had an important influence on the process and the outcome of the EWC Directive's review.

Not long after the adoption of the SE regulation and the directive on worker participation, the European Parliament issued resolution A5-0282/2001 (4/09/2001) appealing to the Commission to launch the overdue review process of Directive 94/45/EC. In this resolution the Parliament made explicit references to the same Davignon Group report that provided an impulse to the SE directive and insisted on including in the modifications several of the more favourable solutions applied in the SE directive 2001/86/EC. The most important SE-inspired demands included:

- a) Shortening of the period for negotiations to 18 months;
- b) Extending and modifying definitions of information and consultation by means of specifying the content of information, timing, and the right to give opinion on proposed measures;
- c) Recognition of the role of trade unions and guarantees of rights for their participation/involvement in the EWC;
- d) Guarantees of more extensive resources for EWCs, especially with regard to training of EWC members;
- e) Procedures for the renegotiation of agreements; and
- f) Extension of information and consultation by introduction of elements of negotiation.

The above SE-inspired demands formed the core, not only of the European Parliament's subsequent resolutions and positions taken with regard to the revision of the EWC directive, but also of other stakeholders in the process. The European Economic and Social Committee and its Exploratory Opinion *Practical application of the European Works Council Directive (94/45/EC) and on any aspects of the directive that might need to be revised* of September 2003 should be mentioned.

One of the arguments used in the EESC opinion that gradually spread to be used by others as one of the key grounds for demands for EWC revision was the changed legal context (point 1.12 of the EESC opinion). The EESC suggested tentatively that, with the adoption of directive 2001/86/EC (and of the Information and Consultation Framework Directive 2002/14/EC), the standards set by the EWC directive became outdated and were lagging behind those of the newer legislation on workers' participation. Those tentative suggestions were later on substantiated by means of reference to concrete provisions in the SE directive that set higher standards, above all on information and consultation procedures (e.g. point 2.3.9).

The original catalogue of SE-inspired demands for EWC revision formulated in the European Parliament's resolution of 2001 (see above) also served the European Trade Union Confederation (ETUC) as a foundation for its catalogue of desired modifications. Among numerous reasons of diverse character, the argument of lending legal coherence (ETUC 2003, point 4) enjoyed a prominent place in the catalogue of demands. This was particularly appropriate in exerting political pressure on the Commission to live up to its obligation to play its role as guardian of the treaties.

The persistent reference to the modified legal context and incoherence in the European system of worker participation finally paid off in April 2004 when the Commission published a communication opening the first stage of consultation of the EWC revision (European Commission 2004). In this communication it was acknowledged that there had been considerable developments in the European legislative *acquis* on employee involvement, thanks to the adoption of three significant new instruments (SE directive 2001/86/EC, national works councils directive 2002/14/EC and employee involvement in the European Cooperative society 2003/72/EC) as well as recognition of workers' information and consultation rights in *The Charter of Fundamental Rights of the European Union* (OJ C364 of 18.12.2000). Due to the overlap of information and consultation rights between various levels some of the matters regulated by the new legal instruments listed above were relevant for and formed parts of the EWC directive 94/45/EC. It was therefore recognised that the EWC framework required modifications and upgrading to the newer, more extensive standards.

Once this argument entered the debate it became commonly accepted by all the stakeholders and institutional actors (apart from employers'

organisation UNICE/BusinessEurope that consistently denied the need for any modifications) and became a substantial part of virtually all subsequent EESC opinions (e.g. EESC 2006), ETUC or trade union resolutions and strategies, European Parliament's resolutions and Commission's communications in the period preceding the 2008 re-launch of the EWC directive's revision.³

Once the European Commission in November 2007 announced its plan to reopen the EWC-revision-dossier in 2008, the European trade unions through the ETUC restated the catalogue of concrete demands to modify specific parts of the EWC directive 94/45/EC (ETUC 2007). The SE-inspired demands included in the renewed trade union strategy are listed in Table 1.

It can be clearly seen that the inspiration from the SE directive was substantial, first and foremost since it set the standards for definitions of information and consultation which represented the critical pillars of any modifications to the EWC framework.

However, not only trade unions took the SE directive 2001/86/EC as a point of reference or a model solution for future EWCs. The European Commission also oriented itself towards the standard set by the SE. Similar to the ETUC position, the Commission's *Communication opening the 2nd stage of consultations on the revision of the EWC directive* (European Commission 2008) makes a clear reference to the SE standard (and to directive 2002/14/EC, 2003/72/EC and others) with regard to modification of information and consultation, the positive experience with the contribution/role of trade unions, entitlement to training of workers' representatives, procedures for renegotiation as well as adaptation and termination of agreements in case of changes in company structure, transnational competence of EWCs. The communication was accompanied by an Impact Study (European Commission 2007), which made numerous comparisons between the SE and EWC directives and used the SE directive as a point of reference for analysing the potential cost of upgrading of the EWC regulations. Those comparisons concerned in particular changes in the composition and operation of the special

3. For a chronological overview of various documents and initiatives in the EWC revision process see <http://www.worker-participation.eu/European-Works-Councils/Recast-Directive/Chronology-of-Recast-Key-docs>; for more contextual information on the revision process see Jagodzinski (2008).

Table 1 Trade union demands inspired by SE directive 2001/86/EC prior to the EWC review/revision (2008)

No.	ETUC demands	Commission's communication 2008	Outcome in the recast Directive 2009/38/EC
1.	Include definition of 'information' with the same standards as those used in directive 2001/86/EC	Yes (general)	Introduced, but not entirely identical to SE regulation (only in Subsidiary Requirements)
2.	Modify definition of 'consultation' by means of upgrading it to the 'consultation' standards set in directive 2001/86/EC	Yes (general)	Modified, but not entirely identical to SE regulation (only in Subsidiary Requirements)
3.	Possibility in the directive to establish a select committee (as in Subsidiary Requirements of 2001/86/EC)		Included
4.	Equip the SNB with the right to seek expert advice, to be provided with training (including paid-time off for participation and coverage of costs)		Expert advice limited to one expert; training rights provided (lacking precision on assuming costs)
5.	Recognition of the role of trade unions in negotiations (SNB) and in the EWC and their right to demand information on companies' structure, employee distribution in order to examine eligibility for an EWC (including the right to initiate negotiations)	Yes (partial)	Granted (partially)
6.	Reduction of the time for negotiations of an EWC agreement to 1 year, extendable by max. 6 months		Refused
7.	Right to preparatory and debriefing meetings prior to and after the plenary meeting with management		Included in Subsidiary Requirements.
8.	Obligatory procedures for renegotiation in EWC agreements	Yes	Yes
9.	More precision + extension of transnational competence	Yes (though no extension)	Yes (extension only in the preamble)
10.	Central obligatory register of EWCs and companies eligible*	No	Refused

Note: * Similar to registration obligations when establishing an SE, though in the case of the latter no European central registry exists.

Source: Author's compilation.

negotiating body (*ibid.*: 45-46) as well as the costs of the introduction of articulation with other levels of information and consultation (among others SE Works Councils).

As can be seen in Table 1, many of the references to the SE directive and arguments inspired by SE solutions were taken up in the review (finalised as the recast) process of the EWC directive and encoded as provisions in the recast Directive 2009/38/EC. On top of the most substantial provisions listed above, a number of more technical passages from the Standard Rules of the SE directive 2001/86/EC (Annex 1) found their way into the recast Directive 2009/38/EC. This is true for, among others, the right to hold a preparatory and debriefing meeting of the SNB without the presence of management, which was copied from Directive 2001/86/EC. Similarly, the EWC members' obligation to communicate the outcomes of information and consultation was replicated from the SE Standard Rules. Moreover, the wording of the recast EWC provisions on experts of the EWC's choice, select committee, training and the costs of operation of EWC is identical to and was taken from the same SE Standard Rules. Concerning some elements of the EWC recast Directive, the intention to use the rules from the SE Directive 2001/86/EC was only partially realised (e.g. definitions of information and consultation, definition of transnational competence of EWCs; see Table 1). The European Economic and Social Committee (EESC) was quick to point this fact out and indicate lack of consistency with the explanatory memorandum to the proposal for the recast directive (EESC 2009, point 3.1).

As can be seen from the above analysis, the mutual influence between the EWC and SE regulations is undeniable and has been consistently strong throughout the debates, legal proposals, statements, communications and opinions of all the involved stakeholders and institutional actors. Indeed, on top of the mutually supportive impact of legal and practical developments in EWCs and SEs (and their works councils), the argument of regulatory coherence and consistency between directives in both areas has been one of the substantial drivers of their progress as well as of the entire framework of the European system of worker representation.

4. Revision of the SE directive

The argument developed in the previous section of this chapter, namely that the influence of EWC and SE regulations has been mutually sup-

portive, can be challenged in face of the latest developments concerning the review of the SE legal framework. The review (or revision) process was started by the European Commission in 2008 by means of commissioning an evaluation study to be carried out by Ernst & Young (Ernst & Young 2009). The study was subsequently submitted for public consultation.⁴ Instead of an expected positive conclusion on the general context and structure of worker representation instruments in the EU, to dismay of many, the study referred to employee participation as a negative driver which discouraged the choice of the SE as a corporate form (Ernst & Young 2009: 241). Such a conclusion represented a very negative evaluation of a history of over two decades of transnational worker representation; this was because the solutions applied in SEs derived from EWCs caused strong opposition amongst experts, researchers and stakeholders (European Commission 2010: 9). The study reported that respondents from companies that did not opt for an SE considered the procedure relating to the negotiation of employee involvement as provided by the SE Directive as complex; therefore it could be regarded as a negative driver in Member States without board level employee representation. Similarly, the process of establishment of SEs involving negotiations with employees was considered to involve ‘considerable difficulties’, one of which was the possibility to extend the process beyond the statutory period of 6 months and so (deliberately) delay establishment of the SE. In general it was argued that worker participation was perceived as a foreign concept in a number of Member States. Furthermore, it was suggested that the necessity of recognising trade union involvement in negotiations was correlated to a low population of SEs in some countries. The study concluded by stating that ‘[t]his tends to show that the rules relating to employee involvement within the framework of the formation and running of the SE constitute, in some countries, a hindrance to the creation of SEs (...)’ (ibid.: 242).

As mentioned above, such a conclusion of an official report commissioned by the European Commission evoked strong reactions from the research and expert communities. A particularly in-depth and methodical analysis exposing the shortcomings of the Ernst & Young report was prepared by the SEEurope Network (Cremers *et al.* 2010; see also Stollt and Kluge 2010). Experts argued that such a conclusion lacked empirical foundations and was based on the selective perception of the Ernst &

4. Public consultation on the results of the Study on the operation and the impacts of the Statute for a European Company (SE), deadline for responses 23/05/2010.

Young team that lacked sufficient knowledge of the issue. The study was also criticised for overemphasising the perspective of commercially oriented legal advisers and presenting insufficient inquiries about the experience of practitioners on both sides of the company, i.e. employers and employees actually involved in negotiations (Cremers *et al.* 2010: 40). The Ernst & Young team was also reproached for not taking into account the fact that other forms of workers' involvement, including in particular European Works Councils, were widespread in countries where the population of the SEs was low (European Commission 2010: 9). Experts and researchers argued against the judgement of Ernst & Young that negotiations with workers representatives on the establishment of employee participation structures in SE were in fact not as cumbersome as procedures for the establishment of other aspects of the SE. The latter argument, though it was not explicitly backed up by a reference to EWCs, clearly pointed towards the experience with existing SE Works Councils, but also with the more numerous EWCs.

However, in general there was little reference made to EWCs in the various debates on the review/revision of the SE Directive. Even though a debate during a conference on the SE revision organised by the European Commission on 26 May 2010 overruled the Ernst & Young conclusions on worker participation as a negative driver, this was not achieved by means of extensive references to EWCs. The latter might be considered surprising given the recent adoption of the EWC recast directive 2009/38/EC which, even though contested, was evaluated rather positively. It seems all the more puzzling that the potential represented by the recast EWC directive has not been exploited more extensively in the SE revision because some of the modifications went beyond the SE information and consultation standards. Table 2 below gives an overview of modifications to the EWC legal framework. Amongst them there are both those inspired and originating from the SE directive 2001/86/EC as well as those that rise above the standards set by the latter. The upgraded standards comprise modifications in the following areas:

- Articulation between various levels of information and consultation (national, local);
- Information on commencement of negotiations to establish an EWC to recognised European employers' and employees' organisations;

Table 2 New provisions of the EWC recast directive

No.	Issue	Article (body of the directive)	Recital
1.	Transnational character of information & consultation / competence of EWC	1.2; 10.1	12, 16
2.	Minimum burden on companies	2.1 g	9
3.	Minimum limitation of decision making power of management	1.2	14
4.	Information and consultation – definitions	1.2; 1.3; 2.1 f and g	14, 15, 21, 22, 23, 36, 37, 43
5.	Articulation/relationship EWC – national bodies of information & consultation	12	21, 29
6.	Information on commencement of negotiations for an EWC	4.4; 5.2 b and c)	25
7.	Role of trade unions	2.2 c); 5.4	27
8.	Termination & renegotiation clauses in agreements	6.2 g)	28
9.	Select Committee	6.2 e)	30
10.	Agreements in force and adaptation clause	6.2 g); 13; 14	39, 40
12	Content of agreements	6.2 b), c), e) and g)	
13	Informing back employees	10.2; 12.2	33
14	Entitlement to training	12.4	
15	Sanctions		36
16	Means for EWCs	10.1	
17	Collective representation of interests of employees	10.1	

Source: Author's compilation.

- Mention of requirements for sanctions (proportionate, dissuasive and effective);⁵
- Means for operation of worker representation body;
- Capacity to collectively represent workers' interests.

Of the above, only the articulation between various levels of information and consultation and the relationship between a representative body in

5. Admittedly these are only part of the Preamble to the EWC recast directive 2009/38/EC; as well as partially already present in the Directive 2001/86/EC in art. 12.2.

SE and EWC is mentioned by the European Commission's communication opening the first stage of consultation on the SE directive revision (European Commission 2011).

It seems that the reason for the limited or lacking references to EWCs in the SE revision was the increased complexity of the SE debate. This discussion not only dealt with the workers' information and consultation, but also with participation on board level as well as corporate governance issues and legal questions regarding corporate law. Concerning worker involvement, more attention seems to have been given to employee board level participation component and less attention to information and consultation issues. Furthermore, it has been commonly tacitly accepted that the information and consultation procedures in SEs will be arranged according to the EWC model that has already been tested and proven fit for handling transnational matters.

Finally, one more common thread for the revision debates of EWC and SE directives should be mentioned, namely the demand to establish a central register and registration obligation for multinational companies. In the case of EWCs this demand was raised by European trade unions (ETUC and its sectoral affiliates, the European Trade Union Federations) as well as by the research community (Jagodzinski *et al.* 2008), both of which have encountered difficulties with access to information on companies eligible for and having an EWC. For trade unions, the lack of information on company operations, employee figures and workers' distribution across the Member States has represented a serious obstacle in establishing more EWCs.⁶ The research community, on the other hand, has been struggling to assess how many companies in the European Union were eligible to establish an EWC. As a result of the latter, statistical data on important aspects of EWCs (e.g. on companies' compliance rate with the EWC directive(s); number of workers represented in EWCs) and of substantial meaning for all stakeholders including the European Commission was often only an approximation of reality. Problems caused by the lack of an official register have also been raised by virtually the same communities, including the ETUI and the SEEurope Network's demonstration of the negative consequences thereof by show-

6. The only three cases adjudicated before the European Court of Justice dealing with EWCs (ADS Anker, Kühne & Nagel, Bofrost) all concerned the various aspects of establishment of EWCs and access to data on companies' eligibility (workforce figures, distribution, etc.). For more information see part II of Dorsemont and Blanke (2010).

ing the number of SEs established and registered nationally as shelf-SEs or UFOs. In case of SEs, even though the stakeholders including the Commission and the Ernst & Young 2010 report commonly took-up the reference to SEs established without any operation and/or employees and condemned the practice (European Commission 2011: 3), it seems that the importance of the demand for a central register and companies' obligation to report to has not yet been fully realised by the European law-maker; a point that will hopefully be still taken on board in the revised SE legislation.

5. Conclusion

This chapter has demonstrated that the construction of the European system of workers' involvement on company level was substantially based on the development of EWC and SE legislation. It is also evident that legislative developments in both areas were interdependent and mutually supportive, each providing impulses and inspiration for one another. In this sense it seems appropriate to describe those developments by using the neo-functional theory of international integration and its concept of *positive spill-over effects*. This idea serves well in capturing and explaining the dynamics of development of EWC directive 94/45/EC, which benefited from earlier debates on European Company status and worker representation and, at the same time, contributed to the adoption and shape of the SE directive 2001/86/EC on worker involvement in SE. The correlation effect between the two legislative frameworks was so close that it could even be denominated as 'mutually beneficial and reinforcing influence' or a 'symbiotic relationship', in the sense that parts of one directive were in many cases used literally in the other one, while other provisions served to inspire modifications or upgrades. This close relationship seems to have worked well until approximately 2009, when the achievements of the SE directive 2001/86/EC served as arguments in the debate and as an inspiration for upgrading the EWC directive and so making the European regulations on worker involvement coherent.

Currently, with the debate on the revision of the SE legal framework, it seems that the spiral of positive spill-over effects is in danger, as references to EWC directive (and other *acquis* on worker involvement) become scarce and limited. It might be too early to make a final judgement on the concrete outcome of the SE revision process just now, yet it should be clearly expressed that there is a serious risk in it for the worker

involvement system in Europe: when no further upgrading is seen as necessary and beneficial by the European legislator and when the link to achievements and positive models in the sibling directive on EWCs is denied and unexploited, progress will become difficult. Such a scenario would be detrimental not only for the workers, but also for companies they are employed in as well as the entire European project as outlined by the Europe 2020 strategy (ETUI and ETUC 2011, chapter 8).

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