

A social Europe needs workers' participation

Introduction

Within the array of challenges and opportunities that face Europe today, some are new, while others are quite familiar. Whether the challenges lie in mastering technological advances, responding to sluggish economic performance, or coping with the pressures of deregulation, workers' rights – and in particular the processes of involvement and social dialogue – are an essential part of managing the present and shaping the future.

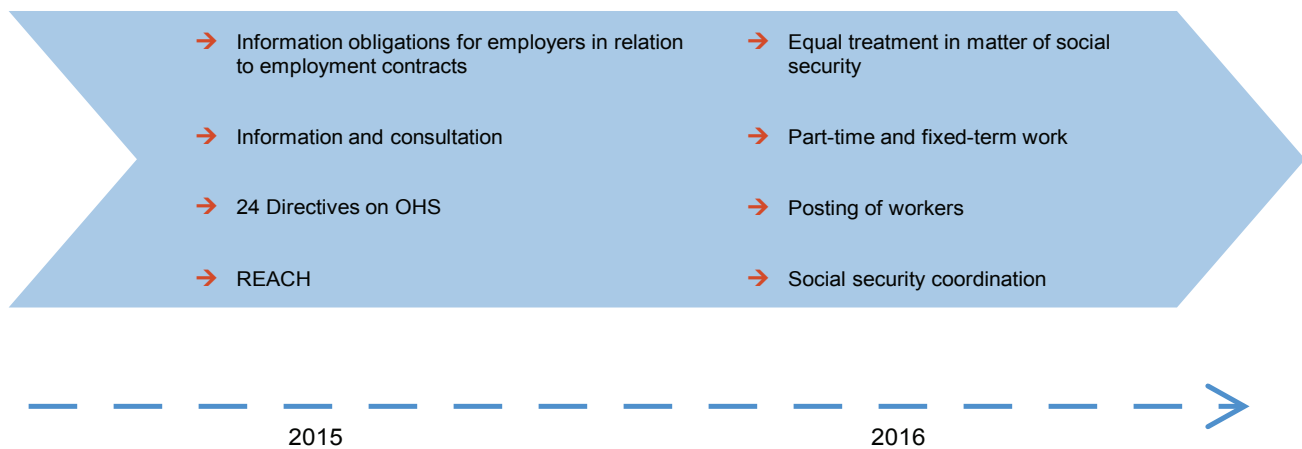
This chapter opens with a summary and update of the impact and progression of the Commission's REFIT programme, particularly in the area of collective rights to information and consultation, or individual rights in employment contracts, for example, as well as in relation to a suite of occupational health and safety protection legislation. Turning to the contribution of the social partners, we highlight the results achieved to date, in the social dialogue at both cross-sectoral and sectoral levels, with regard to managing technological changes. Recent findings on European Works Council (EWC) agreements and legislation are complemented by a focus on the potential of EWCs to play a role in improving occupational health and safety protection. Finally, we explore the contribution of workers' participation to sustainable companies and to the Europe 2020 strategy.

Topics

> <i>Refitting workers' rights: progress and setbacks</i>	56
> <i>What role for the EU social dialogue in the digitalised world of work?</i>	60
> <i>European Works Councils</i>	62
> <i>How to imagine health and safety for future generations?</i>	66
> <i>Governing emerging and innovative technologies</i>	67
> <i>Workers' participation and company sustainability</i>	68
> <i>Worker participation, the Europe 2020 strategy and the crisis</i>	69
> <i>Conclusions</i>	70

Refitting workers' rights: progress and setbacks

Figure 4.1 Workers' rights under scrutiny of EU Commission's REFIT pending processes



Source: ETUI own research.

How far can workers' rights resist the unprecedented review of EU law?

The European Commission's 2015 Work Programme centred on the issue of implementing and deepening the Better Regulation Agenda; this focus is intensified still further in the 2016 Work Programme.

The aim of the exercise is to eradicate unnecessary administrative and regulatory costs in each and every piece of EU law. Chiefly, this is to be achieved via the evaluation of EU Directives according to a range of methods, starting from the standard cost/benefit analysis up to the multi-criteria analysis (ETUI and ETUC 2015). This approach flies in the face of the fact that experts have already demonstrated the inappropriateness of the methodology – especially of the standard cost model – to accurately assess the social impact of legislation and of OHS legislation in particular (Vogel and Van den Abeele 2010:13-18).

This unprecedented review of the legislative *acquis communautaire* affects labour law in particular. In 2015 the REFIT initiatives were numerous. The evaluation of the Written Statement Directive of 1991, which lays down information obligations for employers in relation to employment contracts, has been launched as an ex-post evaluation. The objective is to assess the compliance, relevance, effectiveness, efficiency and coherence of the Directive. It thus seeks also to identify its EU added value, in particular in respect of the two objectives of the Directive: 1. to provide employees with improved protection against possible infringement of their rights and 2. to create greater transparency on the labour market.

No impact assessment is planned yet, however. The evaluation will include 'an examination of any amendment to the Directive or other actions that prove to be necessary in order to achieve the objectives assigned to the Directive' (Roadmap 2016). This evaluation is currently being carried out by an external consultant and should be finalised by October 2016. It is complemented by interviews with key EU-level stakeholders, including the European institutions and the EU Social Partners (the European social partners were already interviewed in spring 2015). Finally, a 3-month open public consultation will be launched in January 2016.

The Commission has also set its sights on the REACH legislation which

aims to improve the protection of human health and the environment through four processes, namely the registration, evaluation, authorisation and restriction of chemicals. A Fitness Check of the most relevant chemicals legislation not covered by REACH, as well as related aspects of legislation applied to downstream industries, was launched in 2015. In parallel, a REFIT will be carried out in 2016, the aim being to develop legislative initiatives under the aegis of REACH. The Commission is also expected to issue an implementing regulation on simplifying the authorisation procedure under REACH, as well as a Commission Implementing Regulation on transparency and cost-sharing in substance information exchange fora (SIEF) under REACH. Finally, the formal evaluation is expected to be launched for completion in 2017.

Concerning the REFIT of the 24 Occupational Health and Safety Directives launched in 2015, the final report of the external consultancy agency is expected to be published in 2016, together with a Commission communication.

The REFIT ex-post evaluation of Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security was carried out in 2015 via a questionnaire sent to all member states. This method was complemented by an evaluation, by an external contractor, of EU28 national social

Refitting workers' rights: progress and setbacks

security systems with a view to gaining an understanding of how the Directive has been transposed and to developing recommendations in view of the possible modernisation of the Directive. Its final report was expected in December 2015. In addition a public consultation, in which the ETUC took part, was finalised by 15 December 2015.

The REFIT Evaluation was conducted in 2015 on the Directives on part-time work (1997) and fixed-term work (1999). So far, no information has been published on the outcome of this evaluation.

Turning to the 2016 REFIT initiatives, new initiatives will address the evaluation within the labour mobility package of the targeted revision of the Directive on the posting of workers and the revision of Regulations on social security coordination. Furthermore, the Commission intends to evaluate the scope, the essential health and safety requirements and their links with the related conformity assessment procedure of the lifts directive of 1995.

In the framework of the implementation of the Digital Single Market (DSM) strategy adopted in May 2015, initiatives aim at 'breaking down national silos in telecoms regulation, in copyrights, and data protection legislation in the application of competition law'. Five REFIT exercises will take place with respect to new legal propositions on digital contract rights, copyrights, geo-blocking, free flow of data, and cloud computing. Furthermore, a review of telecom regulations will take place, particularly with respect to the reform of the Regulation and Directive on data protection.

Turning to workers' rights in the digital economy, following an EU public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, the ETUC (2015) stressed that it is of the utmost importance to acknowledge that phenomena like cloud working, crowd sourcing and digitalisation are revolutionising the workplace. It is therefore essential to pass legislation to identify a liable employer. For this purpose, the ETUC emphasises the need to elaborate a proper definition of 'Online platform' so as to recognise that in some cases, depending on the set

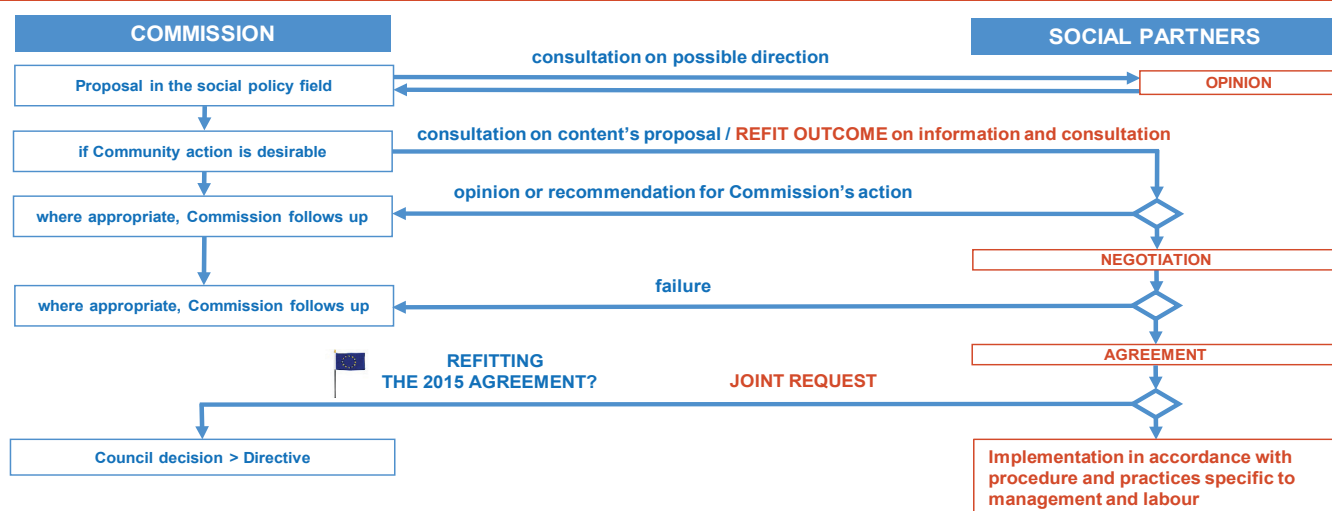
of circumstances, an online platform may constitute an employment relationship involving an employee or an economically dependent self-employed worker or in other circumstances a labour market intermediary (employment agency).

A legal act would further prevent the owners of online platforms or employers from denying the existence of employment relationships and hence from denying their obligations under labour legislation and the fact that freelance digital workers are in need of protection.

Furthermore, the ETUC stresses the need to protect freelance digital workers such as economically dependent self-employed workers and to introduce EU regulation of online platforms aimed at enabling the enforcement of employment rights, including the right to bargain collectively for decent pay, and ensuring that the various online platforms, alongside cloud working and collaborative working, do not become a vehicle for tax avoidance and the non-payment of social security (ETUC 2015).

Refitting workers' rights: progress and setbacks

Figure 4.2 2015 European sectoral social partners agreement on information and consultation in the consultation process under Art. 155(2) EU Treaty



Source: ETUI own research.

European sectoral social dialogue at the front to secure sustainable information and consultation rights

To follow up on the European Commission's 'Better Regulation Agenda' (ETUI and ETUC 2015), the Commission had been expected in 2014 to launch a consultation of the European social partners following the REFIT of Directives dealing with information and consultation of workers. It was not until 10 April 2015, however, that the European Commission announced its intention to embark on the first phase of a social partner consultation on the possibility of recasting in a single text three Directives dealing with workers' information and consultation: the General Framework Directive 2002/14/EC, the Collective Redundancies Directive 98/59/EC, and the Transfer of Undertakings Directive 2001/23/EC.

The follow-up of this procedure has been most probably placed on hold in order to accommodate the initiative

taken by the European sectoral social dialogue partners of the public services to start negotiations, as allowed by the EU Treaty, on one of the outcomes of the REFIT, namely to include public services in the remit of the Directives on information and consultation; this would extend the practical effect of the Directives to cover a significant proportion of the workforce. This most important aspect has been reiterated in the ETUC's reply to the 1st stage consultation on June 2015.

An additional reason to launch negotiations has been the impact of the austerity measures on public administration and in particular the drastic pay freezes, cuts in wages and jobs, leading to approximately one million lost jobs, but also changes to contractual arrangements and working conditions.

Based on this shared evaluation, trade unions and employers of central administration were convinced that public administration should be able to better tackle such restructurings via a better information and consultation of the workforce and should therefore build on the outcome of the REFIT on the information and consultation to overcome the current shortcomings of the EU legislation so as to consolidate public employees' rights on information and consultation and adoption of a legally binding European framework on information and consultation to public administration and

to improve restructuring at the national level of public administration.

Outcome: On 21 December 2015, a landmark agreement was reached between representatives of the Trade Unions National and European Administration Delegation (TUNED) and the European Union Public Administration Employees (EUPAE). It sets out a general framework of common minimum standards on the fundamental right for the information and consultation rights of public workers in central government administrations, including restructuring, work/life balance, working time and health and safety.

The agreement on rights for central government employees is based on the Directive establishing a general framework for informing and consulting employees in the European Community (2002/14/EC). It extends its scope of application not only to civil servants but also to contractual employees in public administration; it widens furthermore the material scope of information to working conditions, work organisation, training, gender, social protection and remuneration and the scope of consultation obligations' to health and safety, working time, work-life balance and restructuring. It gives a broad definition to restructuring; finally, it clearly identifies the specific role of trade unions in managing restructuring. The agreement does not, however, foresee any participation of trade union representatives in

Refitting workers' rights: progress and setbacks

the form of negotiating agreements, as is proposed in the directive.

Follow up: The next step appears a most challenging one, as the European sectoral social partners have jointly requested the Commission to pass the agreement to the Council for adoption, so that it can be turned into a Directive in line with articles 154-155 TFEU. The adoption of a directive would give the agreement a binding legal value akin to European legal acts, and would entail for the governments the obligation to be transposed into their national legislation. If successful, the procedure would provide the opportunity for the Commission to implement the letter and spirit of the 2015 announcement on the need for a 'new start' for social dialogue, and demonstrate a solid commitment to improving the rights of workers across the EU (European Commission 2015). This agreement, in particular if turned into a directive, would provide a simple and effective way of lifting the current exclusions of public administration from the fundamental rights of information and consultation of workers, as anchored in the charter of fundamental rights of the European Union, which has the same legally binding value as the Treaties.

However, as with the 2010 European sectoral agreement on hairdressing offering clear guidance for hairdressers to work in a healthy and safe environment, the Commission might want to carry out an impact assessment. This is the only case of its kind so far not to have been passed to the Council, due to a protracted impact assessment, although the Treaty foresees no such veto procedure. This has led to severe criticism of the European Commission for not living up to its political and legal responsibility to decide on a request from the social partners in a timely and impartial way (UNI 2013). The Commission's latest position in this respect is that it does not intend to address the issue until the end of a broader review on occupational health and safety legislation. At the time of the writing, such a review has been completed; however, the Commission does not intend to publish a communication until autumn 2016.

In the ideal case, the 2015 agreement on rights for central government employees might be passed to the

Council, either because the Commission's impact assessment will be carried out quickly and will turn out to be positive or because no impact assessment might be necessary given the direct link of the agreement with the REFIT on the three Information and Consultation Directives. Even in this ideal case, the agreement will still have to be approved by the Council before it could be turned into a Directive. Given the current political complexion of the Council, this last step might also become a real obstacle.

What role for the EU social dialogue in the digitalised world of work?

Figure 4.3 The introduction of new technologies/telework and the European cross-industry social dialogue

Date	Social Partners involved	Title
1985-11-12	ETUC / UNICE-CEEP	Joint Declaration UNICE-ETUC-CEEP on social dialogue and new technologies
1991-01-10	ETUC / UNICE-CEEP	Joint opinion on new technologies , work organization and adaptability of the labour market
2002-07-16	ETUC / UNICE-CEEP-UEAPME	Framework agreement on Telework
2006-06-28	ETUC / UNICE-CEEP-UEAPME	Implementation of the European Framework Agreement on Telework – Report by European Social Partners
2015-07-16	ETUC / BUSINESSEUROPE-UEAPME-CEEP	Fifth multiannual work programme for 2015-2017 – "Partnership for inclusive growth and employment"

Source: Own research by C. Degryse and S. Clauwaert, ETUI, in ETUI Sectoral Social Dialogue Database and the European Commission social dialogue texts database, 2016.

The potential social benefits of the digital revolution are not automatic

For the past few years, an intense European and national debate has been taking place on digitalisation of the economy, marked by terms like 'Uber', 'Big Data', 'internet platforms', 'cloud computing' and 'collaborative economy'. The European Commission has declared the creation of a 'Digital Single Market' (DSM) to be a top priority; it is claimed that the DSM can, in the course of the mandate of the current Juncker Commission, not only generate up to EUR 250 billion of additional growth in Europe but also, simultaneously, generate the creation of thousands of new jobs, notably for younger job-seekers (European Commission 2015).

Yet in this debate and the related policy documents, the impact of the digital revolution on labour markets and workers' rights and interests is hardly touched upon.

The challenges of the 'information society' and/or the introduction of new technologies is not, of course, a new phenomenon confronting workers in general and the national and European social

partners in particular. In fact, at the cross-industry as well as at the sectoral level, the European social partners have been able to build up a certain *acquis* and expertise in this field.

At the cross-industry level, the first joint texts on how to deal with the impact of the introduction of new technologies on labour markets and work organisation date back as far as 1985 – long before the creation of the institutionalised European social dialogue, as we now know it, under articles 152-155 TFEU (see Figure 4.1). As for the European sectoral social dialogue, joint texts on the social impact of the information society and new technologies started appearing around 1997. These were mainly (and perhaps predictably) concluded in the telecommunications sector; but over time, such joint texts were concluded also in other sectors, such as the railways, banking and electricity sectors (see Figure 4.2). In addition, at both cross-industry and sectoral level, the respective European social partners' interest was also triggered by a particular form of work requiring the use of new technologies, namely telework; accordingly, they sought to provide (regulatory) frameworks to protect the rights and interests of the workers concerned (see Figures 4.1 and 4.2). Looking in particular at the texts on the introduction of new technologies, including those dating from the 1980s, the concerns of the European social partners – and in particular the trade union side – boil down

to the same topics as mentioned above, i.e. job creation/destruction, new flexible forms of work, individual and collective rights, training and skill needs, data protection, etc. The European (and national) social partners will thus undoubtedly be able to build on this expertise to contribute the appropriate policy solutions in the new digitalisation debate.

However, looking at the importance the European Commission attaches to the digital revolution and the magnitude attributed to its effects, the European Commission seems to see itself a bit like the Star Trek Starship Enterprise travelling towards that final frontier, the Digital Space. The EU Commission seems keen to 'explore strange new worlds' and 'boldly go where no man has gone before'. This new world will certainly create opportunities and benefits but the Commission seems blind to the social risks.

As for the cross-industry level, the only recent joint text referring to the impact of digital technologies is the fifth multiannual work programme for 2015-2017 – 'Partnership for inclusive growth and employment' – concluded between ETUC/BUSINESSEUROPE/UEAPME/CEEP in July 2015; this programme includes a (rather limited) objective to exchange views on 'skills needs in digital economies' (ETUC *et al.* 2015).

In the meantime, however, the ETUC has analysed and taken positions on particular aspects of the social dimension of

What role for the EU social dialogue in the digitalised world of work?

Figure 4.4 The introduction of new technologies/Telework and the European sectoral social dialogue

Date	Sector	Social Partners involved	Title
1997-11-20	Telecommunications	Joint Committee on Telecommunications	Draft Proposal for a Joint opinion on the Social and Labour Market Dimension in the Information Society
1997-11-20	Telecommunications	Joint Committee on Telecommunications	Recommendatory framework agreement
1997-11-23	Telecommunications	Joint Committee on Telecommunications	Joint opinion on the study concerning the effects on employment of the process of liberalisation in the telecommunications sector
1998-03-23	Telecommunications	Joint Committee on Telecommunications	Opinion on the green paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation (COM (97) 623)
1998-11-23	Telecommunications	Joint Committee on Telecommunications	Opinion on Telework
2000-05-01	Railways	ETF / CER	Joint Working Group on the use of new technologies in training (FS SpA – RENFE – SNCB/NMBS – SNCF). General Assessment of the Working Group.
2001-02-07	Telecommunications	UNI-Europa / ETNO	Guidelines for Telework in Europe
2001-04-26	Commerce	UNI-Europa / Eurocommerce	European Framework agreement on Telework in Commerce
2001-06-14	Banking	Uni-Europa / EACB, ESBG, FBE	IT employability in the European banking sector
2001-07-05	Banking	Uni-Europa / EACB, ESBG, FBE	Study on IT employability in the European banking sector
2002-11-13	Electricity	EPSU, EMCEF/ EURELECTRIC	Joint Declaration on Telework
2004-01-13	Local and regional government	EPSU / CEMR-EP	CEMR-EP / EPSU joint statement on Telework
2013-11-18	Electricity	EPSU, industriAll / EURELECTRIC	The impact of energy technologies and innovation on the electricity sector and employment
2014-11-19	Road transport	ETF / IRU	Taxis-for a level playing field
2015-02-10	Insurance	UNI-Europa / BIPAR, AMICE, InsuranceEurope	Joint Declaration on Telework by the European social partners in the insurance sector
2015-12-04	Hospitality/tourism	EFFAT / HOTREC	Joint Statement on the "Sharing Economy. For a level playing field and fair competition in hospitality and tourism"
2015-12-11	Local and regional administration	EPSU / CEMR	Joint Declaration on the opportunities and challenges of digitalisation in local and regional administration

Source: Own research by C. Degryse and S. Clauwaert, ETUI, in ETUI Sectoral Social Dialogue Database and the European Commission social dialogue texts database, 2016.

the digital economy via several resolutions and/or workshops (e.g. ETUC 2015a and b; and three workshops in 2015-2016 on 'digitalisation and information, consultation and participation', 'the sectoral stakes of digitalisation' and 'legal aspects and academic research').

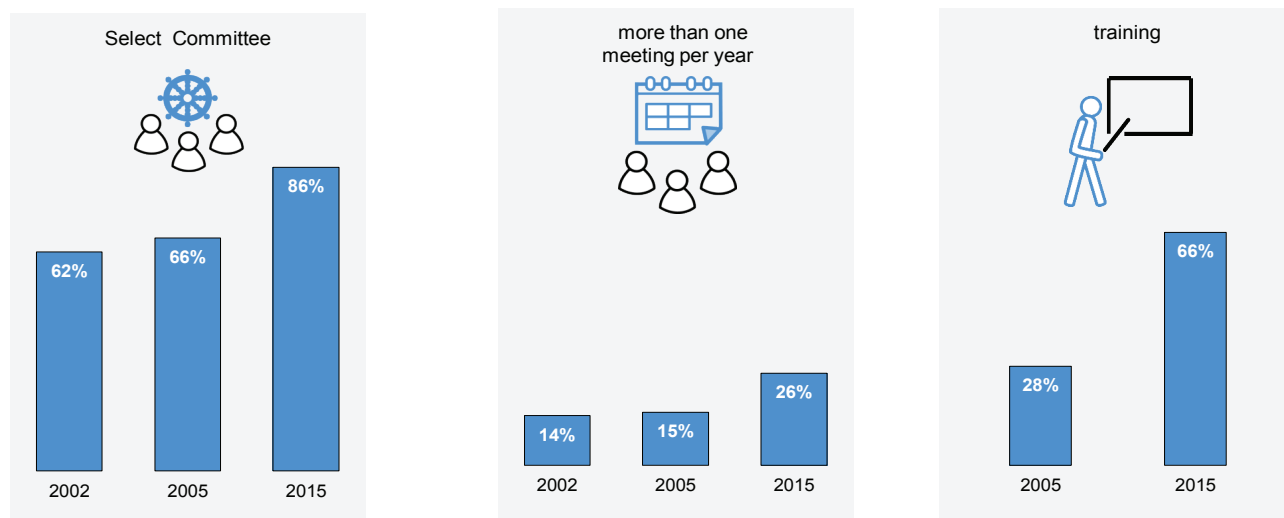
On the other hand, at the sectoral level, at least some – perhaps rather unexpected – sectors have adopted joint texts on particular aspects raised by the new digitalisation wave. Firstly there is the joint position of November 2014 in the road transport sector between IRU and ETF on creating a level playing field in relation to working conditions for taxis and hire cars with drivers in response to the self-proclaimed 'ride-sharing' forward transport platforms like the oft-cited case of Uber. Secondly, in December 2015, EFFAT and HOTREC adopted a statement in relation to the unfair competition inflicted on their hospitality and tourism sector by new online platforms such as Airbnb and Couchsurfing. And, finally, there is a EPSU-CEMR joint declaration on the opportunities and challenges

of digitalisation in local and regional administration of December 2015 (for the preparatory work, see also EPSU-CEMR (2015a and b) and EPSU 2015) (see Table 2). Other European Trade Union Federations affiliated to the ETUC are also developing initiatives or positions. For example, IndustriAll has issued several Policy Briefs (e.g. IndustriAll (2015a,b and c)) as well as an official position entitled 'Digitalisation for equality, participation and cooperation in industry – More and better industrial jobs in the digital age' (IndustriAll (2015d)). UNI-Europa has issued a statement entitled 'Digitalisation, Work and Employment' (UNI-Europa *et al.* 2015) and a critical assessment of the Commission's digitalisation strategy. EFFAT has issued a position paper on the European tourism sector on 'The "Sharing Economy" in Tourism' (EFFAT 2015). Finally, ETUCE was the first trade union to sign a pledge with the Grand Coalition for Digital Jobs implemented by the Commission (ETUCE 2015). For more European and in particular national trade union/social partner initiatives, see Degryse (2016).

As the new digital industry currently occupies a sort of legal no-man's land, the European trade union movement is preparing itself to counter the purely economic narrative of the benefits of this Digital Single Market and is intent on raising more awareness for its social dimension. Firstly, although the social challenges may be described as 'old problems in new bottles' (ETUC 2015b), the magnitude of this new policy agenda, and thus its likely impact, will very likely be much greater than for any previous 'technological revolution'. And, secondly, to paraphrase the conclusion of a 1998 opinion of the Joint Committee on Telecommunications (see Figure 4.2): although this new technological revolution may potentially entail clear social benefits, these will not come by themselves and will require safeguarding. And trade unions and workers' representatives on every level (EU social dialogue, trade unions, EWCs and SEs, national works councils) will thus be needed more than ever to ensure and enforce these safeguards at all levels.

European Works Councils

Figure 4.5 EWC characteristics over time



Source: Kerckhofs (2000, 2006), De Spiegelaere and Jagodzinski (2015).

Proliferating best practice in European Works Councils

Making a European Works Council a genuine institution for transnational information and consultation of employees is not a given. The members of an EWC face many obstacles and challenges in order to effectively express a European employee voice. Language differences, lack of expert assistance, lack of time, vague purposes of meetings and an uncooperative management are just some of the many recurring difficulties to be overcome.

EWCs have now been in existence for over 20 years. This long experience enables them to learn from past experiences and to develop more efficient practices. In this process, the EWCs are helped by the services of the European Trade Union Federations which help them to learn from good (and bad) practices. Additionally, the 2009 EWC Recast Directive was aimed specifically at improving the effective functioning of EWCs.

So how have EWCs' practices evolved over time? If we compare the

EWC population from 2002, 2005 and 2015 we can see some clear trends.

First of all, the use of select committees (a smaller coordinating group of EWC representatives) is gradually spreading to almost all EWCs. In 2002, slightly above 60% of all EWCs had a select committee, a proportion that had risen to over 80% by 2015. Such a committee has proved very useful as its work keeps the EWCs active between meetings. Select committees were already included in the subsidiary requirement of the original 1994 EWC Directive, but the 2009 EWC Recast Directive requires the parties to decide explicitly whether or not to establish such a committee.

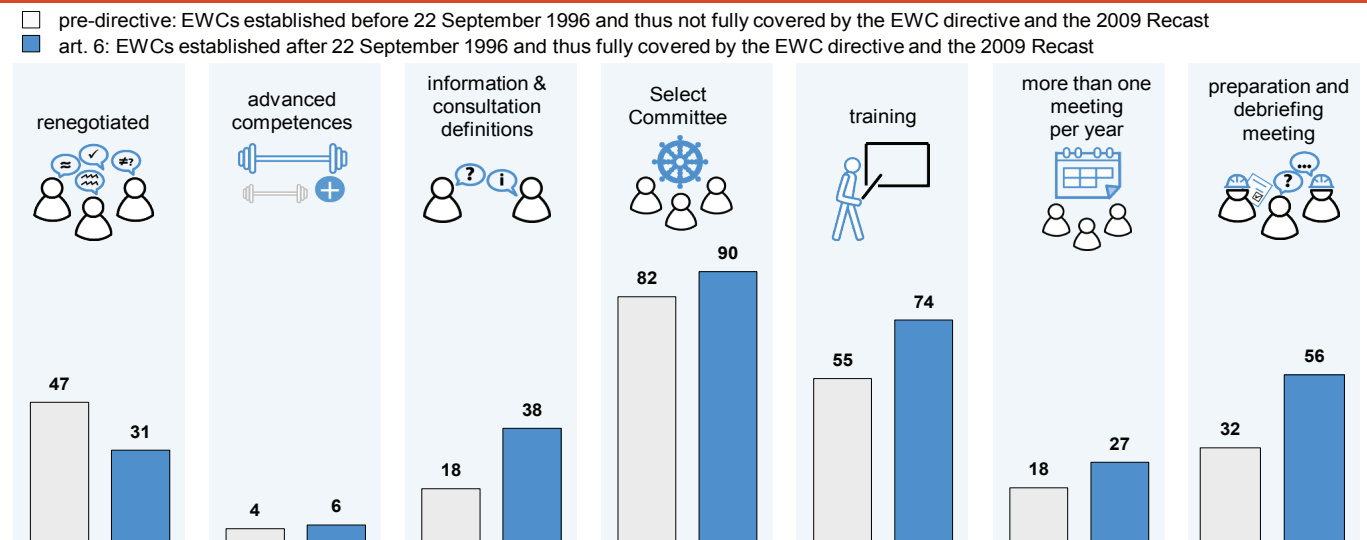
Secondly, a lack of technical competences can be countered by providing the representatives with specialised training. This training helps them in assessing the information provided and in preparing questions, comments and opinions for the consultation, and it is considered useful by both the employer and the employee side (GHK 2007). In 2005, only 28% of all EWC agreements provided for training for the employee representatives; within 10 years, this proportion has more than doubled to above 60% in 2015. This remarkable increase in training provision is very likely due to the recognised effectiveness of training, the supply of specialised and effective sessions and the policy attention to training issues in the 2009 Recast of the EWC Directive.

Thirdly, the number of meetings held by EWCs is a crucial factor. In both the original Directive and the 2009 Recast, the minimum requirement for plenary meetings is one a year. Since company measures and strategies are likely to change over time, meeting once every 12 months is a weak basis for a vibrant and effective information and consultation process. Even though the regulation did not change on this matter, we do see a slight increase in the numbers of EWCs planning to hold regular meetings at least twice. Additionally, in about 86% of all EWCs some form of extraordinary meeting is included in the agreements. These are meetings convened for the purpose of information and consultation on transnational measures under consideration by central management. It is the pivotal right of an EWC to make use of its right to meet to be informed and consulted about measures that are under consideration in the course of the year. Only in this way can the EWC's right to be informed in a timely way be ensured.

Obviously, EWCs are an 'institution in the making', facing numerous obstacles before they can fully live up to their potential. Over the years, we see a general learning process supported by changing regulation which is likely to improve the overall efficacy of EWCs. The organisation of select committees, the increase in the number of meetings and the almost generalised provision of training are three examples of the uneven spread of good practice.

European Works Councils

Figure 4.6 EWCs under different regulatory frameworks



Source: De Spiegelaere and Jagodzinski (2015).

The long shadow of the 1994 Article 13 exemption

No two EWCs are the same—and there is a stratified landscape of agreements marked by their particular legal base. It makes a difference whether an EWC is anchored within the frame of the EWC Directive, or whether it is recognised as a formal exemption from the national rules.

On the long road towards the 1994 EWC Directive, the European legislator drew inspiration and legitimacy from existing voluntary practices. The regulatory framework sought to recognise and retain these self-regulatory practices. It did so in two ways. First, as an expression of regulated self-regulation, it sets the boundaries and minimum requirements for EWCs, but provides the negotiating parties with sufficient autonomy to develop their own, possibly divergent, practices. Secondly, the original 1994 Directive included the famous Article 13 exemption, according to which all EWCs established before the Directive's entry into force in September 1996 would be completely self-regulated and exempt from the rights and obligations arising from the 1994 Directive.

As European legislation became increasingly likely, and once the Directive was adopted, the number of initiatives to negotiate these 'pre-Directive Agreements' increased dramatically. The number of new EWCs rocketed during the two-year implementation phase of the Directive – i.e. in the two years between its adoption and its entry into force. Moreover, even if these EWCs may have since renegotiated the terms of their agreement, they generally tend to maintain their status as pre-Directive EWCs.

In 2002, 67% of all EWCs were established under this 1994 Article 13. Overall, this proportion of voluntary or pre-Directive EWCs can be expected to decrease naturally over time, but this is clearly a slow process: in 2015 as many as 44% of EWCs are still not fully covered by the regulations of the original or the recast Directive. This proportion varies by sector, with 57% of EWCs in the chemical sector being pre-Directive, while only 24% of the EWCs in the transport sector date back to before September 1996.

An analysis of all EWC Agreements reveals a clear relationship between the legal status and the quality of the most recent agreement. Pre-Directive EWCs are less likely to have competences that go beyond mere information and consultation, such as the EWC's competence to initiate projects, make recommendations, or engage in negotiations; they are far less likely to have clear definitions

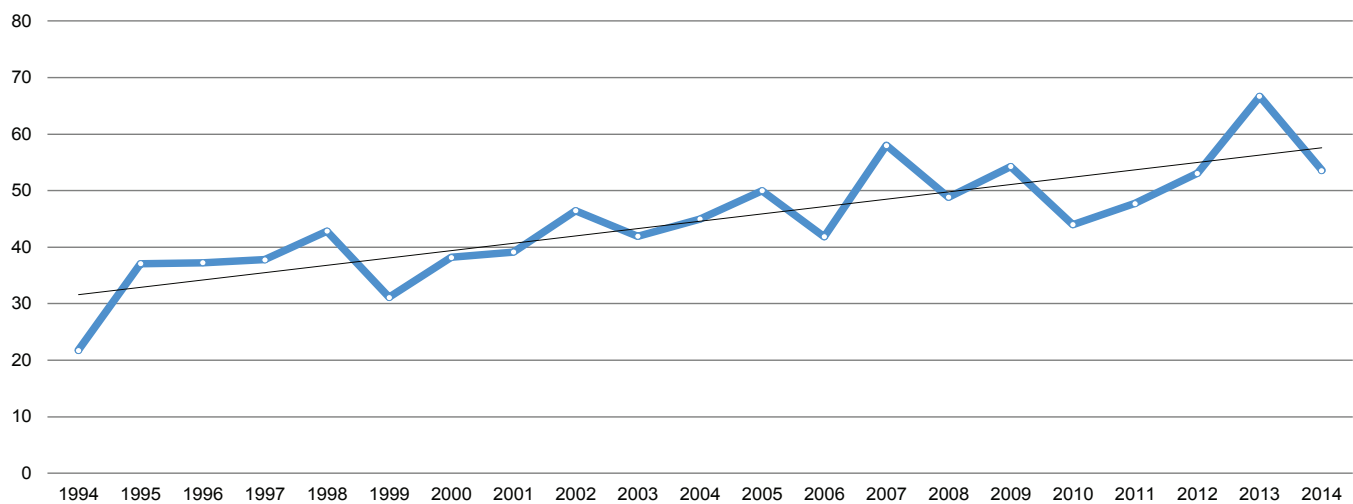
of what constitutes information and/or consultation; they are less likely to have a select committee, less likely to have a clear right to training, less likely to have more than one meeting a year, and they are a great deal less likely to have the right to hold a preparatory and debriefing meeting without the management.

These differences are significant, and all the more surprising, since about half of the EWCs functioning under the 1994 Article 13 have since renegotiated their agreement. These renegotiations would have provided an opportunity to align the EWC's functioning with recent regulation and practices, but obviously a large proportion of Pre-Directive EWCs have not managed to do so. While some of those renegotiations provided the EWC with very similar or equivalent rights as EWCs fully functioning under the EU regulation, the legacy of the first directive and its famous exemption clause is clearly observable.

Moreover, the legacy of the first Directive is likely to linger for a long time as the proportion of pre-Directive EWCs, while declining, is doing so at a very slow pace. In the year in which progress can be expected in the debate about a possible revision of the EWC Directive, the message that pre-Directive EWC agreements are less able to benefit from an improvement in the Directive's provisions is an important one.

European Works Councils

Figure 4.7 % of agreements signed per year which include an occupational health and safety competence



Source: ETUI database of EWCs, www.ewcdb.eu (January 2016).

Addressing occupational health and safety in EWCs

Occupational health and safety (OSH) has a well-established legal framework. Next to the EU Framework Directive 89/391 that provides overarching provisions aimed at promoting a culture of prevention and safety management, there are 24 other 'Daughter Directives' which set additional provisions regarding specific hazards.

However, occupational health and safety protection does not end with the EU legal framework. National laws can go beyond the principles set by the Directive. This, combined with the extensive range of activities developed by the European Agency of Safety and Health at Work, gives Europe a solid foundation for OHS. Of course, the world of work is evolving rapidly; thus, the current system needs to be continually improved.

New technologies, materials and forms of work cause new hazards and risks that both the legislator and individual companies need to prevent. Health and safety can be addressed at various levels

and actors like the national OHS system, labour inspectorates, EU OSHA Focal Points in each country, or worker safety representatives in each company, all contribute to better prevention.

Despite significant differences in the ways in which occupational health and safety is dealt with at the workplace level, it is a common feature across the EU that as a rule there is a role for elected employee representatives.

One interesting trend is the fact that health and safety is increasingly part of the mandate of European Works Councils (EWCs).

The data from the ETUI EWC Database show that over time, EWC agreements more often include health and safety competences. Whereas, of all EWC agreements signed in 1994, only 20% included OSH competences, this proportion has risen to over 50% in the last three years alone.

This is obviously a positive trend but the figures can hide different realities. EWCs can address health and safety in different ways.

Some EWCs clearly stipulate in their agreement that OHS is not part of their competences. This would not, however, preclude EWC members from exchanging among themselves, either generally, or on a case-by-case basis.

In other EWC agreements, OHS is limited to information about company safety and environmental performance, such as the number of accidents, lost time

incidents, and related changes in work organisation. Still, this information can provide employee representatives with important benchmarks about health and safety protection across the company and supply arguments and examples for local improvements.

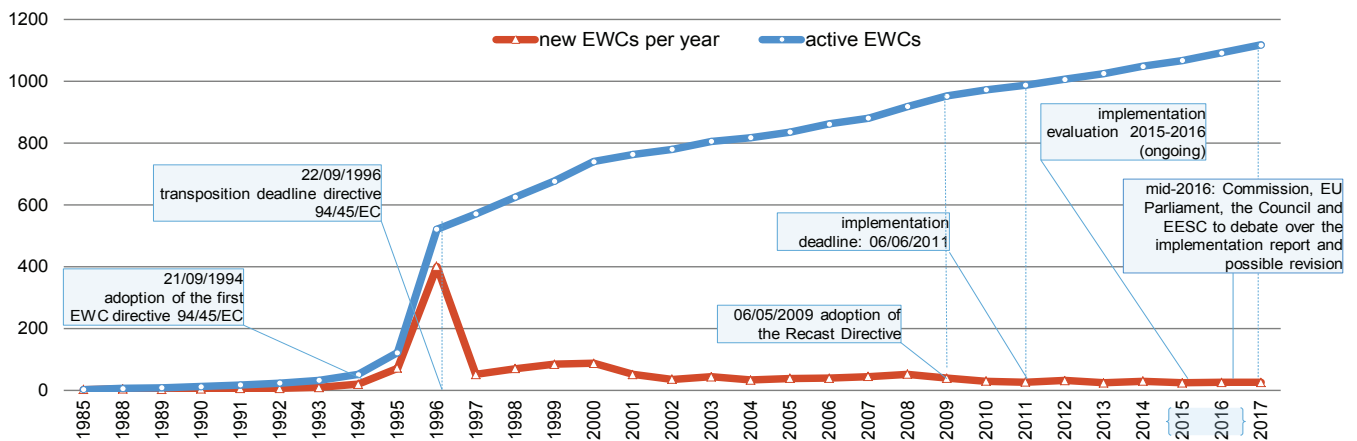
In other EWCs, employee representatives are informed by central management, and also play a more proactive role by proposing, identifying and sharing good practices in different countries; they are provided with access to experts and training on issues like psychosocial risk factors, working conditions or work organisation. This makes them well-placed to develop more systematic monitoring approaches. As increasing numbers of companies develop an own interest in company-wide approaches to health and safety protection, this could further encourage engagement by the employee representatives on the EWC.

Finally, some EWCs build upon solid and comprehensive information and consultation practices by actively liaising with workers' safety representatives and joint health and safety committees which can monitor, investigate, and contribute to better health and safety.

More research is needed to better support EWCS as they engage with health and safety protection, to ensure that they can become genuinely involved in OHS issues for the benefit of the entire European workforce.

European Works Councils

Figure 4.8 EWC developments in context of legislative milestones



Source: ETUI database of EWCs, www.ewcdb.eu (January 2016).

On the eve of another revision?

2016 can be expected to be an important year for European Works Councils (EWCs). It will see the publication of the formal implementation report for the 2009 Recast EWC Directive, which will be based on the report commissioned from an external consultancy in 2015. The Commission's Implementation Report is the basis for the formal inter-institutional exchange between the European Commission, the Council, and the European Parliament, which may result in further amendments and/or the launch a full revision process of the Directive. The entire process of monitoring and evaluating national implementation acts thus holds the key to opening a debate on remedying shortcomings identified in the operation of EWCs under the Recast Directive.

As recent ETUI research (De Spiegelaere and Jagodzinski 2015; Jagodzinski (ed.) 2015) demonstrates, despite improvements offered by the Recast Directive in some areas, many shortcomings remain. Firstly, one of the primary goals set by the Recast Directive (Recital 7 of the Preamble) is to increase access to transnational information and

consultation rights by facilitating the conclusion of new EWC agreements. This goal has not been reached. The only 72 new EWCs established since the Recast EWC Directive entered into force in 2011 (ETUI database of EWCs, www.ewcdb.eu, accessed 28/01/2016) account for no more than 7% of currently active bodies; the new EWC Directive has clearly not given the desired boost. At the same time, it should be noted that, notwithstanding its declared objective to increase the number of EWCs, there is nothing in the Recast EWC Directive that actually provides any impetus or incentive to conclude agreements.

Secondly, with respect to the crucial process of transposing the Directive in the member states, several issues have been identified by leading experts working under the aegis of the ETUI. A universal feature of almost all national implementation measures is the (varying) extent to which they simply reproduce the text of the Recast Directive verbatim in the national legislation. In some instances, this copy-and-paste method may be justified – for example, to ensure a harmonised transposition of key definitions. In most cases, however, this method often amounted to reproducing the Directive's general formulations and goals without providing the necessarily country-specific precise, concrete and effective procedures needed to make the achievements of the Directive concretely

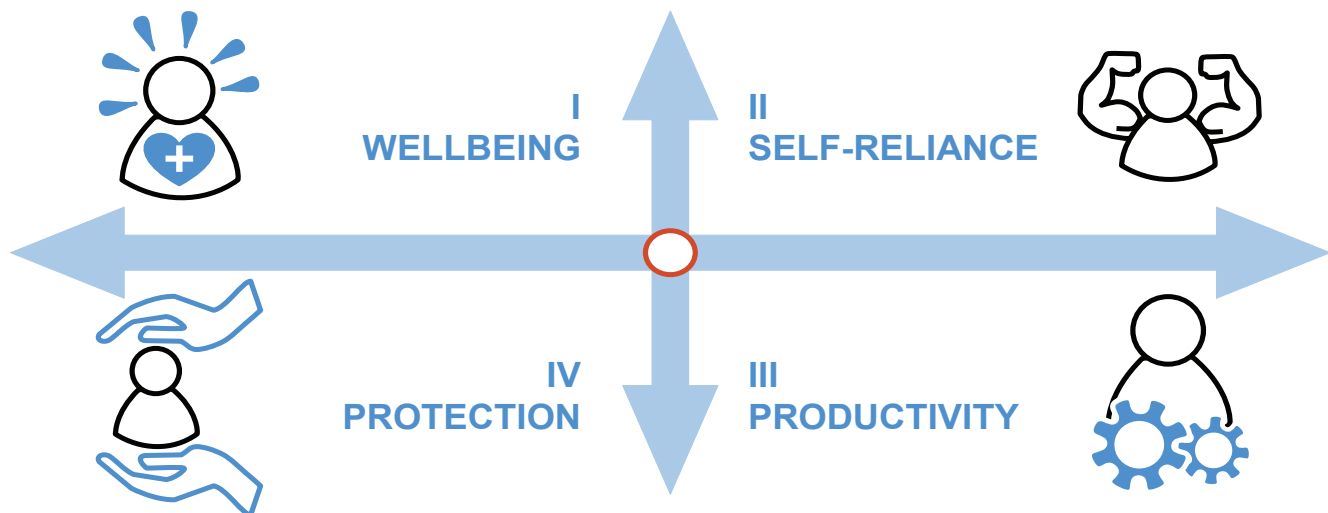
available to workers. There was, in other words, no real transposition. The consequence of this approach by national legislators has been a significant reduction in the *effet utile* of the Directive, i.e. its power to improve the rights and situation of workers. National authorities' fixation on abiding only by the formal rules and often minimal implementation is expressed also by the common stark disregard for the Preamble that harbours the spirit of the Directive.

This general observation has been formulated on the basis of analysis of implementation of concrete provisions such as the definition of the transnational competence of EWCs, the articulation between the national and European levels of information and consultation, the means provided to EWCs and enforcement provisions (including sanctions) to name just a few (see also ETUC and ETUI 2015 and 2014).

While views remain divided as to whether a full revision of the Directive is necessary, there are widely shared expectations that the Commission should in 2016 pursue a thorough and objective evaluation of the national legislation and take corrective measures wherever necessary.

How to imagine health and safety for future generations?

Figure 4.9 Scenarios for the future of occupational health and safety regulation



Source: ETUI own research.

OHS 2040: a long-term view on health and safety

As outlined above, the European Commission is applying the measures of the Better Regulation Package to all European Directives related to occupational health and safety.

In 2015, the ETUI developed and implemented a project on scenario building. The result of this work has been the identification of the factors that will significantly influence the future OHS environment and the building of scenarios. These can now be used to establish a dialogue with other actors, draft proposals, take decisions and act.

Four distinct potential scenarios that can impact future generations have been identified. They were named: wellbeing, self-reliance, productivity and protection.

Wellbeing is the scenario that envisages the need for both appropriate responsive legislative framework and genuine participation of all stakeholders. Consensual decision-making takes time and requires a high level of investment. A high degree of worker participation is required

at all appropriate decision-making levels in the companies, as well as high worker participation with inclusion in strategic decisions and in negotiations. Health and safety is safeguarded on the basis of generally accepted and enforceable legislation and internal rules in the company, as well as a genuine social dialogue.

Self-reliance is the second scenario. It revolves around soft law and good practices, increased transparency and a self-organised environment, with a high investment in digitalisation and ITC innovation. Openness to technological innovation can ensure safer workplaces but at the same time results in workplaces being open to risks. The lack of formalised rights and standards or collective representation and workers' participation is offset by the primacy of individual involvement in OSH questions. Individuals become more responsible in OHS issues and, because they are better informed, companies and society can reach better levels of health and safety in workplaces. This scenario requires high-tech businesses and highly skilled workers.

Being fit for work describes the Productivity scenario. Here the role of the regulatory framework has less impact and the corporate world has become the driving force in shaping OHS standards. There is high-quality health and safety in peak performers; however, high work density increases psychosocial risks. In 2040, a healthy company becomes so by excelling

in its ability to apply its own OHS rules, monitoring units and sanction systems. In such a scenario, the role traditionally played by preventive services such as the labour inspectorate would probably be reduced, but there may be ample space for highly institutionalised worker participation at the company level.

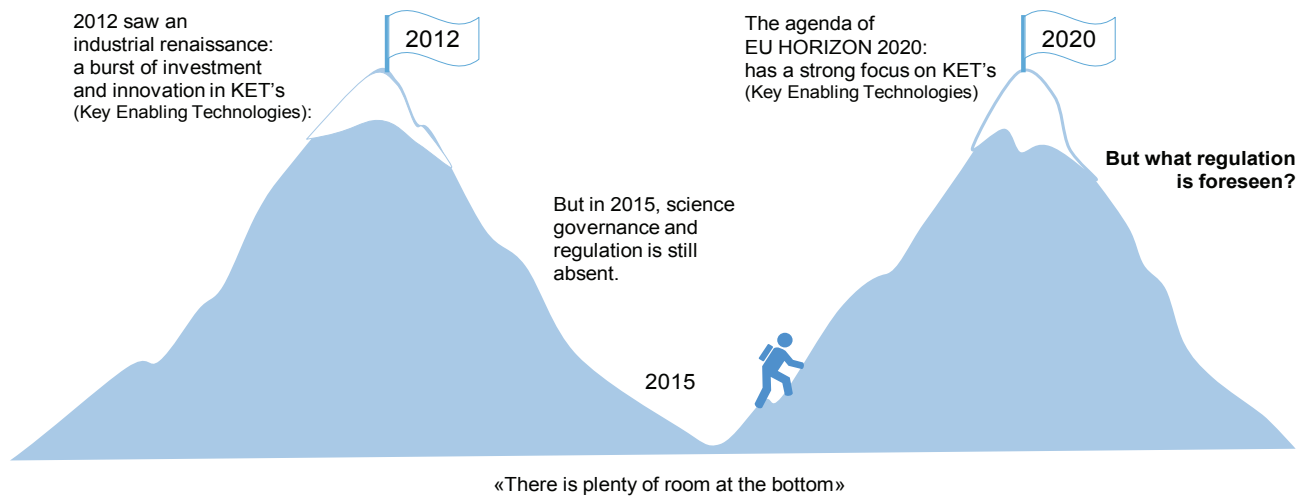
The so-called Protection scenario arises from a cascade of multiple crises, economic and social problems, demographic change, migration, etc. In this scenario, minimum security becomes a high priority and OHS becomes a matter of public health. National funds may be used to improve national health systems.

Elderly and migrant workers benefit from a wide variety of state-supported health programmes to foster their employability. There is an increase in the number of organisations based on command and control as a tool for managing OHS and accidents. Worker representatives evolve in their role and become watchdogs, who act when standards are not met and when the command and control does not operate as it should.

None of these scenarios is an ideal model. They are multifaceted narratives that aim at helping the discussion on the core values, technological and societal changes that help refitting a plausible future of OSH. They also will contribute to shaping the type of OSH that we want to leave to future generations in Europe and globally.

Governing emerging and innovative technologies

Figure 4.10 The long climb to regulating innovation



Source: ETUI own research.

Regulating Key Enabling Technologies

The European Commission has placed specific emphasis on Key Enabling Technologies (KETs) and decided to support the sector financially to the tune of almost 6 billion euros.

However, 2015 was a year in which science governance suffered a major dropdown – and nanotechnologies are an example of that worrying trend.

The workplace and the legislature are two key arenas in which science governance takes place. It is important for these technologies to be regulated both in law and in day-to-day practice.

Various EU-based multinational companies and SMEs produce and market a wide variety of nano-enabled products with new functionalities. These can now be found in almost all industrial sectors: automotive, construction, chemical, health, sports, transport, water, etc. However, no adequate regulation ensuring the protection and proper training of workers has been put in place yet. Surveys conducted in 2008 and 2012 reveal that companies are unsure about how best to go about protecting health and

safety. Additionally, it is not clear how to properly inform and train workers (Conti 2008; INRS 2010; Engeman 2012).

Member states, trade unions and NGOs have been demanding that nanomaterials produced or imported in the EU be traced, and that quantities be known. This could be achieved in different ways, one possibility being to amend the annexes of the existing REACH regulation.

In 2015, the regulatory initiatives that were ongoing were suddenly faced by a new and negative attitude at Commission level. Ten member states have asked the Commission to establish a European registry of nanomaterials. Several others, such as France, Belgium, Denmark, and Sweden are already setting up their own registry at national level. Yet the Commission services are non-reactive and are still having internal discussions about the matter.

The issue of how properly to govern nanotechnologies, as an example of future and enabling technologies, should be squarely and decidedly put on the table. This can be done by conducting an analysis of societal risks and benefits, by ensuring transparency as to what is produced by EU companies, by tracing what is imported, and by guaranteeing traceability throughout the industrial supply chain. Exposure assessment based on safe-by-design and human exposure traceability at company level, two other

key weaknesses, should also be considered as key aspects.

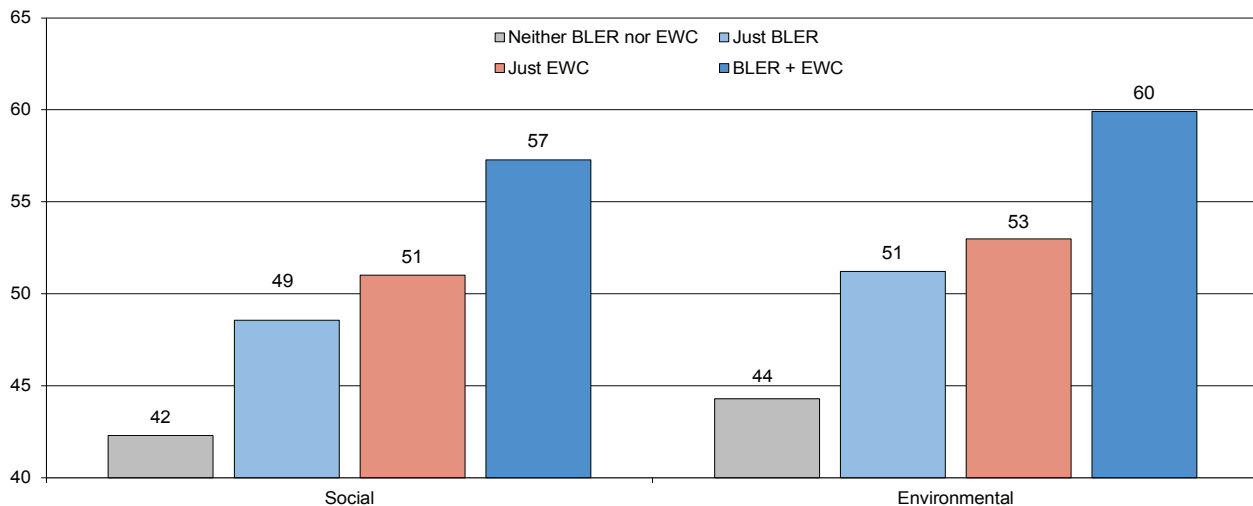
Innovative technologies like nanotechnologies, advanced manufacturing, robotics and others are vital for Horizon 2020 and can contribute to creating jobs and upgrading skills. However, they cannot be developed without a robust regulatory system, controlled conditions for the integration of the technology in the workplace, a real improvement in the levels of workers' knowledge and safe working environments.

Time has come to revisit Feynman's famous lecture 'There is Plenty of Room at the Bottom'. Science regulators should climb out of the regulatory black hole that 2015 has been and start building a genuine and relevant regulatory framework for innovative technologies, one which ensures adequate protection and training at the workplace.

To the extent that these Key Enabling Technologies are increasingly a part of daily working life, it is all the more essential that workers' representatives have the training and the facilities to fulfil their role.

Workers' participation and company sustainability

Figure 4.11 Social and environmental performance of European Companies (2013)



Source: Vitols (2015).

No trade-off between worker rights and sustainability apparent

An empirical analysis of large European firms finds that there is no trade-off between the strength of worker participation and the sustainability of companies. Rather, the presence of European works councils and/or board-level employee representation (BLER) in a company is associated with a higher score on most social and environmental dimensions of sustainability when compared with companies which lack such forms of workers' participation.

While in the 1970s and 1980s the concept of 'sustainability' was linked mainly to environmental impact, experts nowadays agree that this concept must be multi-dimensional. In addition to the environment, the impact of companies on society must also be taken into account. Finally, the governance structures of companies (corporate governance) are seen as a key aspect to be taken into account, since 'good governance' is

needed to encourage the right kind of company policies. Sustainability rating agencies often use the term ESG (environmental, social and governance) to refer to these three overall dimensions of sustainability. These three broad areas can be further broken down into sub-categories, e.g. the social dimension includes sub-dimensions such as workforce development, human rights, and responsibility towards the community. The sustainability data used for this analysis comes from ASSET4, a ratings agency that monitors the sustainability policies and performance of approximately 4,000 companies worldwide, including over 900 European companies. This analysis was based on 534 companies from 16 European countries for which information was available both on sustainability performance (from ASSET4) and the presence of either a European works council (EWC) or board-level employee representation (BLER). Figure 4.11 reports the average scores of companies with one or both of these forms of representation versus companies without such representation. For example, the social score of a large European company with BLER but no EWC was on average 49, or seven points higher than a company with neither BLER nor an EWC. The score of a company with an EWC but no BLER was 51, or nine points higher than a company with neither form of participation. The highest average

social score was achieved by companies with both BLER and an EWC (57 points). Similar results were obtained for environmental performance. For example, a company with both BLER and an EWC could be expected to have an environmental performance score of 60, or 16 points higher than a company with neither of these forms of worker participation. To conclude, worker participation appears to be strongly associated with more sustainability at the company level. This analysis took into account both the size and sector of the company.

Worker participation, the Europe 2020 strategy and the crisis

Figure 4.12 Comparative performance of countries with stronger vs. weaker worker participation rights on five Europe 2020 headline indicators (2009-2014)

Europe 2020 Headline Indicator	Group 1: Countries with stronger participation rights	Group 2: Countries with weaker participation rights	Difference (Group 1 vs. Group 2)
Employment rate, age group 20-64, 2009-2014	72.0	66.1	5.9
Gross domestic expenditure on R&D (GERD), 2009-2014	2.2	1.1	1.1
Share of renewables in gross final energy consumption, 2009-2014	18.6	14.1	4.5
Early leavers from education and training, 2009-2014	9.4	13.2	3.7
Tertiary educational attainment, age group 30-34, 2009-2014	38.8	35.4	3.4
Population at risk of poverty or exclusion, 2009-2014	18.7	29.8	11.1

Source: Vitols and Rux (2016).

Workers' participation no barrier to smart, sustainable and inclusive growth

The overarching economic strategy of the EU, as stated in the Europe 2020 initiative (European Commission 2010), is the achievement of 'smart, sustainable and inclusive growth.' Does workers' participation hinder or help the EU realise its ambition of being 'smarter, greener and more inclusive'?

An analysis of the evidence since the onset of the crisis suggests that the latter rather than the former is the case. The group of countries with strong participation rights has performed much better than the group of countries with weak participation rights, as measured by key indicators for the Europe 2020 strategy.

This analysis is based on two data sources. The first is Eurostat, which gathers data on the EU's progress in meeting goals set out in its Europe 2020 strategy in five areas: employment, R&D, climate change and energy sustainability,

education, and fighting poverty and social exclusion. In each of these areas the EU has defined statistical indicators which allow countries to measure their progress in meeting specific goals. This data is accessible through a dedicated Eurostat website; a series of publications analyse this data and the progress of each country and the EU as a whole towards achieving these targets (Eurostat 2015). A notable aspect of Europe 2020 is that it goes beyond standard economic measures (e.g. GDP growth) to look at a variety of social and environmental outcomes. However, workers' participation is not mentioned in the Europe 2020 strategy document, despite evidence from numerous studies that it can have a positive impact.

To take a closer look at this association, researchers at the ETUI developed the European Participation Index (EPI), which measures the strength of workers' participation at the European level. As reported in detail in the past (ETUI/ETUC 2011: 98-99), the EPI showed that the group of countries with stronger participation rights performed much better on the Europe 2020 'headline' indicators than the group of countries with weaker participation rights. This was based on data from 2008/9, i.e. at the onset of the crisis.

An updated analysis based on Eurostat data from 2009-2014 (i.e. since the onset of the crisis) shows that the strength of workers' participation

continues to be strongly associated with positive outcomes on Europe 2020 headline indicators for all five of the Europe 2020 strategy areas. As shown in Figure 4.12, the group of countries with higher than average scores on the EPI performed better than the group of countries with below average scores on all of the following indicators: 1) the employment rate in the 20-64 age group, 2) R&D expenditures as a % of GDP, 3) share of renewable energy in total energy consumption, 4) share of early leavers from education and training, 5) tertiary educational attainment for the 30-34 age group, and 6) share of population at risk of poverty or exclusion. The relationship with the strength of worker participation is particularly strong in the case of R&D expenditure, which is twice as high in the 'strong rights' group compared with the 'weaker rights' group (see also Figure 4.12 showing correlation of the EPI and R&D in individual countries).

The cause of each of these outcomes is of course complex and cannot be reduced to one factor. However, the strong association between positive outcomes on Europe 2020 indicators and the EPI suggests that worker participation helps rather than hinders the achievement of 'smart, sustainable and inclusive growth'. As such the strengthening of workers' participation in Europe could help the EU to reach these ambitious goals.

Conclusions

Today's challenges call for more, not less, social dialogue and workers' participation

Many of the questions raised in current debates do indeed strike a sadly familiar chord. Relentless deregulation is eroding the foundation of worker involvement, thus impeding the ability of its institutions to serve as the social cement in Europe. Workers' rights, protections, and voice mechanisms are being sacrificed on the altar of the need to 'reduce administrative burdens'.

At the same time, however, we witness a deepening of economic and political integration, the proliferation of horizontal and vertical links between companies, unprecedented technical possibilities arising from the radical increase in transparency of processes, behaviours, and actors; these dynamics together warrant a closer consideration of what existing institutions, actors and approaches can contribute towards meeting these challenges. While EU-level regulation has been driven by deregulation, the social partners have risen to the occasion by developing joint approaches to issues of mutual concern, such as the advent of new technologies.

The long arm of REFIT is reaching deep into the social *acquis*. Alongside the rights and protections codified in European individual and collective employment legislation are many other rights laid down in health and safety legislation and company law. While it is still early days, there is a real risk that employees' rights to involvement in defining and implementing health and safety policy at the company level, as well as more general and information and consultation rights, will be dismantled. It is no accident that it is in the areas of employment and working conditions and health and safety legislation that workers' involvement rights are enshrined in law.

Arguably, in the European cross-sectoral and sectoral social dialogue, the social partners are a bit ahead of the game; they have been addressing the impact of new technologies at the European level since the 1980s. Much of this provides a good foundation for further developments.

The importance of early and comprehensive information and consultation between employee representatives at all levels cannot be underestimated. Scientific governance takes place in the legislature, in technical laboratories and, not least, at the shop floor. New technologies and production strategies promise to streamline work processes, improve efficiency, and reduce exposure to hazards, for example. Though the European Commission enthusiastically welcomes the advent of the digital age and has developed a vision of a digital single market, in its 'better regulation' advances, it fails to address the most obvious challenges. It is therefore all the more important that these concerns should be brought to bear on ongoing discussions about 'refitting' workers' rights, particularly in the areas of information and consultation, employment contracts, chemicals legislation, and approaches to key emerging technologies, or new forms of work organisation.

A natural corollary to the new transparency is that employees too should demand greater involvement and transparency. Top-down command-and-control systems are being replaced by more participatory, transversal, digital-technology-based systems that steer communicating networks of machines, workers, and algorithms.

It is also quite clear that these challenges of European integration within companies and along the supply chain cannot be answered solely at the local enterprise level. New technologies, new managerial hierarchies, or new intragroup relationships, are typically 'rolled out' centrally across the whole transnational company without regard for national (regulatory) borders. Institutions such as European Works Councils and board-level employee representatives are ideally placed to meet these challenges, insofar as they are able to serve as flexible transmission belts, conveying information and

consultation processes throughout the company. It is all the more important that these institutions for transnational information and consultation should become better equipped to fulfil this role. The need for comprehensive and timely information and consultation is all the more pressing when it concerns far-reaching processes that will have important consequences for working conditions, job security and intra-company networks of service provision and/or production.

Finally, this chapter has shown the importance of stakeholder-based governance in ensuring sustainable companies and sustainable labour markets. The contribution of board-level workers to ensuring sound, stakeholder-based decision-making must remain a key pillar of the European Social Model.