

## 5. WORKER PARTICIPATION AND THE LISBON AGENDA

Worker involvement undeniably mirrors the Lisbon goals at the micro-level constituted by the workplace, making workers into citizens at their workplaces. Worker involvement serves, at the same time, two major objectives: to make social rights effective in order to strengthen democracy and social understanding, and to support companies in achieving economic competitiveness. More than 14,000 members of European Works Councils or works councils in European Companies (SE), supported by their trade unions, have adopted a pro-active role in this regard, particularly in relation to the need to resist and tackle economic crisis without excessive social damage.

The social right to information and consultation – at the very least – for workers in their workplaces can be seen to wind like a red thread through the history of the European Union. Article 27 of the European Charter of Fundamental Rights, assuming it becomes enshrined in the new EU Treaty, will make this right binding and subject to recourse in law. It links up with provisions on information, consultation and also participation in management decision-making at board level that currently exist in many EU member states. At the very least, the three directives concerned with European Works Councils (EWC), worker involvement in the European

Company (SE)/European Cooperative Society, and information and consultation standards (I+C), express the political will to implement these fundamental rights appropriately and in full throughout Europe.

Although, in general terms, the Lisbon Strategy sets out to take effective measures to balance economic performance, social aspects, and sustainability in order to withstand global competition, it is surprising that no explicit consideration is given to proactive worker involvement as one of the drivers for achieving the much emphasised Lisbon Strategy objectives of making Europe an attractive place to invest and to work. For it is precisely the priority accorded to well qualified and committed workforces in the framework of stable social security systems as a vehicle of competitiveness that makes Europe different from other economic areas in the world.

A look at the latest Communication from the EU Commission on the Lisbon Strategy on the occasion of the 2008 Spring Council (European Commission 2007e) serves to highlight this connection. The Communication once again stresses the importance of the workforce by focussing on the adaptability of workers and enterprises, or the capacity to introduce modern forms of work organisation

or a workplace environment that will facilitate innovation. And yet no reference is found to the self-enforcing power to realize these demanding goals at the micro level of companies and workplaces.

Could it be that this aspect has been simply forgotten by the policymakers? More than a decade ago the so-called Davignon report provided arguments for the usefulness of worker participation by stressing its importance for the achievement of economic goals: ‘The type of labour needed by European companies – skilled, mobile, committed, responsible, and capable of using technical innovations and of identifying with the objective of increasing competitiveness and quality – cannot be expected simply to obey the employers’ instructions. Workers must be closely and permanently involved in decision-making at all levels of the company’ (European Commission 1997).

Sometimes it seems that these findings are no longer regarded as valid or relevant, that, on the contrary, they are increasingly perceived as mere remnants of times past and never to return. However, the failure of the liberal model of organising economies, as it is apparent today, restores purpose to the appeal for mechanisms able to achieve social cohesion and integration of economy into society. Such is the purpose of this chapter.

### Themes

- 5.1. Lisbon and worker involvement
- 5.2. Economic and social welfare effects of worker involvement in Europe
- 5.3. Information and Consultation Directive
- 5.4. European Works Councils (EWC)
- 5.5. Worker involvement in the European Company (SE)
- 5.6. Conclusions

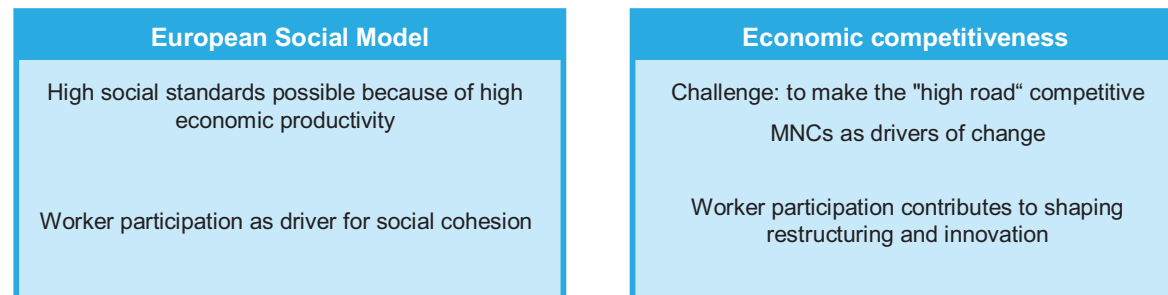
## 5.1. Lisbon and worker involvement

### Where is the link?

The aim here is to highlight those European acts and institutions which would seem to be key to the restoration of balance between the economic and social goals set in the Lisbon Agenda. For this purpose an innovative tool for measuring country performance in terms of employee participation is presented, proving the existence of reciprocal links between quality workforce involvement in the workplace and GDP, productivity, employment level and environmental issues. Secondly, one of the three pillars of workers' rights to information and consultation in Europe is presented, namely, framework directive 2002/14/EC introducing works councils as the basic level of social dialogue on company level. Subsequently, the supranational company level is discussed in its two fundamental forms – the European Works Councils (EWCs, based on directives 94/45/EC and 97/74/EC) introduced in 1994 and the participation of employees in the SE (directive 2001/86/EC) adopted in 2001. Both these directives pursue the goal of conveying information and enabling consultation on company issues affecting employees on a transnational level, i.e. when measures involve subsidiaries from at least two member states and go beyond the decision-making powers of management in a single country. In these sections an attempt is made to present the links

between these specific tools of company-level social dialogue and attainment of the Lisbon goals.

**Figure 5.1: The Lisbon Strategy - the way Europe can progress**



Part of the new EU treaty: Art. 27 EU Charter  
information and consultation are fundamental rights - make workers into citizens at their workplaces

## 5.2. Economic and social welfare effects of worker involvement in Europe

### The European Participation Index (EPI)

What is the relationship between worker involvement, social cohesion and economic performance in Europe? In order to enable Europe-wide comparisons in this regard between the EU member states, the ETUI-REHS has developed a European Participation Index (EPI), consisting of three equally weighted components:

- 1) Board-level participation – measures the strength of legal rights in each country for employee representation in the company's highest decision-making body. This classification was developed by the SEEurope network of ETUI ([www.worker-participation.eu](http://www.worker-participation.eu)) and classifies countries in three groups: 'widespread participation rights', 'limited participation rights' and 'no (or very limited) participation rights'.
- 2) Plant-level participation – measures the strength of worker participation at the plant level. This includes three sub-indicators, including i) the probability of the presence of an interest representation body (including in smaller companies), ii) the existence of extensive information and consultation rights, including the right to veto or delay decisions with strong impact on employees like restructuring, closure, and mass redundancies, and iii) the

competence to negotiate and sign legally binding agreements.

- 3) Collective bargaining participation – measures union influence on company industrial-relations policies, including an average of i) union density (i.e. percentage of workforce belonging to unions) and ii) collective bargaining coverage (i.e. percentage of the workforce covered by collective agreements).

Countries were classified based on their overall scores on the participation index. The 'stronger participation rights' group includes nine countries: Austria,

Denmark, Finland, France, Germany, Greece, Luxembourg, the Netherlands and Sweden. The 'weaker participation rights' group includes 18 countries: Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom. Each of the two groups accounts for roughly half of EU27 GDP, making their importance in economic terms approximately equal.

This comparison of the EU27 countries classified by strength of workers' rights

regarding information, consultation and participation shows that, on the whole, countries with stronger participation rights performed better along a range of Lisbon Strategy indicators than did countries with weaker rights. Figure 5.2 shows that the 'strong rights' group of countries surpassed the other in a wide variety of key indicators: GDP per capita, labour productivity, overall employment rate, employment rate of older workers, youth educational attainment, expenditures on R&D, progress on the reduction of greenhouse gas emissions and consumption of energy.

Figure 5.2: European Participation Index

Performance indicator	Countries with stronger participation rights	Countries with weaker participation rights
GDP per capita in Purchasing Power Standards (EU27 = 100)	116.5	104.5
Labour productivity per person employed (EU27 = 100)	113.9	103.6
Employment rate (total %)	67.6	64.7
Employment rate of older workers (percent)	46.1	44.3
Youth education attainment level - % of the population aged 20 to 24 having completed at least upper secondary education	77.8	75.8
Gross domestic expenditure on R&D (percent of GDP)	2.3	1.4
Index of greenhouse gas emissions and targets - In CO2 equivalents (Actual base year = 100)	92.7	103.3
Gross inland consumption of energy divided by GDP (kilogram of oil equivalent per 1000 Euro)	170	261.7

Data source: Eurostat. Note: all data for 2006. Countries weighted by 2006 GDP.

## 5.3. Information and Consultation Directive

### Supporting social dialogue at national level

The Information and Consultation Directive 2002/14, establishing a general framework for informing and consulting employees in the European Community, was intended to broaden the scope of the right to information and consultation of workers to all EU member states. The concept is based on national employees' representation, and thus needed to accommodate all the variety of national traditions and institutions, such as, for example, single (exclusively via trade unions) or dual (trade unions and independent employee representatives) channel of representation. Indirectly, Directive 2002/14 established a prerequisite to the right of information and consultation: each member state must provide for a general and permanent system of employee representation, either single or double channelled, elected and/or appointed. This point was reiterated in the ECJ landmark decision of 1992 (Commission vs. UK, C-382/92). It allowed for transitional provisions (Art. 10) in member states in which there was, 'at the date of entry into force of this Directive, no general, permanent and statutory system of information and consultation of employees, nor a general, permanent and statutory system of employee representation at the workplace allowing employees to be represented for that purpose'. In total six member states (Cyprus, Ireland,

Italy, Malta, Poland and the UK) took advantage of the provision of Article 10.

However, the picture of worker representation in respect of the implementation of Directive 2002/14 remains heterogeneous. In only one third of the member states are there provisions requiring employers to set up such workers' representative bodies, which means that the employer has to be active in delivering information and conducting consultation. Subsequent implementation provisions of the Directive on national level secure workers' information and consultation in the absence of employee representatives

in the enterprise. However, only a limited number of member states provide for the direct involvement of national institutions as a means of last resort in the event of violations or lack of implementation of the Directive's provisions. None of them has taken advantage of the opportunity given by the Directive to improve domestic legislation in respect of employee representation systems.

Although it might be too early to judge fully the directive's impact on consultation and information, because of the very recent change in some countries, especially in the New Member

States (NMS), the fact is that workplace representation, as a distinctive feature of the national industrial relations systems, still varies significantly across the European Union (Vandenbrande *et al.* 2008; European Commission, 2006a). In some countries (Hungary and Slovakia) works councils seem to be less important than trade union representatives. In France, Greece, Portugal and Spain, on the other hand, works councils could be considered as complementary bodies to the trade union representation. At the same time, the dual-channel structures in Belgium, Denmark, Italy, Luxembourg and Slovakia are monopolised or

**Figure 5.3: Structures of workplace representation and representation density rate (%)**

	Structures of workplace representation		
	Single channel		Dual channel
	Union representatives	Alternative model	
Low (≤33%)	Estonia (before 2007); Latvia (usual until now); Lithuania (usual until now); Poland (before 2006)	Lithuania (from 2003, implemented by special law 2005); Poland (new law 2006)	Estonia (2007, seldom); Latvia (2002, seldom)
Medium (>33-≤66%)	Cyprus; Ireland; Malta; UK	Czech Republic (from 2001); Slovakia (2002-3)	Austria; Belgium; France; Germany; Greece; Hungary (since 1992); Italy; Luxembourg; Netherlands; Portugal; Slovakia (from 2003); Slovenia (since 1993); Spain
High (>66%)	Finland; Sweden		Denmark

Source: Kohl (2008), Vandenbrande *et al.* (2007), <http://www.worker-participation.eu/>. Note: Presence of trade unions or similar organisations in the workplace as a percentage of the employees. Not included: Bulgaria (dual channel from 2006 but before single channel) and Romania (usual single channel by union representatives but hybrid single channel from 2003).

## 5.3. Information and Consultation Directive

### Supporting social dialogue at national level

dominated by the trade unions. In Austria, Germany and the Netherlands works councils are the only statutory body of workplace representation and the union delegation plays only a secondary role at workplace level; trade union delegations are particularly rare in Austria.

Single channels of worker representation are still the norm in Finland and Sweden and also in Cyprus, Ireland, Malta and the UK. Although in the majority of member states existing standing worker representative bodies enjoy a right of information and consultation, trigger mechanisms have been introduced in the UK and Ireland so that information and consultation rights depend on the request of 10% of the workforce to negotiate an agreement in order to provide for the election of ad hoc worker representatives or for direct involvement, thus deriving from the single-channel method based on trade union recognition by the employer. In practice single-channel representation is also the case in most NMS, despite the fact that the information and consultation directive gave the opportunity for the establishment of dual-channel structures. Single-channel worker representation by a trade union was traditionally the dominant type of worker representation in the NMS. This has only slightly

changed in most of those states since the implementation of the directive. Baltic, Polish and Romanian trade unions have all followed the rather hybrid type of worker representation found in the Czech Republic where works councils, often considered as competitors of trade unions and undermining them, could be set up but cease to exist when a trade union representation is chosen in the company (Kohl, 2008). In practice, very few works councils have been established and worker representation by union representatives is also weak because of low union density in the majority of the NMS.

Figure 5.3 shows that in countries where workers' representation is based on single-channel structures the representation density rate, i.e. the presence of trade unions or similar organisations as a percentage of the employees, is rather mixed. While in member states with longstanding statutory systems of information and consultation the representation rate is between 33% and 66% or even higher (Finland and Sweden), the rate is significantly low in the NMS. The latter adopted a single-channel worker representation system regardless of whether works councils could exist as an alternative or not (Carley *et al.* 2007).

This is in contrast to countries where worker representation is based on dual-channel structures. In none of those countries is the representation density rate low, although Bulgaria (not stated in the figure), Estonia and Latvia seem to be exceptions. However, in those countries dual channels have only recently been introduced and, as in the other NMS, in practice few works councils have been established, notwithstanding the directive on consultation and information. Moreover, due to different thresholds of necessary employment before a company is obliged to apply legal provisions, there is not only cross-national diversity but also sectoral variance. Workplace representation is obviously weaker in those sectors dominated by small and medium-sized companies, which is particularly the case in the largest economic sector, the low-unionised but still growing private services sector. In other words, a large proportion of the workers who are assumed to be the drivers of a competitive and dynamic knowledge-drive economy are excluded from information and consultation rights.

Six years after passing the Directive it is still difficult to conclude that information and consultation of workers are efficiently guaranteed in the European Union, mainly because most member

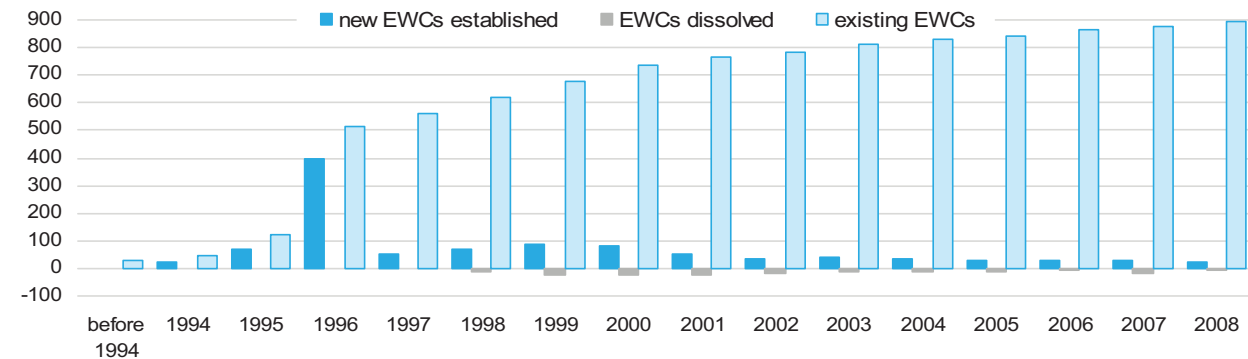
states have implemented this piece of European legislation in minimalist fashion. Thus the '*effet utile*' of the Directive, meaning the effective guarantee of the right to information and consultation to all workers in order to 'promote employee involvement in the operation and future of the undertaking and increase its competitiveness' as mentioned in recital 7 of the directive, could not be fully realised. Following an expert report on the implementation of the EU directive on information and consultation, the European Parliament's Commission of Employment and Social Affairs has called for revision of Directive 2002/14/2008/2246 INI.

## 5.4. European Works Councils (EWC) EWCs' contribution to the Lisbon Agenda

Although not a tool invented specifically to attain the Lisbon goals, EWCs have become one of the important institutions contributing to the 'sustainable economic growth' of companies. Sustainability of companies is strengthened by information and consultation processes taking place in EWCs and making the link between local operations of multinational enterprises and their global decision-making centres. In this way, EWCs represent an often missing link between the employees at the level of a single plant and the sustainable aspect of making the EU the most competitive economy in the world. In this regard, sustainability should be understood as the ability to continue without causing damage not only to natural environment, but also to the social entourage, i.e. employees of companies as their main stakeholders (ETUC and ETUI-REHS 2008).

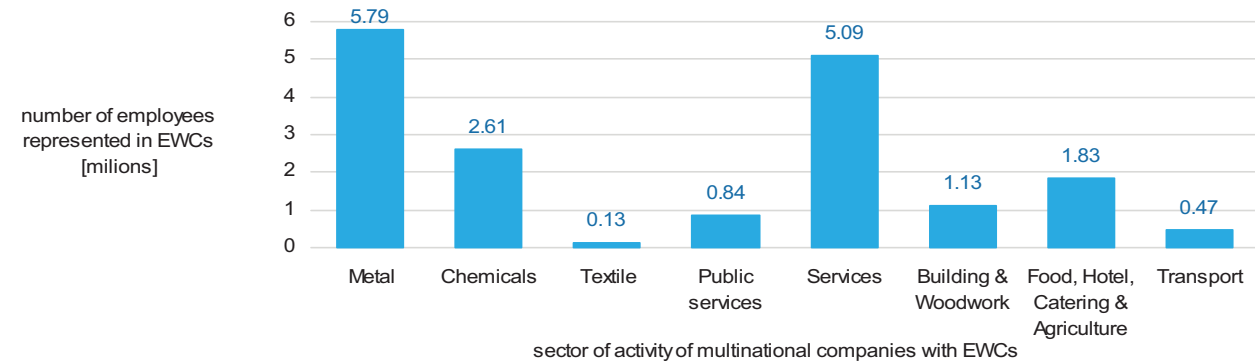
In this regard, the moderate – but steady – rise in the number of EWCs (Figure 5.4) proves that this concept has become for many multinational companies (especially the biggest ones employing over 10 000 workers in the European Economic Area (EEA) and those employing between 5 000 – 10 000, representing respectively 42% and 37% of all EWCs created) a standard and a logical complement to their policies in the area of sustainability and corporate responsibility. The 893 EWCs active today (ETUI-REHS 2008) represent a total of at least 15.6 million workers in the EEA working in 856 enterprises in eight main sectors of industry (Figure 5.5).

Figure 5.4: Development of EWCs over the years



Data source: ETUI-REHS (2008). Note: for an additional 9 EWCs the date of creation is not known.

Figure 5.5: Employees represented in EWCs per sector of activity of multinational companies



Data source: ETUI-REHS (2008).

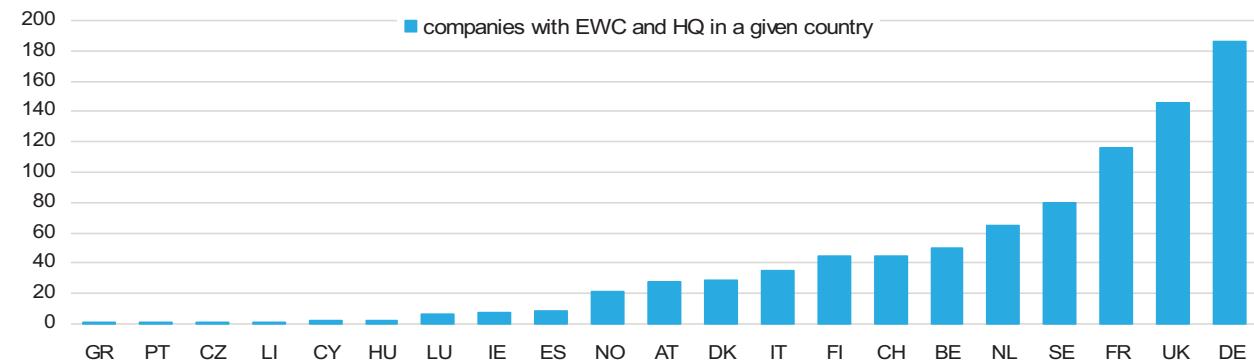
## 5.4. European Works Councils (EWC)

### EWCs and restructuring

As was argued above, countries with a strong participation index perform better in many economic and environmental aspects. This conclusion is also true as far as EWCs are concerned: in undertakings headquartered in the 'stronger participation rights' group (see section 5.2) a total of 556 EWCs (62% of all active EWCs) have been set up (Figure 5.6). Hence, EWCs, perceived as one of the elements contributing to the achievement of the Lisbon goals, make the countries in question even more effective drivers of a balanced growth and social sustainability.

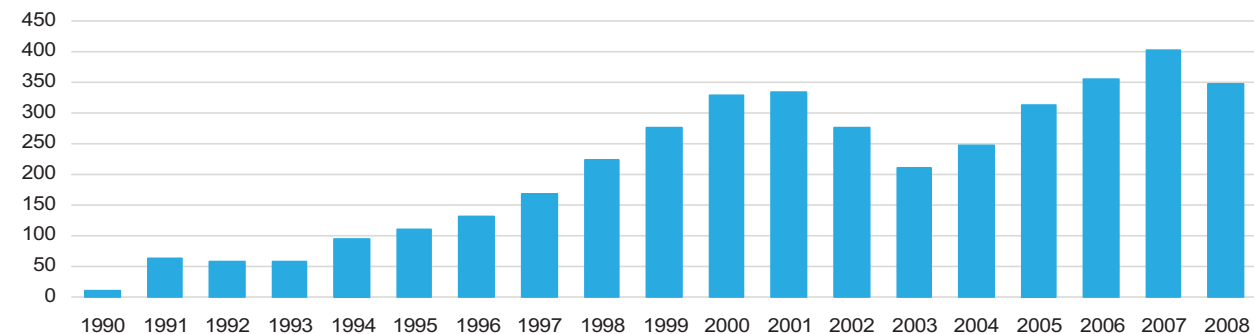
Restructuring has become, in recent years, a highly relevant issue in Europe and 'may in some senses be the most important issue with which EWCs' are dealing (Schömann *et al.* 2008: 15). Involvement of companies (both with and without EWCs) in merger and acquisition cases notified to the DG Competition of the European Commission between 1990 and 2008 (Figure 5.7) clearly shows that the pace of restructuring has been accelerating fast. This development might become even more significant in the coming years, given that, as a consequence of the financial crisis of autumn 2008, numerous restructuring processes across sectors and borders can be expected.

Figure 5.6: Headquarters of multinational companies with EWCs



Data source: ETUI-REHS (2008).

Figure 5.7: Number of merger cases notified to DG Competition of the European Commission (1990-2008)



Data source: Eurostat (2008a).

## 5.4. European Works Councils (EWC)

### EWCs and restructuring

However, it is in this context that we find the situation and role of the EWCs to be rather ambivalent. On the one hand, the European Commission puts great emphasis on the 'essential role' of the EWCs in anticipating and managing restructuring operations (European Commission 2002a and 2005c) and finances numerous projects and initiatives on this topic. On the other hand, the available research results are clear : best practices of early and extensive information as a basis for consultation on management decisions are rare and an active role by EWCs in accompanying restructuring and relocation together with European and local trade unions – as, for example, in the case of General Motors Europe (Banyuls *et al.* 2008; Fetzer 2008) – is the exception, rather than the rule, the norm being for EWC representatives to be 'consulted' after the decision had been finalised (Waddington 2006; Telljohann 2009), while in some cases the information was not only useless but actually absent. When, at the beginning of 2008, Nokia announced the closure of the site in Bochum (Germany) and the relocation of a significant part of the production to Romania, the EWC was neither informed, nor consulted, in clear violation of European employees' rights. But such extreme cases

apart, companies tend to bypass EWCs during restructuring processes by portraying the measures as having only a 'national dimension', and in other cases undertakings involve EWCs in a merely instrumental way so as to play off production sites against each other.

The mismatch between European discourse and initiatives on the one hand and restructuring practices on the other contradicts not only the original purpose of the EWC Directive as a new European institutional structure for employee participation at cross-border level but also the spirit of the Lisbon Strategy and its objective of strengthening social and territorial cohesion. Corporate restructuring is often essential for companies' competitiveness, but it is always also of strategic significance for the region(s) which are affected, in terms of job losses, employability, and citizens' living conditions. Though EWCs, on their own, are of course inadequate to manage transnational restructuring and the processes of regional industrial change related to it, the EWC can be an essential 'company knot' and *relais* of a broad network of social partnership; as such it certainly has a capacity to become a central actor in restructuring processes, together and in transnational coordination with European trade unions

(Moreau and Paris 2008). This role has already been claimed by at least a certain number of EWCs in operation in 89 enterprises, where transnational agreements between employee representatives and management have been signed, some of them dealing with the social implications of restructuring measures (European Commission 2008b: 3).

The framework in which EWCs operate, currently characterised by a lack of rights and resources, makes it difficult for the EWCs to live up to their potential. Firstly, the information and consultation rights, which – also in comparison with the later directives on information and consultation rights (2002/14/EC) and on the European Company (e.g. directive 2001/86/EC) – are too vaguely defined. Secondly, the hazy definition of what constitutes a 'transnational issue' included in the EWC directive (94/45/EC) has all too often led to EWCs being hindered in their representation activities because the management has unilaterally defined restructuring measures as 'national' or 'local'. Last but not least, there is a need for effective sanctions in case of the directive, or the agreements arising from it, not being adhered to, i.e. when decisions affecting employees in several countries are taken without

proper information and consultation – as recently in the case of Nokia. If these shortcomings are tackled and EWCs thus rendered more effective, they can be indeed a very important partner of local unions and political actors in shaping transnational restructuring processes.



## 5.4. European Works Councils (EWC)

### EWCs beyond the legal minima

In a number of cases EWCs over the years have developed solutions going beyond the legal minima of the EWC Directive (94/45/EC). In more than 40 cases the two parties have agreed upon more advanced definitions of information and consultation, such as the obligation for the EWC to submit an opinion in order for the decision-making process to be complete, the right of an EWC to request postponement of a decision to enable in-depth analysis, with some of the agreements going as far as to grant entitlement to negotiation. Moreover, a substantial group of about 20% of the companies has opted in their agreements for two plenary meetings per year. The quality of this facility is crucial for operation of EWCs, as it enables employee representatives to meet, obtain and exchange information on corporate plans and to submit proposals and opinions to management, aiming at making the business decisions more socially balanced. This is made possible by EWCs discussing issues such as company performance, economic and financial situation, probable development of the business and production, probable trends of employment, investments, and substantial changes concerning work organisation and production, etc. (Annex to directive 94/45/EC, art. 2). In view of the steeply rising pace of restructuring (see Figure 5.7) and numerous implications thereof,

one meeting per year, being the most frequent solution (Figure 5.8), is no longer sufficient to allow effective and meaningful involvement of employee representatives in information and consultation. Nor, therefore, is it sufficient to substantially contribute to realisation of the Lisbon goals.

Unfortunately, with regard to other facilities for EWCs, such as language training, the situation is rather similar, little progress having been recorded over the years.

As is depicted in Figure 5.9 a vast majority of EWCs has been in operation

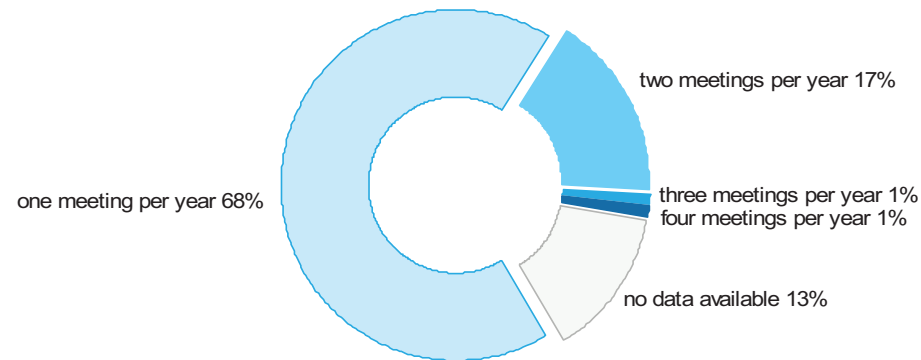
for 10 or more years, which implies that, due to their experience, they have made progress in terms of competence and partnership.

The figure clearly shows that the 893 currently existing EWCs (the total number of EWCs ever set up is 1088) have become a permanent feature of European industrial relations. Even though, in a vast majority of cases, they have proved their value, they need to evolve and become more efficient if they are to become meaningful and effective instruments for both employees and companies. The latter clearly find EWCs useful in terms of corporate

decision-making, as proven by a survey conducted by Vitols (ETUC and ETUI-REHS 2008: 78). In specific terms, this proves that companies in Europe are reliant upon effective agreements with a highly qualified workforce that supports innovation and change.

The question of precisely how EWCs contribute to innovation and change as well as to handling change in an innovative and sustainable way can be explained by referring to an emerging phenomenon of transnational company agreements. In about two thirds of such agreements, signed mainly

Figure 5.8: Frequency of meetings of active EWCs



Data source: ETUI-REHS (2008).

## 5.4. European Works Councils (EWC)

### EWCs beyond the legal minima

against a background of restructuring, EWCs have been active participants and co-signatories (European Commission 2008c). Currently there are no fewer than 147 transnational agreements in at least 89 different multinational companies (Jagodzinski *et al.* 2008: 39). These documents deal with various aspects of employees' work in multinational companies ranging from working conditions, data protection, training, environmental issues, CSR and even to regulations on some financial benefits (*ibidem*). A special form of such agreements, those co-signed by trade union organisations on both national and supranational levels (European Industry Federations, International Union Federations) are International Framework Agreements (IFAs), which can be regarded as constituting an emerging level of transnational collective bargaining. (Schömann *et al.* 2008)

From the point of view of their contribution to the Lisbon Agenda, these transnational company agreements (especially the IFAs) are a specifically European and highly innovative way of handling the social consequences of restructuring and industrial change. There are some remarkable examples of such active involvement of employees in seeking sustainable solutions

for competition-ridden economies, including Group4Falck, Volkswagen, Ford, EADS, PSA Peugeot Citroën, Renault and Suez and others (see: European Foundation for the Improvement of Living and Working Conditions 2008: 11).

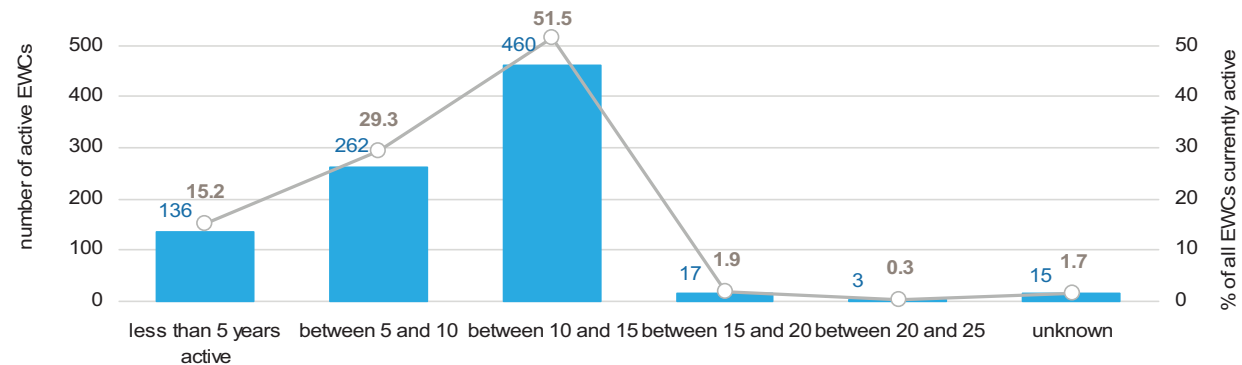
This kind of evolution from information and (non-binding) consultation rights – stipulated originally in directive 94/45/EC – to more efficient, extra-legal instruments such as transnational company agreements is currently not reflected or covered by any law. What is more, it refers, unfortunately, to only a limited number

of EWCs. The later group of more advanced EWCs definitely represents, to a certain extent, a kind of avant-garde, indicating that these information and consultation bodies follow practical developments and demands and that they are maturing more quickly than legislation.

The debate on the long overdue revision (recast) of the EWC directive in 2008 initially gave rise to hope, but, finally has also revealed the limits of consensus heavily influenced by ideological short-sightedness. Having just faced the end of the process, we are aware that not all the expectations

concerning the improvement of the legislative framework for EWCs have been able to be realised. Firstly, what happened was a change of status from a revision to a mere recast which imposed certain limitations on the process (e.g. scope of action of the European Parliament). This fact, combined with a restrictive and minimalist approach on the part of employers' organisations, prevented some vital improvements for which the ETUC has been campaigning (ETUC 2003; ETUC 2008a).

Figure 5.9: Length of existence of currently active EWCs in years



Data source: ETUI-REHS (2008).

## 5.5. Worker involvement in the European Company (SE)

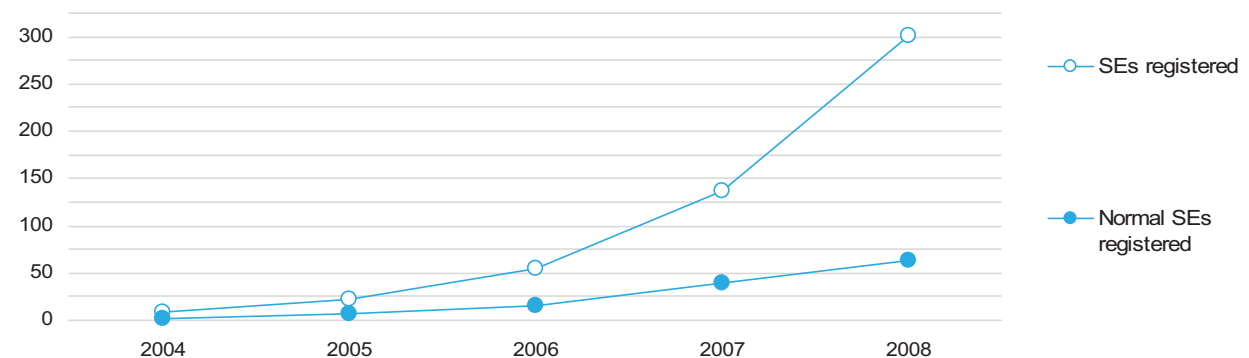
### Combining cross border-flexibility and transnational worker involvement

Following protracted discussions over more than 30 years, the European Company (SE) legislation came into force in October 2004. Though not directly connected to the Lisbon Agenda, the SE legislation is clearly in line with its aims. Its main focus is to strengthen the competitiveness of companies by offering them a new business form that enables them to take better advantage of the internal market. Nevertheless, there also exists a link with the social dimension of Lisbon, insofar as the accompanying SE Directive on worker involvement represented a step forward as compared to the EWC Directive by offering more transnational information and consultation rights and by introducing the dimension of employee board-level representation ('participation') into the obligatory negotiations on worker involvement when an SE is set up (Kluge and Stollt 2007).

More than four years after its entry into force it is possible to draw some preliminary conclusions on the SE's impacts on contributing to the Lisbon aims. Predicted by many to be a 'still born child' the SE has developed into a relative success story (Gold *et al.* 2009). Since its introduction in 2004, the number of SEs has increased steadily year by year. By the end of 2008 more than 300 companies had been founded in the form of a Societas

Europaea (ETUI-REHS 2008). However, this rather impressive total should not blind observers to the fact that many SEs do not conform to the standard definition, for they are, in their overwhelming majority, SEs without any employees ('empty SEs') and/or not even a specific business purpose ('shell SEs'). As research by the ETUI's SEEurope network has shown, this practice is particularly present in the Czech Republic where more than 100 shell/empty SEs have been set up, mainly by five specialised traders (Carlson 2008).

**Figure 5.10: Total number of registered European Companies (SEs)**



Data source: ETUI-REHS (2008).

## 5.5. Worker involvement in the European Company (SE)

### Extending participation rights across national borders

Whereas the founding of shell companies – i.e. without any employees at the time of registration (as opposed to ‘normal’ SEs, i.e. those with employees) – is a practice commonly applied to enable companies to set up in business more quickly, it represents a potential threat to worker involvement rights in an SE (ETUC and ETUI-REHS 2008). In this regard, it has to be borne in mind that mechanisms for securing employee rights to information, consultation and participation are guaranteed only at the moment of founding of SEs. It is accordingly difficult to negotiate workers’ rights at a later point in time, when the company has recruited its employees. In this respect, the existing mechanisms of the SE Directive do not represent a sufficient guarantee. The Commission has in fact acknowledged this shortcoming in its recent communication on the revision of the SE (European Commission 2008c). In the meantime, some first cases have indeed arisen in which no negotiations took place when a registered ‘shell SE’ was sold and merged with an existing ‘normal’ company with employees.

The almost exponential growth of the ‘atypical’ SEs – especially when compared to the moderate growth of the ‘normal SEs’ – raises the question of the purpose of the SE legislation. The very

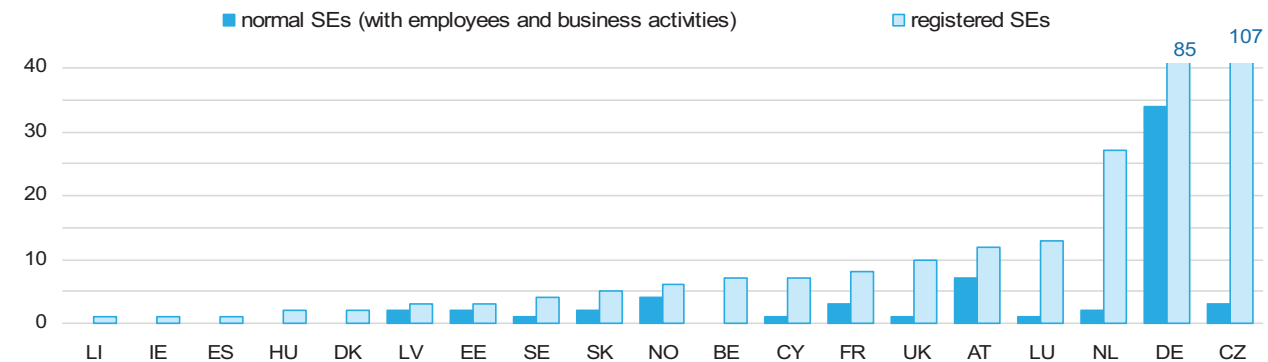
high number of shell and empty SEs as compared to ‘normal’ ones creates some doubts as to whether the practice of establishing and registering undertakings without employees is in line with the goals, spirit and the *ef-fet utile* of the legislation in question.

In the overall majority of cases where ‘normal’ SEs with employees have been created, management respected the procedure laid down in the SE Directive for negotiations on information, consultation and participation rights. The most prominent case where the procedure was initially not respected (Strabag SE) was subsequently

‘healed’, not least due to coordinated cross-border pressure from European trade union organisations (Klambauer 2008). By December 2008 an agreement on worker involvement had been concluded in no more than 32 out of the total of roughly 300 SEs. As with EWC agreements, the quality of these agreements differs significantly from one company to another. However, particularly the agreements of the larger SEs are in general in line with good ‘EWC practice’ and on certain points they go beyond what is legally foreseen in the SE Directive. In 18 SEs out of the 32 where agreements on worker involvement have been signed, the rights

enshrined in the agreement include board-level participation, thereby adding an important dimension for workers’ voice in company decision-making. By December 2008 more than 50 employee board members represented the interests of the workforce on SE supervisory or administrative boards. A fundamental innovation introduced by the SE legislation is the transnational component of participation at board level. In a number of SEs (e.g. Allianz SE, BASF SE and MAN Diesel SE) employee representatives from several countries sit on the board and represent the interests of the whole workforce in Europe.

**Figure 5.11: 304 European Companies (SEs), set up in 19 countries**



Data source: ETUI-REHS (2008).

## 5.5. Worker involvement in the European Company (SE)

### Extending participation rights across national borders

This exercise of a European mandate certainly represents a new challenge for the representatives and their unions. The recent decision of the ETUC and its member organisations to set up a specific fund (financed by the board remuneration of the employee board members in the SEs) to support the European structures of employee representation within SEs and the pioneers of 'European participation' demonstrates a commitment to meet this challenge.

These rather positive general remarks cannot conceal the fact that, particularly from the German perspective that traditionally assumes a high level of co-determination rights, evaluation of the first SE experiences is inevitably mixed. Establishment of an SE has in some cases (e.g. Allianz and BASF SE) represented a pretext for lowering the number of board seats without formally changing the proportions between employee representatives and other (company) board members, leading to a de facto reduction in the number of seats guaranteed to workers. It is also striking that, in a considerable number of cases, an SE has been set up by German companies that were approaching an employee threshold which, under German law, would have required them to introduce board-level

representation rights (500+ employees) or to extend existing rights (2000+ employees → from 1/3 to 1/2 of the board seats, including some seats 'reserved' for external trade union representatives) (Köstler and Werner 2007). This practice entails the danger that citizens perceive the SE not as a step forward but rather as yet another example of European legislation missing the mark in the endeavour to balance economic success and social aims.

Figure 5.12: Overview of SEs with operations and employees\*

company	sector	seat	corporate governance**	employees concerned
Allianz SE	financial services	Germany	two-tier	133,846
BASF SE	chemicals	Germany	two-tier	ca. 65,000
Fresenius SE	medical care, chemicals	Germany	two-tier	48,828
Strabag Bauholding SE	construction	Austria	two-tier	32,682
Porsche Automobil Holding SE	metal	Germany	two-tier	11,500
Hager SE	metal	Germany	two-tier	7,600
Elcoteq SE	metal	Luxembourg	single-tier	7,450
Klöckner & Co. SE	metal	Germany	two-tier	7,377
MAN Diesel SE	metal	Germany	two-tier	6,625
Donata Holding SE	chemicals	Germany	single-tier	3,922
PCC SE	chemicals	Germany	single-tier	3,756
Q-Cells SE	chemicals, metal	Germany	two-tier	ca. 2.500
Conrad Electronic SE	retail	Germany	single-tier	2,314
RKW SE	chemicals	Germany	two-tier	2,221
Surteco SE	paper industry	Germany	two-tier	2,109
WILO SE	metal	Germany	two-tier	1,871
Interseroh SE	metal, services	Germany	two-tier	1,729
HAWE Hydraulik SE	metal	Germany	two-tier	ca. 1.800
Knauf Interfer SE	metal, services	Germany	two-tier	1,667
ASIC SE	services IBITS	Germany	two-tier	1,429
Plansee SE	metal	Austria	single-tier	1,422
Odfjell Terminals SE	metal, chemicals	Norway	single-tier	860
SCOR SE	financial services	France	single-tier	801

A information, consultation and participation
 A information and consultation only
 A participation only
 A no information and consultation, no participation
 A no information on worker involvement available

Data Source: ETUI-REHS (2008). Notes: SEs > 800 employees\* (30.11.2008). \*\*Single-tier: administrative board/two-tier = management board and supervisory board.

## 5.6. Conclusions

### Worker involvement – major potential, yet still unused

One of the lessons from the current financial and economic crisis relates to a significant loss of trust in the relationships between economic actors like banks, financial institutions, managers, and also certain governmental institutions. Approaching the end of the ten-year period for which the Lisbon Strategy was constructed, many of the political promises have not yet been realised.

It is therefore high time to revitalise the forces for effective and collective self-activation in order to seek perspectives for the time beyond crisis. This chapter provides a reminder of one of the ‘forgotten resources’ in this regard as constituted by worker involvement in a broader sense and based on institutional settings provided by European legislation.

Institutions for worker involvement have long represented a valuable contribution to the stability of labour relations in circumstances of fundamental industrial change. Furthermore, involving employees has had a positive effect on much-needed innovative developments at the workplaces. It is disappointing, in this regard, to see that not much use has been made of the opportunities created by the European legal framework in this field:

- Surprising as this might seem, in none of the EU member states was any use made of the opportunity created by the EU Information and Consultation Directive to improve its domestic legislation on worker representation, in particular by means of strengthening interest representation in small and medium-sized companies below 50 employees, considered to be the drivers of a successfully working economy in Europe.
- Although EWCs seem to be a beneficial complement of labour relations at transnational level, the recast of the EWC Directive falls short of expectations in terms of the provision of tools for evolution towards more efficient additional instruments introduced by agreement between management and labour.
- Although worker involvement in the SE has actually developed into a relative success story by adding participation at board level as an important dimension for workers’ voice in company decision-making, we are currently witnessing a political debate on a statute for a ‘European Private Company’, in which, under the pretext of adapting to ‘specific needs of SMEs’, an attempt is being made to de facto lower legal standards of worker involvement.

What Europe needs today is legislation to support improvements to the institutions that legitimise company decisions, creating trust within the company but also between company and society, since companies do not stand outside society. There are strong arguments in favour of a change of direction: as the European Participation Index (EPI) shows, some EU member states – regarded as having in place stronger worker participation systems than others – have gained a lot from such mechanisms, particularly, in relation to the effort to achieve the Lisbon objectives. In this perspective, EU directives providing for workers’ involvement on the transnational level complement national provisions, and, altogether, represent a legally guaranteed space for worker involvement that can be used, in practice, to build up a European social model from the bottom to the top – and not the other way round!