

WORKERS' VOICE AND GOOD CORPORATE GOVERNANCE

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WORKERS' VOICE



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EXECUTIVE SUMMARY

The rise of transnational companies as a powerful actor in global and European politics has important implications for the well-being of local communities and workers. Traditionally, Europe has had strong mechanisms to represent the concerns of workers, either through comprehensive social policies, labour market regulation but also through provisions for workers' representation. There is a long tradition of workers' voice in corporate governance in large companies. Workers' voice has always been a central part of the European Social Model. In many member states, various forms of workers' voice exist. 18 out of 28 EU member states have board-level employee representation, and in all member states there is an important role for collective bargaining in large companies. Moreover, the European Works Council Directive is now over 20 years old, and there have been more than 10 years' experience of workers' representation in the European Company Statute (SE). At the same time, corporate governance practices are under pressure and corporate law is in flux. There is an increasing consensus about the need to strengthen the European Social Model including the role of workers' voice in the context of good corporate governance.

In October 2015, the Expert Group on "Workers' Voice and Good Corporate Governance in Transnational Companies in Europe" met for the first time in Brussels. The group consists of representatives from different spheres and countries. Practitioners from companies, trade union representatives, representatives from civil society organisations and the financial sector, academics and representatives from the EU Commission met six times in various European countries. The Expert Group was tasked to assess the extent and the role of different forms of workers' voice in European transnational companies and their effects on sustainability and corporate governance.

The group discussed the following topics:

- the effects and impact of workers' voice in the process of corporate restructuring (2nd meeting in Prague, April 2016)
- the role of workers' voice in the context of sustainability and corporate social responsibility (3rd meeting in Paris, September 2016)
- the role of workers' voice for the long-term orientation of business models and corporate governance reform (4th meeting in Rome, March 2017)
- the extent and forms of workers' voice and functional equivalents (5th meeting in Stockholm, September 2017).

The group acquired a broad understanding of workers' representation beyond the institutional forms of co-determination, which included social dialogues, corporate responsibility practices and stakeholder dialogue. It assessed the current state of research and compiled relevant data. The group commissioned research reports from experts and organised hearings of best practice in order to gather first hand experiences.

As part of the project, the academic secretariat collected a dataset on 855 publicly listed companies in Europe. The dataset allows the analysis of workers' voice data in regard to restructuring, corporate governance and company sustainability between the years 2006 to 2014. It comprises data on European works councils, SE works councils (EWC/SE WC) and transnational company agreements (TCAs) at the European level, and of board-level employee representation (BLER), works councils and trade unions at the national level.

The report delved into many areas and produced a large number of recommendations. In particular, it highlights three strategic areas, which policy-makers and trade unions should address in order to strengthen the European Social Model through workers' voice:

- promote the role of workers and their representatives as an ingredient of good corporate governance. In recent years, the role of stakeholders has repeatedly been discussed in the context of better corporate governance. Workers' representatives have many strengths to offer in order to improve corporate governance and corporate responsibility through communication, monitoring and channelling workers' concerns. These strengths should be systematically integrated in further policy reforms.
- strengthen the legal foundations of workers' voice at the European level and at the level of EU member states. The freedoms of the Single European Market must not be used to erode workers' rights and representation. On the contrary, existing primary law should be used more proactively to ensure the strengthening of participation through secondary law. This can take place in the new company law package, a clearer defense of workers' rights by European institutions, such as the Commission and the European Court of Justice, and the strengthening of European works councils' rights.
- trade unions and workers' representatives should build up strategic capacities to advance workers' voice at the company level. This should take place through learning networks, best practice and strategic partnership.

CHAPTER 1

CURRENT CHALLENGES AND THE FUTURE OF THE EUROPEAN SOCIAL MODEL

What is at stake?

Europe is an important player in the global economy. The EU is the world's biggest trade bloc and the economically most integrated region. Together, the European Union's 28 members account for 16% of the world's imports and exports.¹ Globalisation and trade openness are key for the European economy, with more than 30 million jobs in the EU depending on exports to the rest of the world.²

Globalisation and deeper economic integration also has its downsides. It is accompanied by rapid company restructuring, structural changes and increasing social inequality within European societies. The catching up of emerging economies has often been based on competition, with lower wages, lower environmental standards and tax evasion. The effect on the European economies is real: Companies have closed down factories, made workers redundant or put downward pressure on wages and conditions. This has long-lasting effects for regions and citizens. Despite fairly steady economic growth, the incomes of the lower and middle classes in the Western, developed world have decreased constantly or have been stagnant for decades, while the top 10% of earners and capital income have made massive gains.

The recent surge in populist parties in European elections and anti-European sentiments is at least partly connected to the reality of unfettered and imbalanced globalisation that has embraced many parts of the world. The fall-out of the financial crisis primarily hit public budgets. Governments bailed out banks and public debts rose. Consequently, governments cut public spending, in particular in areas of social welfare and infrastructure, which directly hurt working people and society as a whole. The crisis of the Eurozone and subsequent austerity policies have made matters worse. Globalisation, as well as the European Union with its high level of economic integration, have become easy targets for the populist right.

In this context, the European Social Model (ESM) has regained importance in European policy-making. President Juncker opened the debate on social Europe with the drafting of the European Pillar of Social Rights, as proclaimed at the 'Social Summit for Fair Jobs and Growth' in Gothenburg on 17 November 2017. Harnessing globalisation to day necessitates a new initiative for strengthening

the foundations of social partnership in the EU and must be accompanied by a new approach towards the role of workers' voice as active stakeholders in the companies they work for.

Transnational companies and the global economy

The most recent wave of globalisation has had three key facets: Firstly, the entry of China, India and the former communist countries into the global trading system since the early 1990s. By their integration into the world's economy, the global workforce doubled, and lower living standards in these countries put downward pressure on the wages of lower-skilled workers in advanced economies. Secondly, the massive increase of capital flows in the last three decades. Global capital flows have increased 25-fold (compared to an eightfold increase in trade) between 1980 and 2007.³ This has shifted value creation and political power to the financial services industries and endangered the stability of financial systems.

Thirdly, the transnational company has increasingly been seen as an important holder of assets and as an economic and political actor.⁴ The importance of transnational companies is unprecedented in human history. A comparison of company versus government revenues, by the campaign organisation 'Global Justice Now', has revealed that in 2016, 69 out of the 100 largest economic entities were companies. In 2015, it was 63 companies. Walmart has higher revenues than the government of Spain; Apple has higher revenues than the government of Belgium and the Daimler AG more than the government of Denmark.⁵

International production has expanded steadily over the last 25 years, taking advantage of the opening up of emerging economies. For instance: between 1990 and 2016, the number of cross-border mergers and acquisitions (M&As) at the global level increased almost tenfold, from 98 to 869. In the EU, the value of M&As has trebled within only six years, from \$118 billion to \$360 billion in sales. Similarly, employment by foreign affiliates of transnational companies has almost quadrupled, from 21 million to 82 million employees globally.⁶ Finally, market capitalisation of publicly-listed companies has also shot up. In the EU, market capitalisation has increased from \$2.004 trillion in 1990 to \$7.185 trillion in 2014.⁷ This absorbs a large part of

¹ European Commission (2014)

² Juncker, Jean-Claude (2016)

³ Lagarde, Christine (2016)

⁴ Ruggie, John Gerard (2017), pp. 1-17

⁵ http://www.globaljustice.org.uk/sites/default/files/files/resources/corporations_vs_governments_final.pdf

⁶ UNCTAD (2017), p. 26

⁷ The World Bank (2018)

economic growth during that period and reflects a channelling of assets towards shareholders in those companies.

Due to their growth and economic prowess, transnational companies have long since become major political and economic actors in Europe and beyond. The decisions of the top managers of these companies have a powerful impact on local communities, the tax base of a government, and social and environmental standards. Companies have invested heavily in their own lobbying at the national and European level and also in financing election campaigns in some countries. Moreover, most controversial forms of companies' tax optimisation and tax evasion are connected to big transnational companies, like IKEA, Apple or Amazon.

Transnational companies shape globalisation. If globalisation is to be made fairer, transnational companies have to be better regulated and embedded into the societies where they operate. The European Commission has started to address tax evasion by transnational companies. But given the role and importance of transnational companies for the well-being of societies, there is an urgent need for a better and stronger representation of other stakeholders. As this report and the next section will emphasise, we see the role of workers' voice as fundamentally suitable and a necessary way to address the existing regulatory gap in a bid to achieve fairness in globalization.

Workers' voice and fair globalization

Companies are often proud of their workforce. "People are companies' greatest asset" is a well-known phrase in human resources. However, the voice of people or workers is underused in making globalisation a fairer place. Workers have the knowledge of the needs of local communities, embody the spirit of fairness and sustainability at work and, as a core part of the company, they can enforce rules and norms effectively. A strong workers' voice in transnational companies is an important contribution to fair globalisation, especially in Europe.

Workers' rights and workers' voice have historically been more strongly institutionalised in Europe than in other regions of the world. In many European countries, the practice of collective bargaining, workplace and board-level representation, and trade union membership have been institutionally enshrined and legal provisions for protecting workers' voice comprehensive. In addition, welfare provisions have been comparatively more encompassing and the welfare state more protective. The combination of a strong protection of workers' voice, strong trade unions and expansive welfare provision defines the core of the ESM.

In a global comparison, these underlying institutions of the ESM have been highly successful and generally beneficial in creating one of the most

prosperous and egalitarian regions in the world. Measured by population, the European Union is not only the largest region of rich countries in the world, followed by North America and Japan, but also the most egalitarian, with high scores on quality of life, longevity, health and happiness.⁸

Regarding income inequality and social mobility, Europe has always been at the top of rankings. In a recent report by the OECD on income inequality, concerns were raised over the negative effects of rising income inequality for prosperity and growth.⁹ When ranking countries, based on the Gini coefficient for disposable income, the global top ten countries with the lowest level of income inequality include eight European countries, which have strong forms of workers' voice embodied in laws on board-level employee representation (BLER).¹⁰ The importance of the European Social Model for social inequality is underlined by the World Inequality Report:

"The divergence in inequality levels has been particularly extreme between Western Europe and the United States, which had similar levels of inequality in 1980 but today are in radically different situations. While the top 1% income share was close to 10% in both regions in 1980, it rose only slightly to 12% in 2016 in Western Europe while it shot up to 20% in the United States. Meanwhile, in the United States, the bottom 50% income share decreased from more than 20% in 1980 to 13% in 2016."¹¹

But Europe is, as a region, not only fairer but also economically highly successful. Let's look at innovation. The Global Competitiveness Report for 2015 by the World Economic Forum emphasises the role of innovation and skills as key drivers for economic growth.¹² Out of 144 countries, the report establishes a ranking of countries' competitiveness. Among the global top ten countries, there are six Northern European countries. Of these six countries, four¹³ have extensive provision for workers' representation on companies' boards. Even more striking, among the European top ten countries, seven¹⁴ have legal provisions for BLER. In conclu-

⁸ See data on the Better Life Indicators from the OECD: <http://www.oecdbetterlifeindex.org/de/#/111111111111>

⁹ Cingano, Federico (2014)

¹⁰ Slovenia, Denmark, Norway, Sweden, Luxembourg, Slovakia, the Czech Republic and Finland

¹¹ World Inequality Report 2018, see <http://wir2018.wid.world/executive-summary.html>

¹² "The report remains the most comprehensive assessment of national competitiveness worldwide, providing a platform for dialogue between government, business and civil society about the actions required to improve economic prosperity. Competitiveness is defined as the set of institutions, policies and factors that determine the level of productivity of a country. The level of productivity, in turn, sets the level of prosperity that can be earned by an economy." See World Economic Forum (2014)

¹³ Sweden, Germany, the Netherlands and Finland

¹⁴ Germany, Finland, the Netherlands, Sweden, Denmark, Norway and Luxembourg

sion, not only are European economies among the world's most competitive and prosperous countries, those countries within Europe that have a long and strong tradition of workers' voice in companies are more likely to be among the most competitive countries than those who have not.

This data shows that, despite the rise of global markets, financial liberalisation and increasing competition from emerging economies, the ESM has not been relegated from the premier league of countries championing economic prosperity. Countries with strong workers' voice continue to be among the most innovative and prosperous in the world. Moreover, the ESM is a role model for social equality and social inclusion. There is no empirical evidence or theoretical claim that the strong presence of workers' voice is harmful to the economic and social success of these countries. In contrast to many discussions on the effects of globalisation in mature welfare states, high levels of skills, a capacity for innovation, cooperative labour relations and strong public policy have been found to be at least as conducive to the global competition of leading companies as more liberal models of economic development.¹⁵ There is also no empirical evidence that suggests that the ESM is failing the quest for innovation and prosperity or undermining the capacity for change.

However, despite these achievements, the tone of policy discussions about the ESM and the prospect of the European economy have often been pessimistic. Among international and domestic policymakers, Europe has been seen as being out of touch with global developments in the areas of growth and innovation. Even before the Eurozone crisis, the policy debates surrounding the Lisbon Agenda and the subsequent Europe 2020 agenda were often highly critical. Europe was seen as an ageing and slow region, with little capacity for innovation and growth.

The policy record of the EU has often been ambivalent towards the ESM. While Jacques Delors was well aware that the Single European Market needed a social dimension, there was little agreement on how European policy-making could contribute to such. Moreover, member states are highly diverse, and employers are strongly resistant to any European policies fostering social institutions, as they developed in Western Europe. Finally the political support for strong participation rights of workers had peaked in the early 1970s with the proposed Vredeling Directive and the preliminary work on the SE Directive, and declined from then on in the most important member states.

Policymakers within the EU Commission and in member states have struggled with the complexity of the issues, when pursuing a policy agenda aimed at combining deeper market liberalisa-

tion with the protection of national institutions. In an institutionally diverse setting, the harmonisation of standards has been proven impossible, as every step towards harmonisation hurts national autonomy.

These challenges still frame the current policy discussion on workers' voice today. They take place in the areas of company law, labour law and industrial relations within the EU. The processes of Europeanisation and globalisation generally pose four key challenges to the core institutions of workers' voice:

- the increasing cross-border nature of companies in Europe
- the diversity of corporate law traditions in Europe
- the dominance of the shareholder model in corporate governance
- the ambivalent policy stand on workers' voice by the European Commission.

The legal and institutional protection of workers' voice has long been seen by the business community and large parts of the political community as a historical legacy that is largely at odds with the trends towards a global economic model. Within the Anglo-American tradition of corporate governance and company law, the role of stakeholders (other than shareholders) is severely limited. The shareholder model of the company that has informed policy-making at the EU level and in most member states, with regard to international company law and capital markets throughout the 1990s and 2000s, has no room for workers' voice. Even after the corporate governance flaws became evident, with the scandals in the 2000s (ENRON, WorldCom), and after the financial crisis of 2008, when policy discussions started to ponder on more long-term approaches to investment, the inclusion of workers' voice never made it onto the policy agenda. At the European Union level, short-termism of the companies' shareholder model is frequently lamented but rarely addressed. Certainly, the dominant discourse on corporate governance among economists and corporate law experts does not see a stronger role for workers' voice as a solution to the flaws of corporate governance legislation and practices.

In the past, the ESM has been highly successful in sharing the benefits of globalisation and economic growth. During the recent years of market integration, these beneficial constraints have been neglected by policymakers. It is time to move them back to the centre of the European policy agenda.

¹⁵ Berger, Suzanne (2005)

Diversity, history and the challenge of finding a European model of workers' voice

Beyond the immediate challenge to the institutions of workers' voice through EU integration, there are a number of other issues that influence the task of finding a European model of workers' voice. These can be discussed under the headings of diversity, history and complementarity. That is the – often hidden – background on which policy discussions within, but also outside, trade union circles and the centre-left take place. Without taking into account these more implicit and deep rooted issues, we run the risk of a superficial and empty policy debate.

Increasing cross-border, economic activities take place against the background of a broad diversity of national practices, traditions and perspectives in industrial relations and trade union action. While workers' voice and workers' rights are present in all member states of the EU, in one form or another, national systems vary significantly. Not only do legal foundations range from no provision to very strong legal protection and rights, the relations between the social partners and the approach by trade unions vis-à-vis board-level representation also vary greatly between member states. There is no clearly-shared perspective among the social partners in all EU member states that workers' voice at the board level enhances and improves the European Social Model. While some member states support workers' voice, others have either no experience with it at the board level or reject the notion outright, as it does not fit with the general industrial relations framework.

In some countries, independent and autonomous representation by trade unions is seen as the best way of protecting workers. In others, in addition to collective bargaining, legally-regulated works councils and board-level employee representation are key to the representation of workers. Sometimes it is a combination of both. Union membership rates vary between 5 and 80 %. Similarly, collective bargaining coverage in the EU ranges from 10 to 90 %. Collective bargaining can take place at the workplace level or the level of the entire economy.

Therefore, defining the role and place of workers' voice in large companies at the European level is not an easy task. One key dividing line in judging the capacity of workers' voice is what researchers have coined "the level of articulation" of industrial relations. Workers' representatives are either oriented towards finding consensus and compromise in formal institutions and centralised forms of decision-making or they focus on a more decentralised approach.¹⁶ There are also mixed models and less clear-cut cases.

For our purpose here, workers' voice in corporate governance is conceptualised as:

the capacity and potential of workers and their representatives to influence strategic decisions in companies with regard to investment, restructuring and relocation.

This definition covers all workers in Europe, notwithstanding domestic, legal definitions of the term "employee"¹⁷ and a number of different institutional settings, such as board-level employee representation (BLER) in large companies, but also other forms of voice, such as collective bargaining (CB), transnational workers' representation in European works councils (EWC) and transnational company agreements (TCA).¹⁸

Workers' voice describes the representation of employees' interests at the company and plant level. More specifically, we identify four functions of workers' voice: representing workers' concerns, enforcing workers' rights, communicating workers' interests and monitoring management decisions. These functions are not specific to the institutional context but can be carried out in different forms, such as trade union representation, works councils, collective bargaining and board-level representation.

Moreover, while the European Social Model, on the whole, is geared towards strong workers' rights, this is not the case for all member states of the EU. Not only does the UK not subscribe to a continental social model, some new member states, particularly the Baltic States, Romania and Bulgaria, do not have a history of cooperative and strong industrial relations. Southern European countries have strong workers' protection rights but weak traditions of workplace industrial relations. These are also the countries where BLER exists in state-owned companies but not in the private sector.

Given this diversity, how can we define the role of workers' voice in the European Social Model? The practice of legally-protected forms of workers' voice in large transnational companies is situated in the context of wider, historically-constituted industrial relations and corporate governance systems. National industrial relations systems have evolved in the course of industrialisation and, in particular, in the context of war mobilisation and the response to the role of business in Nazi Ger-

17 In this text, the use of the term "employee" is not restricted to domestic legal definitions. Due to the multitude of different concepts in Europe, the terms "worker" and "employee" are used as synonyms.

18 We will not discuss employee financial participation or employee share ownership and, as a consequence, we will also not analyse the role of employee shareholdings and pension funds as board representatives or in corporate governance more generally.

16 Crouch, Colin (1993)

many.¹⁹ Even though countries with strong labour institutions have a good economic performance, these strong labour institutions were not conceived or implemented in order to pursue better economic development. Rather, with a view to Germany and Austria at least, they were the result of social conflict and strife.²⁰ Politically, the introduction of BLER was an expression of the strength of organised labour, combined with political mistrust towards the owners of large firms, who had not lived up to their responsibilities of corporate oversight in the past. Monitoring corporate behaviour lay at the core of instituting workers' representatives at the strategic, decision-making place of large companies.

In this context, and pushed for political reasons, workers' participation was often highly contested at the time, even by trade unions. Some saw BLER as attempting to buy the cooperation of workplace and company representatives at the expense of more autonomous bargaining strategies. In countries with strong, political trade unionism, particularly in Southern Europe, the implicit notion of co-management and responsibility that is embodied in BLER did not fit in with broader, trade union, political views. This has changed over time, as the political landscape has shifted. The push towards pragmatic, corporate oversight instead of political opposition is, however, still a point of contention.

As collective organisations are always rooted in local practices, these different opinions cannot be harmonised in a top-down decision-making process. Rather, European policy-making has to cope with existing diversity and work towards a common understanding of workers' voice that, nonetheless, embraces the diversity within it.

Recommendations

The Expert Group on workers' voice in transnational companies in Europe concluded that the role of transnational companies has become much more important over the last three decades and that they are an important force in globalisation. This has had beneficial effects on economic growth but also the harmful consequences of inequality and economic insecurity. If not addressed, the arising inequalities can threaten the European Union as a whole. The Expert Group also recognised that workers' voice is a key concept for making globalisation fairer.

Workers' voice is a fundamental part of the European Social Model which, in the past, has worked as a tool for sharing prosperity and reducing inequality. Further market integration and company mobility must recognise this and work towards enabling and facilitating workers' voice. European and national policymakers should aim to:

- recognise the importance of social institutions in the process of market creation and liberalisation
- recognise that the European Social Model is globally competitive and open up the debate about how to include workers' voice and social provisions in company law
- uphold and respect existing norms on workers' rights, as laid down in the Treaties of the European Union and the accompanying Community Charter of the Fundamental Social Rights of Workers
- strengthen and widen the application of workers' voice provisions within EU legislation
- incorporate workers' voice in the process of economic development in the EU member states
- change the priority that is given to competition within the Single Market over institutions of workers' voice.

¹⁹ Vitols, Sigurt (2001)

²⁰ Streeck, Wolfgang and Kozo Yamamura (2001)

CHAPTER 2

WORKERS' VOICE IN LARGE EUROPEAN COMPANIES

There is no comprehensive data on transnational companies in the European Union. The ETUC estimates the number of companies that fall under the EWC Directive as around 3,000.²¹ In order to have some empirical data on the spread of workers' voice in large companies in Europe, we created a dataset of 855 listed companies in the EU. On that basis, we can make the following claims:

Firstly, workers' voice is heavily concentrated in large firms. Of the 100 largest companies in the database (ranked by number of employees), 43% have board-level employee representation, 90% have a collective agreement and 51% European agreements. In the larger dataset, the numbers are considerably lower. Workers' voice is also complementary, in the sense that different types of workers form clusters in companies. Particularly, board-level employee representation is positively correlated with companies' willingness to engage in collective bargaining and the presence of European works councils.

Secondly, workers' voice makes a difference to company performance. We find a set of linkages of workers' voice to indicators of good corporate governance. Companies with BLER offered considerably lower remuneration packages to top management than companies without BLER. Also, companies without workers' voice have a higher turnover and a higher degree of volatility, measured as changes in employment (both increases and job losses). Finally, companies with workers' voice are more likely to engage in sustainability management.²²

Workers' voice in publicly listed companies in Europe

The Thompson Reuter dataset on large, publicly listed companies in Europe contains different variables on environmental, social and governance practices. The dataset contains information about companies that are listed on the stock exchange and have been willing to complete questionnaires on sustainability and corporate governance is-

sues. Once completed, Thomson Reuter resends the questionnaire on a yearly basis. Hence the information within the dataset will only draw a picture about listed companies, and this might differ from the general practices of companies within countries. However, this is the only dataset providing comparable data on the different topics covered within this project.

For this report, we added data on transnational company agreements, European works councils/ SE works councils, board-level employee representation and collective bargaining agreements at the company level.²³ Board-level employee representation is a legal requirement in many European member states. In our dataset, in 11 out of 17 countries, BLER is a requirement for at least some companies. European works councils can be set up on request in companies with more than 150 employees in two EU member states. We do not know how many companies in our dataset qualify for an EWC but have measured the number of those who have one. Collective agreements at the workplace, national, European and international level are voluntary in all countries, with the exception of Austria, where membership in the Austrian employers' confederation (business chamber) is mandatory for companies. However, in Austria, not all companies have collective agreements.

As the most important finding, we can observe that workers' voice is widely present among large European companies (figure 2.1). In our database of 855 publicly listed companies with more than 100 employees, 63.2% participate in collective bargaining (CBA), 30.4% have a European works council (EWC) and 27% have board-level employee representation (BLER). 8% have a European company agreement (ECA) and 5.3% an international framework agreement (IFA).²⁴

Larger companies have stronger workers' voice: When we concentrate on the largest 100 companies (ranked by number of employees) of the same dataset, we find that 90 companies have a collective bargaining agreement in place. 43% have employee representatives on company boards and 73% have a European works council or an SE works council. There are 27 companies with European company agreements and 23 companies

21 EWC News (2017): <http://www.ewc-news.com/en012017.htm>

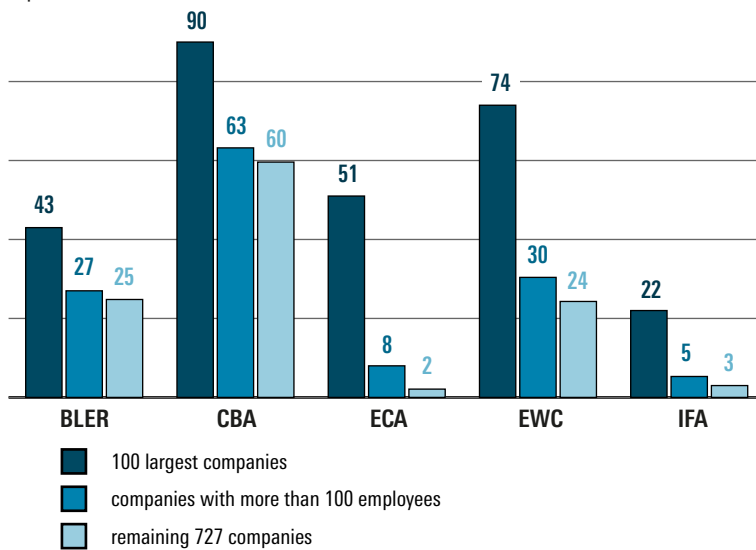
22 In order to have a deeper understanding of the effects of size, we compared the data for the 100 largest companies with the remaining 755 and also companies with more than 100 employees. We also calculated correlations controlling for the size of the companies.

23 For an overview of the respective data sources and data collection of the variables, see annex.

24 This applies for companies with more than 100 workers. We coded collective bargaining agreements as present when CBAs were present in all, or in the majority, of the company operations in the country where the company is listed on the stock market in 2014. If the country, where the company was listed on the stock market, was not the country where the headquarters were located, we checked the CBAs in the country where the headquarters were based. If the company in our list is a holding, we aggregated the information from the company parts.

Figure 2.1

Share of companies with different types of workers' voice by company size, 2014
in per cent



BLER: board level employee representation; CBA: collective bargaining agreement; ECA: European company agreement; EWC: European works council; IFA: international framework agreement

Source: WV dataset Hassel/Helmerich

Hans Böckler
Stiftung

with international framework agreements.²⁵ All companies that have BLER also have a collective agreement.²⁶ We assume that companies with BLER are not only larger but also more willing to engage in collective bargaining due to the existing largely cooperative relations with trade unions that they experience.

Also, workers' voice is cumulative. More than 94% of companies with BLER have a collective agreement in place; 57% of companies with BLER also have at least one European works council in place and 18% at least one European company agreement. In other words, even if BLER would not have an effect on corporate decision-making per se, it is strongly linked to the preservation and institutionalisation of other forms of workers' voice. This is true for all forms of workers' voice. The incidence of collective bargaining doubles when companies

²⁵ Data on international framework agreements were provided by Fichter et al (2013) and Rüb et al (2013). The Database on Transnational Company Agreements of the European Commission gave us the information on European company agreements.

²⁶ Based on a first analysis of the 100 largest companies in the ASSET4 dataset, we found out that the size of the company has an impact on the presence, and potentially on the form, of workers' voice. Hence, in a first step, we excluded holding companies with less than 100 employees, which are usually not the place where workers' voice takes place (20 out of 855 companies had less than 100 employees in 2014). In a second step, we decided to compare data on workers' voice in the 100 largest companies with the results of the entire dataset (N=827, excluding 20 companies with less than 100 employees and 8 companies with no information on employee numbers) and the 727 companies (being the dataset, excluding the 100 largest companies).

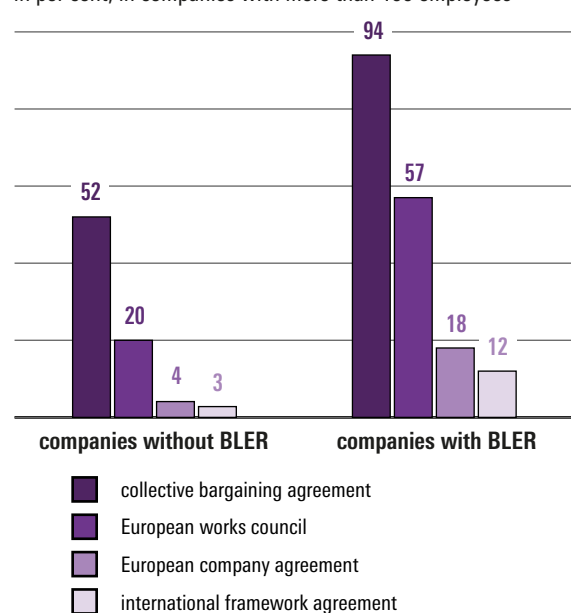
move from no BLER to BLER being present, and the likelihood of EWCs trebles. BLER, the legal requirement to include workers' representatives in some form on the boards of companies, contributes to the institutional safeguards of other forms of workers' representation. This finding should not be underestimated. On the other hand, of the countries where collective bargaining is strongest, Hungary, Italy and Belgium, only Hungary has BLER. Italy and Belgium are well-known for their strong scepticism towards BLER. Here, we find that collective bargaining compensates for the lack of BLER.

Finally, workers' voice is distributed unevenly among the EU member states. We know this already from country comparisons of industrial relations, where union membership, collective bargaining coverage and workplace representation greatly vary.²⁷ Moreover, the dataset is incomplete, as it includes very few companies from Eastern Europe. Nevertheless, we can conclude that collective bargaining is strong in all countries but the United Kingdom, where only 30% of publicly listed companies have collective agreements. In all other countries, the majority of companies has collective agreements and, therefore, recognised trade unions. We can also see that European works councils have spread to almost all countries, even to the UK, where, in 15% of companies, we find an EWC. Other forms of European workers' voice, like European company agreements and international framework agreements are much lower.

Figure 2.2

Workers' voice by BLER, 2014

in per cent, in companies with more than 100 employees



BLER: board level employee representation

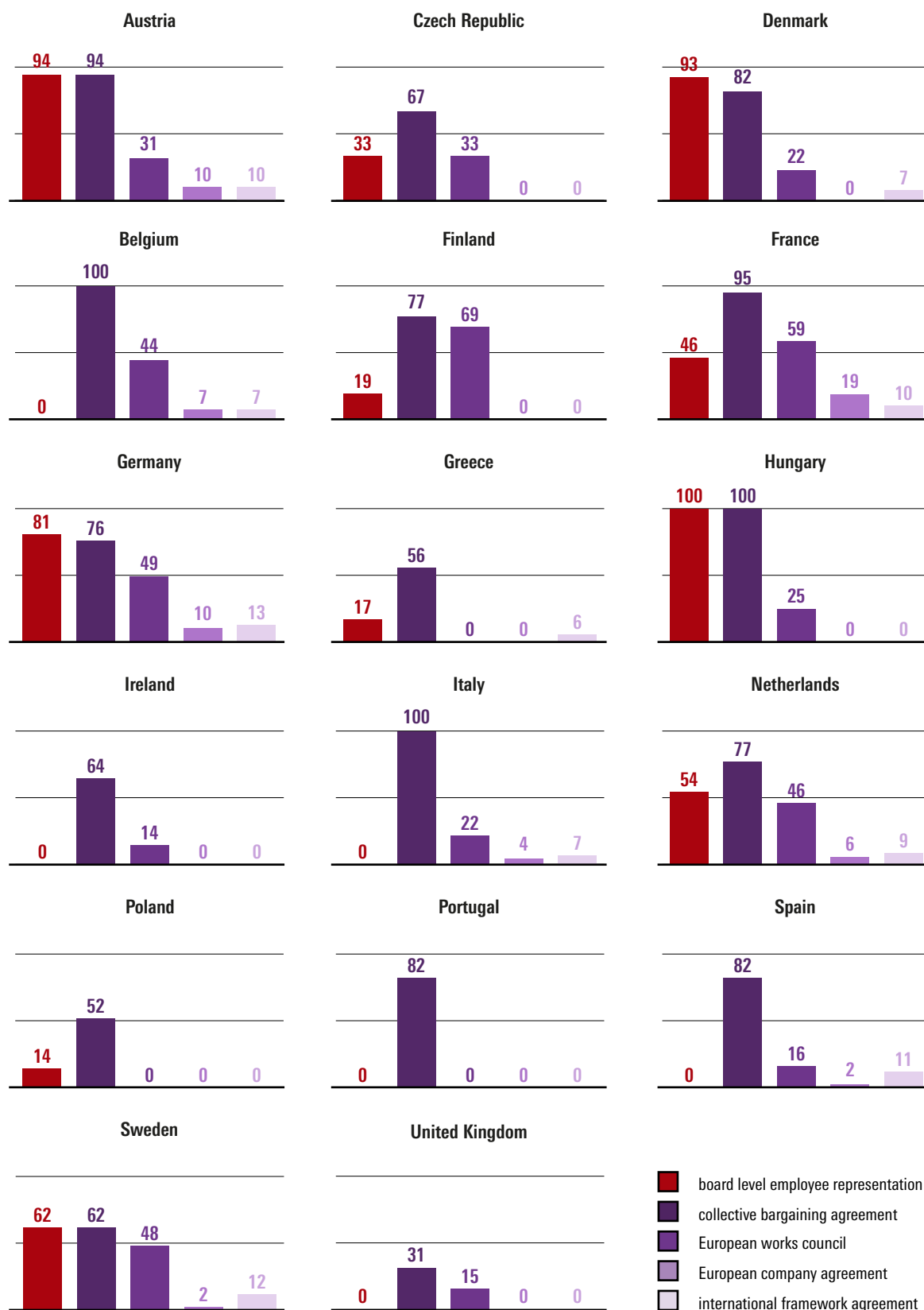
Source: WV dataset Hassel/Helmerich

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²⁷ Eurofound (2017)

Figure 2.3

Workers' voice by country, 2014
in per cent of companies

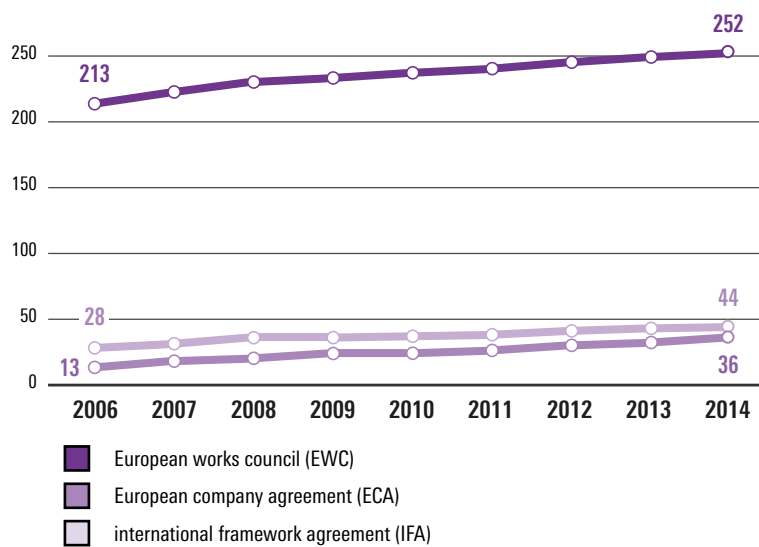


Source: WV dataset Hassel/Helmerich

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Figure 2.4

Number of EWCs, ECAs and IFAs, 2006–2014 (all companies in the dataset included)



Source: WV dataset Hassel/Helmerich

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The Europeanisation of workers' voice is already taking place, as the numbers of European/international agreements and EWCs over the last 8 years show. There has been a steady increase of all three types of international representation, even though the uptake of European/international agreements remains limited (figure 2.4). This compares with about 100 IFAs in Europe overall²⁸ and more than

1,000 European works council agreements.²⁹ Again, the increase in EWCs and IFAs should not be underestimated. They serve as transnational learning platforms in which national practices (BLER and collective bargaining) can be exchanged and disseminated. For the evolution of the European Social Model, the spread of transnational workers' voice is encouraging.

The companies in the dataset employ about 27 million employees worldwide. In line with the finding that larger companies are more likely to have workers' voice present, we find that, even though only 63% of the companies have a collective agreement, about 87% of all employees in these companies are working for companies that have concluded an agreement (figure 2.5).³⁰ Similarly, almost 62% of all employees work for companies with an EWC and 42% of employees are covered by board-level representation. The coverage of workers' voice is, therefore, much larger than the share of companies participating in workers' voice.

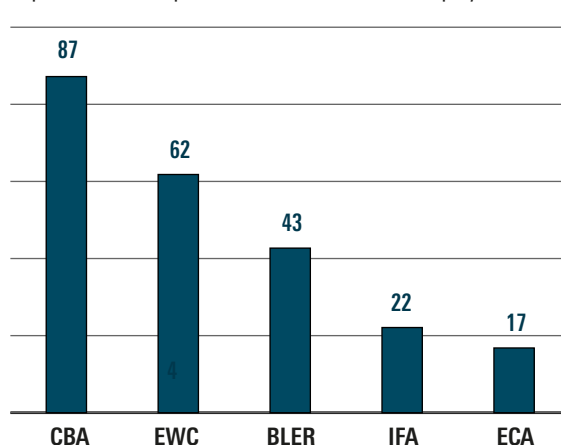
Does workers' voice make a difference?

As workers' voice is concentrated in very large companies, its effect is partly a size effect. However, there are indications that, independent of size, workers' voice has an influence on corporate behaviour. This is also reflected by research on the effects of workers' voice on corporate performance, employment and even effects outside the workplace. There is a growing amount of literature that theorises and tests the effects of different kinds of workers' voice. In this research, it is assumed that employee representation contributes to increased welfare by solving organisational failures within companies, creating trusting industrial relations, exerting voice and by improving managerial decisions. As we will argue in chapters 3-5, workers' voice can play important roles in corporate governance, restructuring and corporate responsibility management by improving information flows and monitoring management behaviour.

Empirical research on the effects of workers' voice has made great progress in establishing the effects and preconditions for those effects.³¹ Research on the effects of works councils and BLER on company performance and on society as a whole

Figure 2.5

Share of employees covered by types of workers' voice, 2014 in per cent, in companies with more than 100 employees



CBA: collective bargaining agreement; EWC: European works council; BLER: board level employee representation; IFA: international framework agreement; ECA: European company agreement

Source: WV dataset Hassel/Helmerich

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²⁸ Platzer, Hans-Wolfgang and Stefan Rüb (2014), p. 7, figure 1

²⁹ de Spiegelaere, Stan and Romuald Jagodziński (2015), p. 12, figure 1

³⁰ This does not mean that the entire workforce of those companies is covered by a collective agreement as there is no information as to who is covered by the collective agreements.

³¹ See Hörisch, Felix (2009); Jirjahn, Uwe (2010)

frequently produces positive results through higher investment, productivity but also an increased civic engagement by workers. Ideally both employers and employees benefit from workers' voice.³² Here, we present some findings on how workers' voice relates to some aspects of corporate governance, restructuring and company policies. In future, these relationships have to be researched in detail. The data gathered for this report should be a good starting point for establishing the precise effect of different types of workers' voice and their cumulative effect on companies, employees and society at large.

A strong effect can be observed regarding executive pay. This is measured by the highest remuneration package within the company in US dollars in a specific year. Figure 2.6 shows that, in companies without either BLER or collective agreements, the average highest executive pay among the 100 largest companies stood at 14.7 million US\$ compared to 4.07 million US\$ in those companies with BLER and 5.62 million US\$ in companies with collective agreements. This is a big difference. Among the remaining 755 companies, corporate pay was, on average, much lower, and the difference between companies with workers' voice was lower but still present.³³

The opposite effect can be observed when looking at net sales or revenues of the company (figure 2.7).³⁴ Here workers' voice is associated with higher sales and higher revenues. Again, there is the strong effect of BLER pushing up the sales and revenues of the company. Companies with neither BLER nor collective agreements have less than half the revenues of companies with BLER, among the 100 largest companies. Remember that these are the same companies that pay their executives significantly higher remuneration packages.³⁵

Companies with workers' voice also grow more than those without. Figure 2.8 shows that, in the 100 largest companies with CBA or BLER, the increase in employment was larger than in compa-

Figure 2.6

Highest remuneration package by workers' voice, 2014
in million US dollars



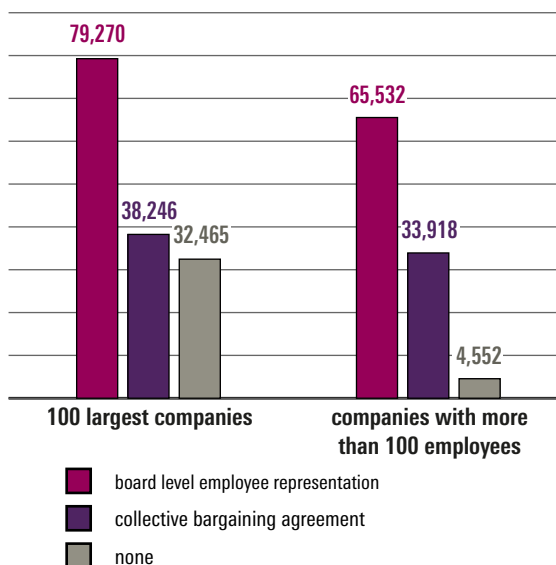
Source: WV dataset Hassel/Helmerich

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nies with no workers' voice coverage. It indicates that the strongest difference is for companies with CBA compared to companies with no workers' voice. It also shows that large companies in Europe continue to grow.³⁶

Figure 2.7

Net sales or revenues, 2014
in 1000 US Dollars



Source: WV dataset Hassel/Helmerich

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³² See research overview in: Jirjahn, Uwe and Stephen C. Smith (2017), but also Lopatta, Kertsin, Böttcher, Katarina and Reemda Jaeschke (2018); Ellguth, Peter and Susanne Kohaut (2015)

³³ When controlling for size, there is a negative correlation between BLER (-0.162) and CBA (-0.237) and the size of the remuneration package.

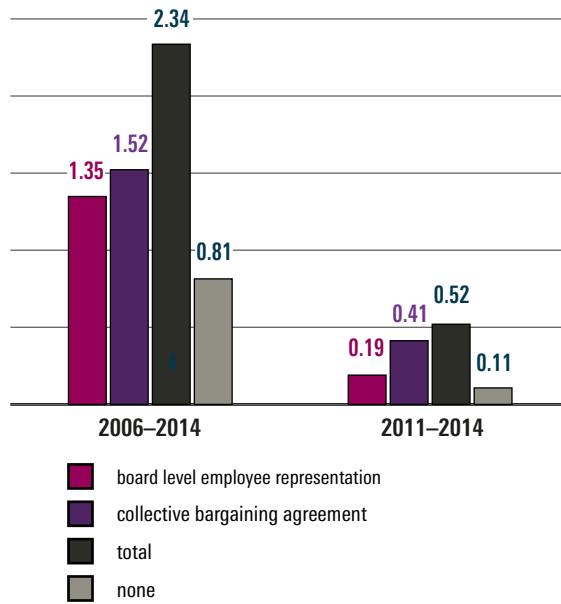
³⁴ The Thomson Reuters Worldscope database variable, net sales or revenues (in US\$), measures the net sales or revenues of the company, converted to US dollars, using the fiscal year end exchange rate. The Thomson Reuters Worldscope database variable, market value, measures the total market value of the company in US dollars.

³⁵ There is a small positive correlation between sales and workers' voice after controlling for size: BLER (0.104) and CBA (0.07).

³⁶ More information about the employment growth of the companies in the data set is in the annex.

Figure 2.8

Change in total employment numbers (100 largest companies)
number of employees, in millions



Source: WV dataset Hassel/Helmerich

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In the area of corporate responsibility, we find that, generally, large, European companies seem to engage in sustainability issues. For example, 73 out of the 100 largest companies were members of the Global Compact in 2014, and 54 out of the 73 have been members of the Global Compact for 9 years or longer. Therefore, membership in sustainability organisations is quite high and has existed for a long period of time.

Figure 2.9 shows the number of companies that have adopted a policy of good employee relations. Within the group of companies without any kind of workers' voice (N=306), 65 companies (or 21%) have a policy on good employee relations. In the group of companies that are bound by a collective agreement (N=521), we find 184 companies (or 35%) that have such a policy. In the group of companies that have a European works council, this share is even higher: out of 248 companies with an EWC, 101 companies have a policy on good employee relations, which amounts to 40%.³⁷

We see a similar effect when looking at the data on membership in a specific sustainability index. Here the differences in absolute numbers and relative shares are even bigger (figure 2.10).³⁸ On the other hand, the amount of missing information

³⁷ A small positive correlation remains after controlling for size: 0.04 (BLER) and 0.09 (CBA).

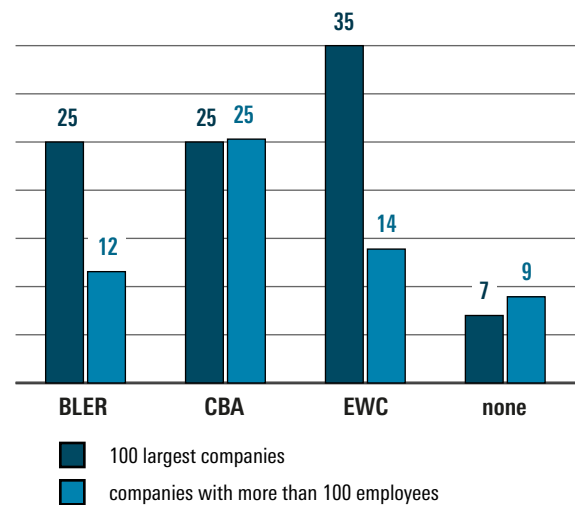
³⁸ Again, the positive correlation remains after controlling for size: BLER (0.03) and CBA (0.01).

is high and probably higher among those smaller companies which also do not have any kind of workers' voice.

Nevertheless, there is no indication that workers' voice has a detrimental effect on corporate governance, employment or ESG indicators. On the whole, the data in the dataset confirms that workers' voice is beneficial for the governance of the companies where it exists and most likely for the communities in which these companies operate.

Figure 2.9

Policy on good employee relations, 2014
in per cent of companies



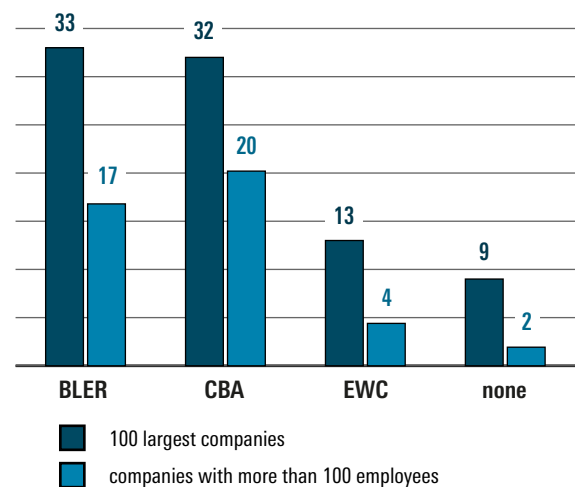
BLER: board level employee representation; CBA: collective bargaining agreement; EWC: European works council

Source: WV dataset Hassel/Helmerich

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Figure 2.10

Membership in a specific sustainability index, 2014
in per cent of companies



BLER: board level employee representation; CBA: collective bargaining agreement; EWC: European works council

Source: WV dataset Hassel/Helmerich

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Recommendations

Despite the growing importance of cross-border economic activity, there is no comprehensive knowledge or data on the scope and size of transnational companies in the EU or the role of workers' voice in those companies. Most industrial relations research focuses on the level of the member state and measures country-level indicators. However, policymakers, trade unions and workers' representatives at the company level need better data on transnational companies in order to make informed decisions.

The Expert Group, therefore, recommends policymakers to:

- improve the database on company-level data, focusing on large transnational companies, including a yearly assessment of transnational companies' activities. A role model could be the UNCTAD World Investment Report.
- improve the database on workers' voice and industrial relations at the company level in co-operation with Eurofound.
- set up specific research programmes in the EU on the effects of cross-border, economic activities (restructuring and mergers), on employment and regional development and the role of workers' voice.
- establish a dataset of companies that are eligible for an EWC.

CHAPTER 3

GOOD CORPORATE GOVERNANCE

While institutionalised forms of workers' voice on management boards are an integral part of corporate governance in two-thirds of the EU member states, this is not reflected in either the academic or the political discourse. Academically, the vast majority of corporate governance analysts subscribe to a narrow agency perspective, which focuses exclusively on the relationship between shareholders and management. Politically, the regulatory design of corporate governance policy has, on the whole, embraced the Anglo-Saxon shareholder model and pursued policies strengthening minority shareholders and transparency in order to prevent collusion between large shareholders and management.

The expert group proposes integrating the role of workers' voice into a concept of good corporate governance. Similar to the authors of the series of publications on the sustainable company, who see workers as stakeholders in a broader stakeholder model of the company, we argue that workers' voice can play a unique role in corporate governance in various institutional contexts.³⁹ This is due to the function of workers' voice regarding both the internal and external monitoring mechanisms of standards of good corporate governance models.

Trends in corporate governance: Diversity of corporate governance models in the EU

Corporate governance refers to the regulation of the internal structures of corporations, in particular those that are associated with directing and controlling the corporation. It is also concerned with the financing of companies and, therefore, interacts with different types of corporate finance. In the OECD world, we find two predominant models of corporate governance, the outsider-financed, Anglo-American shareholder model and the more insider-financed, continental European/Japanese stakeholder model.⁴⁰ The insider-financed model is also more likely to have a dual system of supervisory and management boards, with workers' representatives on company boards. Within the EU, the role of external corporate finance varies tremendously (figure 3.1).

The outsider-financed shareholder model leads to higher levels of market capitalisation in companies and usually focuses on dispersed shareholders rather than block holders. In these cases, the corporate governance regulation focuses on the

"We try to affect as much as we can, particularly in matters of personnel policy and the manufacturing footprint. The owners mostly listen to us, what the feeling is among the staff in the company and how employees perceive the company culture etc. These are questions that they can't get really good responses to from the management."

Annika Ögren, Husqvarna AB

"The single most important issue, in my view, is to develop a sustainable and long-term corporate governance practice that privileges stakeholder rather than shareholder value and that includes as a central topic a forward-looking plan for proactive employment and skills."

Fernando Vasquez

"We always try to balance profitability and employment. That means that, via our co-determination in the supervisory board, we have the possibility to promote, for example:

- priority of giving volumes to existing plants before building new plants
- balancing production volumes between plants or even between brands to prevent situations of "extra work in one factory while having to close other factories for a while"
- investing for modernisation and flexibilisation in existing plants to make this kind of volume-switching possible
- strengthening the development of sites and technological competencies of our in-house-components

In fact, it is often the case that we, as workers' representatives, try to optimise decisions from the "VW group" point of view instead of just seeking to optimise personal management targets at the cost of other departments or brands."

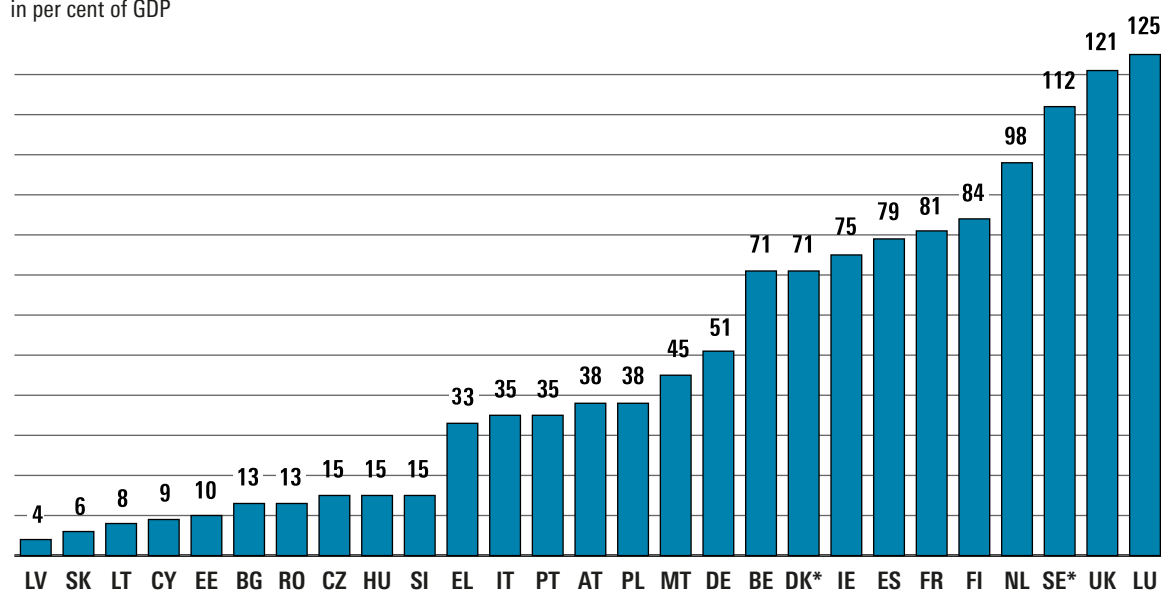
Christoph Harland-Juhl, Volkswagen

³⁹ Vitols, Sigurt and Norbert Kluge (2011)

⁴⁰ West, Andrew (2016), p. 17

Figure 3.1

Stock market capitalisation in EU28 countries, 2013
in per cent of GDP



* Data for 2012; Source: EU Commission

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rights of minority shareholders and transparency rules, which are essential for judging management performance.

The insider-financed stakeholder model has far lower levels of market capitalisation, less access to, and is less influenced by, stock-exchange regulation and has a strong role for block holders. The monitoring of management often occurs through direct control and the participation of block holder representatives on company boards. Workers' representatives are often integrated into this model of direct management monitoring, although in very different ways in different countries.

The type of corporate governance model has implications for the different business models of companies. The outsider-financed shareholder model is associated with the short-term strategies of innovation and restructuring, while insider-financed stakeholder models specialise in more long-term approaches towards innovation and investment. From this perspective, the insider-financed stakeholder model is associated with a more participatory model of capitalism.⁴¹

In the comparative political economy literature, different corporate governance models are explained by the wider institutional framework, in which companies develop strategic complementarities.⁴² An important aspect is the relationship of

patterns of ownership and employee participation, which are characterised as “mutually interdependent and achieving a complementary institutional ‘fit’”.⁴³ Short-term finance is enabled by a liquid market for corporate finance and dependent on an industrial relations system that is based on a flexible labour market and decentralised wage setting.

In comparative corporate governance studies, ownership structure has been a central topic. Despite the focus on the minority shareholder in

	European/Japanese Stakeholder Model	Anglo-American Shareholder Model
Finance	Insider-financed, block holders	Outsider-financed, dispersed shareholders
Capitalisation	Low market capitalisation	High market capitalisation
Board system	More likely a dual board system	More likely a one-tier system
Participation	More participation	Less participation
Corporate strategy	Associated with long-term strategies towards innovation and investment	Associated with short-term strategies of innovation and restructuring

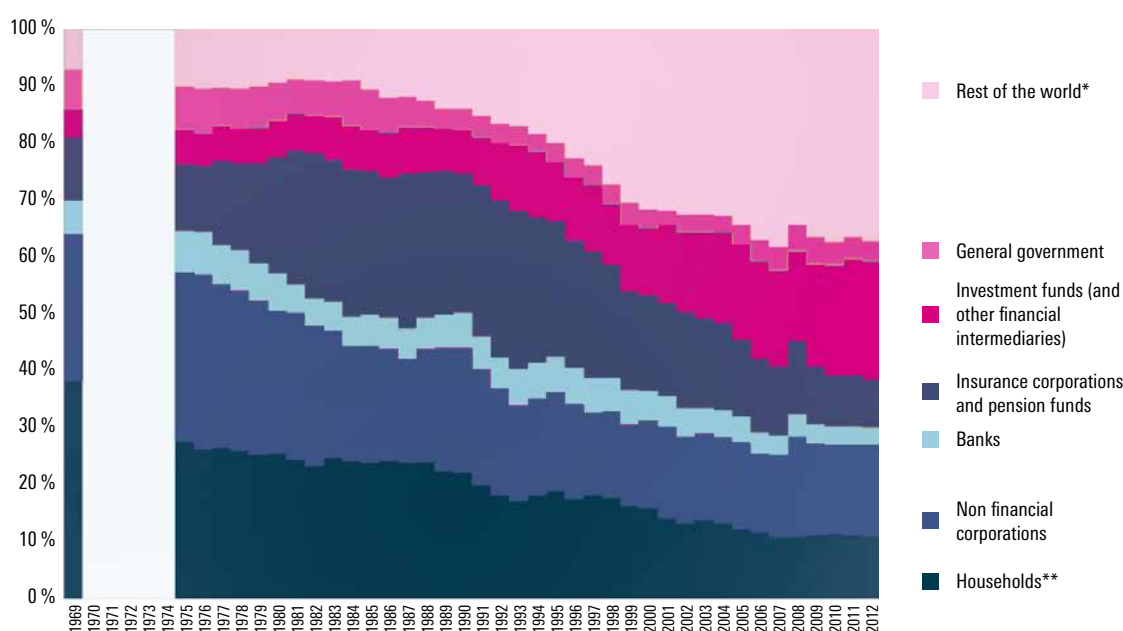
⁴¹ See discussion on corporate governance within the Varieties of Capitalism framework that has different forms of ownership structures as key components for framing the relationship between workers' voice and management practice. Hall, Peter A. and David Soskice (2001)

⁴² Aoki, Masahiko (2001); Milgrom, Paul and John Roberts (1995); Soskice, David (1999)

⁴³ Aguilera, Ruth V. and Gregory Jackson (2010)

Figure 3.2

Share ownership structure in the EU, 1969–2012



* including non domestic EU investors and non EU investors ** including non-profit institutions serving households

For years 1970 to 1974, available data are not representative enough for running any estimation

Source: Davydoff et al. 2013, p. 5 ⁴⁵

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the corporate governance literature and policy, most companies in the world have concentrated ownership structures. Large block holders have enhanced control rights by deviating from the one-share-one-vote principle through dual-class shares, state intervention, hierarchical groups and others. However, as Ruth Aguilera points out, the distinction between concentrated and dispersed ownership patterns is not as clear cut as assumed because of the rise of foreign institutional investors, hedge funds and sovereign wealth funds as well as the decline of block holding.⁴⁴

Investors have different strategic interests in companies, ranging from passive investment to active control. The composition of owners and investors in transnational companies is likely to impact the relationship between management and investors and, therefore, the strategic decision-making of companies as well. As the type of investors change, these governance practices are likely to change as well.

For instance, strategic institutional investors focus on corporate restructuring and prefer countries where restructuring is fast and power is concentrated at the top. They are guided by their capacity to intervene in the company. Michel Goyer has shown in his work how institutional investors prefer

France to Germany, as co-determination rights in Germany slow down restructuring.⁴⁶ As the share of financial intermediaries as company owners rises in the EU, this will impact on corporate governance practices (figure 3.2).

However, more recent studies have found that the relationship between corporate law and corporate organisation is not straightforward. For instance, there is no linear relationship between minority shareholder protection and financial market development.⁴⁷ The empirical observations of corporate governance legislation, financial market dynamics and business models are less institutionally determined than is often assumed in the literature.

Moreover, different types of corporate governance have not prevented corporate scandals or have, by themselves, produced better or worse companies. Good employers can be found in all countries, as can corporate excesses. For example, block holders and other insiders in companies can collude with unscrupulous managers, and these managers are able to insulate themselves against monitoring.

Therefore, the development of good corporate governance should not be dominated by the differences in market capitalisation and institutional

⁴⁴ Aguilera, Ruth V. and Gregory Jackson (2010)

⁴⁵ Davydoff, Didier, Fano, Daniele, Tor Vergata and Li Qin (2013)

⁴⁶ Culpepper, Pepper D. (2010); Goyer, Michel (2011)

⁴⁷ Aguilera, Ruth V. and Gregory Jackson (2010); Armour, John, Deakin, Simon, Sarkar, Prabirjit and Ajit Singh (2009), p. 343

contexts. Rather, we should start with general criteria for good corporate governance, as suggested by Ruth Aguilera.⁴⁸ These include:

- the protection of stakeholder rights and the means to enforce those rights by monitoring executives and holding them accountable
- the management of different interests and demands of various internal and external stakeholders
- the provision of transparent information disclosure
- the provision of strategic and ethical guidance for the company.

The criteria for good corporate governance can be applied to any institutional environment. They refer to the internal and external mechanisms of monitoring management. They are partly facilitated by the legal and factual relationship between shareholders and management (internal) and partly by the wider institutional setting (external).⁴⁹ The role of employees and their representatives is relevant in both the internal and external setting. Workers' representatives, embodying vital knowledge of the company's operation, can contribute to strategic and ethical guidance and formulate the demands of key stakeholders.

The purpose of companies and corporate governance reforms

While the separation of ownership and control has created specific sets of rights and responsibilities for investors and boards in all countries, there has been a marked trend towards a rather specific understanding of corporate governance based on mechanisms to solve agency problems. Agency problems arise as share owners only have property titles and do not have command over the management of the company. Therefore, share owners need other insurances for control. Depending on the ownership structure of the company and the corporate governance model, there are two basic forms of control: block holder control or the market for corporate control. In situations of concentrated ownership, large block holders can exert direct control over top management. Block holding is still a key feature of corporate control, in particular in European markets and in the US. Alternatively, in contexts of dispersed ownership, market mechanisms have taken the place of direct control. In theory, hostile takeovers are key instruments in

Example: Solvay S.A.

More than 30 % of the shares are in the hands of the Solvay family. This is important for the long-term view of the company. Solvay is not driven by rating agencies which want to see short-term results. A good example is the acquisition of the Cytec Company in the US. Cytec was bought to get access to the carbon fibre business, which is a product of the future, used for lightweight cars and aeroplanes. This acquisition was very expensive, 14 times the EBITDA⁵⁰ of Cytec, and it was criticised by the financial analysts. Solvay bought this company as a long-term investment, spanning more than 10 years. This acquisition was taken with the mindset of the Solvay family to have a long-term view of their business.

Albert Kruff, EWC Solvay

disciplining managers in badly performing companies. In order to effectively exert market control, a number of policies and instruments need to be in place: they range from accounting to disclosure rules and focus in particular on the rights of minority shareholders.

Despite the fact that block holding is still a key feature in many large companies, corporate governance reforms over the last 30 years have moved persistently towards a market-based system of corporate control.⁵¹ Market-based corporate control rests on strong disclosure and transparency mechanisms, which signal management performance to market participants. The assumption is that as shareholders will sell the shares of badly-performing companies, undervalued companies invite corporate takeovers, which, in turn, will tackle the problem of performance. Corporate governance often refers to hostile takeovers as characteristic in an active market for corporate control, even though, in practice, these mechanisms frequently do not work and are harmful to employees.

The trend towards a market-based system of corporate control went hand in hand with a shift in the purpose of the company. Up until the 1970s, the perspective that the primary purpose of the company was its capacity to produce and deliver services to its customers was widely shared.⁵² Over time,

48 Aguilera, Ruth V., Desender, Kurt, Bednar, Michael K. and Jun Ho Lee (2015)

49 Aguilera, Ruth V., Desender, Kurt, Bednar, Michael K. and Jun Ho Lee (2015)

50 Earnings before Interests, Taxes, Depreciation and Amortisation, an indicator for financial performance

51 Sjøfjell, Beate, Johnston, Andrew, Anker-Sorensen, Linn and David Millon (2015)

52 See for instance the keynote by John Kay at the

this primary purpose of companies has changed towards a focus on delivering a return on investment or the maximisation of shareholder value. There has always been tension between the aims of managers to pursue the growth of the company versus the interest of investors in return. In the famous lawsuit of Dodge versus Ford over the payout of dividends in 1916, the court decided on this precise question: Can the management of a company pursue an independent strategy of investing in expansion at the expense of investors' return? The court at the time ruled in favour of the investors and forced Henry Ford to pay dividends. However, the court also upheld the 'business judgement rule' (BJR) and, therefore, started the discussion on what the proper purpose of a well-functioning corporation should be. This includes wider business strategies as well as social and environmental concerns: "One important effect of the BJR is to give members of the board and management greater scope to take account of environmental considerations in their decision-making than is apparent on the face of the law".⁵³ In order to have this discussion, it is vital to have other representatives with wider interests also present when strategic discussions take place.

However, these legal cases are extremely rare, primarily because corporate directors will frequently claim to be maximising profits for shareholders, and it is almost impossible to refute these corporate officials' self-serving assertions about their motives.⁵⁴

Over time, and in particular from the 1970s onwards, corporate governance regulation has pursued a stronger link to corporate governance with the maximisation of shareholder value.⁵⁵ The lifting of capital controls and the liberalisation of global financial markets facilitated global financial flows and initiated a search for investment opportunities for investors. These investors were less interested in the growth of companies or the production of goods and services, but in a high return on their investment. In order to ensure high levels of return, corporate governance regulations and models were increasingly focused on shareholder rights and the alignment of corporate directors with the interests of global investors. In that process, the role of other stakeholders, in particular workers' voice, was increasingly downgraded.

In the EU, company law moved onto the agenda with the single European market and financial liberalisation. Particularly the Financial Services Action Plan (FSAP) in 1999 put corporate governance on

the European regulatory agenda. The legislative programme shifted from company law harmonisation "towards a regulatory approach based on minimum requirements and mutual recognition, increasingly geared at adjusting the governance of corporations to the demands of liberalized capital markets."⁵⁶

Agency theory and shareholder value maximisation has been criticised widely by policymakers, business experts, managers and trade unions alike. The exclusive focus on profits and shareholder returns, with minimal or no oversight by anybody else, has encouraged and facilitated corporate scandals and the financial crisis in 2008. Corporate scandals were largely driven by accounting fraud (Enron, WorldCom), insider trading and price fixing, abuses of regulatory loopholes (Deutsche Bank, subprime mortgages) as well as tax evasion through international arbitrage. There is little doubt that the massive increase of executive pay and the steady increase of return on investment up till 2008 are closely related to the regulatory framework of corporate governance models as well as the loosening of financial regulation.

Jack Welch, CEO of GE until 2001 and a major proponent of shareholder value during his active time at GE, stated in an interview with the Financial Times: "On the face of it, shareholder value is the dumbest idea in the world. Shareholder value is a result, not a strategy... your main constituencies are your employees, your customers and your products. Managers and investors should not set share price increases as their overarching goal... Short-term profits should be allied with an increase in the long-term value of a company."⁵⁷

Noticing the increasing focus on the long-term value of a company brings us back to the question of the company's purpose. Rather than turning companies into financial vehicles for maximising return, a successful company should be defined by its capacity to produce successful goods and services and provide long-term, stable employment for local communities. It is, moreover, argued that the turn towards shareholder value maximisation and the sole focus on a return on investment has driven productivity and innovation down, as managers tend not to pursue the development of new products and services but rather squeeze assets and go for short-term financial gains.

The battle over the purpose of the company and the legal setting for guiding corporate decisions has not been decided yet. The financial crisis and corporate scandals have put corporate governance on the agenda for better economic governance. On the one hand, international organisations, like the

Creating Sustainable Companies Summit (Brussels, September 2016). <https://www.johnkay.com/2016/10/24/the-purpose-of-the-corporation/>

⁵³ Sjäfjell, Beate (2015)

⁵⁴ Macey, Jonathan R. (2008)

⁵⁵ Veldman, Jeroen and Hugh Willmott (2016)

⁵⁶ Horn, Laura (2012)

⁵⁷ Welch condemns share price focus. Financial Times, 12 March 2009

OECD, have started to address increasing social inequality and polarisation. Investigative journalism has unveiled the extent of practices of tax evasion in large companies as well as wealthy individuals using offshore centres. Moreover, banks and corporations have been taken to court over fraud and malpractices. Regulators and companies have started to address executive pay.

On the other hand, despite Jack Welch's admission, there has not been much effort or contribution by the business community to fundamentally address the issues of extreme agency orientation. There are still large areas in the business community, which are still used as a self-serving mechanism for jointly exploiting companies' assets for higher executive pay and a return on investment. Executive pay is still rising faster than average pay, and

active institutional investors, in particular hedge funds, are able to strip assets and run down successful companies.

The role of workers' voice in good corporate governance

From an empirical perspective, there is no doubt that companies with a strong role for labour are in no way less competitive or successful than others. For instance, the World Economic Forum has a competitiveness ranking for countries. Among the global top ten countries, there are six Northern European countries. Of these six countries, four⁶⁰ countries have extensive provision for workers' representation on companies' boards. Even more

Corporate governance reforms in the EU

In the last two decades, increasing legislative activity in the EU on European Company Law shows that the EU orients its policies to a shareholder value concept of corporate governance. In **2003**, the European Commission presented an **Action Plan** on "Modernising Company Law and Enhancing Corporate Governance in the EU". Its main goal, in particular, was "strengthening shareholders' rights". The **Takeover Bids Directive 2004** encourages takeovers in Europe and provides minimum standards of protection for minority shareholders (2004/25/EC Takeover Bids).

In the aftermath of the financial crisis, the European Commission focused, in the **2010 and 2011 Green Papers**, on shareholder involvement in financial and non-financial companies. The "EU corporate governance framework" understands corporate governance as: "one means to curb harmful short-termism and excessive risk-taking". Several interviews with a number of listed companies from different member states, experts and investors revealed three key elements of "good corporate governance": high-performing, effective boards of directors; informed and active shareholders and an effective implementation of the 'comply or explain' principle.

The Commission's intention to encourage shareholders to engage more in corporate governance was also outlined in the **Action Plan 2012**: "They should be offered more possibilities to oversee re-

muneration policy and related party transactions, and shareholder cooperation to this end should be made easier" (Action Plan 2012). In 2014, the European Commission submitted the **proposal** for a directive amending the **Shareholder Rights Directive 2007/36/EC** (EC 2014). The directive defined the minimum requirements and rights for shareholders in listed companies across the EU.

The shareholder primacy is a relevant issue in further European initiatives (e.g. the new proposal for a company law package) in several expert groups (e.g. High Level Group of Company Law Experts, the European Corporate Governance Forum) and in decisions of the ECJ (e.g. Golden Shares). On the other hand, the efforts to strengthen workers' voice within the scope of the **Pillar of Social Rights** seem in contrast to the shareholder primacy. Initiatives like the **SE Directive (2001)**, the **Cross Border Merger Directive (2005)** and the **Proposal for a Company Law Package (2018)** provide tools to establish and sustain workers' voice in transnational companies and, thereby, introduce a more continental and participatory corporate governance model in the EU.⁵⁸ However, it is also the case that the SE Directive is actively used by companies to avoid employee participation on company boards and the CBM Directive is weaker compared to the SE Directive. Both are worrying developments.⁵⁹

⁵⁸ Johnston, Andrew (2009)

⁵⁹ See http://www.hugo-sinzheimer-institut.de/fileadmin/user_data_hsi/Veranstaltungen/2017/HBS-Forum_2017/Sick_WSI_HSI_Forum_ErosionMB_02032017fin.pdf


⁶⁰ Sweden, Germany, the Netherlands and Finland

Figure 3.3

Comparative performance of countries with stronger versus 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 between Group 1 and 2
Employment rate, age group 20-64	72.0	66.1	5.9
Gross domestic expenditure on R&D (GERD)	2.2	1.1	1.1
Share of renewables in gross final energy consumption	18.6	14.1	4.5
Early leavers from education and training	9.4	13.2	3.7
Tertiary educational attainment, age group 30-34	38.8	35.4	3.4
Population at risk of poverty or exclusion	18.7	29.8	11.1

Source: ETUI 2016

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striking, among the European top ten countries, seven countries⁶¹ have legal provisions for board level employee representation (BLER).

There is also no living example that workers' voice in corporate governance was abandoned based on bad economic performance, either at the company level or at the national level. There is even evidence to the contrary: that those countries with strong employee representation cope better with economic recessions.⁶²

Academic research at the company level supports this view: There is no firm evidence suggesting that a strong employee voice at the board level has a significant, negative effect on company performance or share prices.⁶³ On the contrary, the influence of workers can help to improve productivity, reduce labour turnover and preserve company-specific human capital and, thereby, contribute to better employment, education and social performance (figure 3.3).

Nevertheless the role of workers' voice in corporate governance is often either ignored or looked down upon. There is a consensus among scholars from different disciplines that assumes that the power of shareholders and employees is distributed in a zero-sum or negative-sum relationship. It is argued that a stronger role of worker involvement in corporate governance weakens the role of shareholders.⁶⁴ Those who assume a positive-sum relationship between shareholders and employees argue that block holding and employees' voice are complementary, as the long-term commitment by investors is matched by a long-term commitment

by employees, which fosters incremental innovation.⁶⁵ This is at the heart of the strong competitiveness of manufacturing companies in countries with a strong board level representation of employees.

However, recent research in corporate governance has shown that this relationship is more flexible. Some countries have strong block holding but not employee representation (i.e. Italy). Other countries with highly fluid, dispersed ownership also host companies that have a strong culture of employment protection (i.e. in the Silicon Valley). Others can have a stronger partnership with their employees, if shareholders do not expect short-term gains. In others, strong employee involvement has helped to increase transparency and shareholders' voice.⁶⁶

As a consequence, we would argue that workers' voice can, and should, contribute to the improvement of existing corporate governance models in all institutional settings, independent of the prevalence of block holding.

The role of workers' voice in corporate governance serves some or all of the following functions:

- It communicates employees' concerns and supports employees' commitment to the long-term future of the company and helps to negotiate corporate restructuring.
- It helps to raise productivity, by encouraging investment in skills and by fostering good work organisation and practices.
- It questions and challenges the strategic orientation of management on behalf of long-term growth and survival.
- It supports and facilitates the sustainability strategies of the company through communication.

⁶¹ Germany, Finland, the Netherlands, Sweden, Denmark, Norway and Luxembourg

⁶² Herzog-Stein, Alexander, Lindner, Fabian and Simon Sturn (2018); Scharpf, Fritz W. (1991)

⁶³ See the research overview in Boneberg, Franziska (2010)

⁶⁴ Goppel, Howard and Andrew Pendleton (2003)

⁶⁵ Hall, Peter A. and David Soskice (2001)

⁶⁶ Jackson, Gregory (2003); Gourevitch, Peter Alexis and James Shinn (2005)

- It enhances transparency and combats corruption, by fostering the role of whistle blowers and ethical standards.
- It protects companies against asset stripping by corporate raiders and some forms of institutional investors.

All these functions build on the capacity of workers' representatives to channel information and to bring together different perspectives and experiences both upwards and downwards. Employee representatives are aware of the concerns of the workforce and the feedback of employees on current practices. They are able to communicate these in board meetings. On the other hand, they can communicate corporate policies on sustainability and ethical compliance from the board to their members. In some corporate governance models with employee involvement these functions are already practiced.

These functions address both the internal and the external mechanisms of corporate governance.⁶⁷ Workers' voice can directly contribute to the relationship between shareholders and management, by enforcing transparency and influencing the adoption of the company's strategic goals. An institutionalised role of employee representatives in corporate governance also contributes to the external governance mechanisms, by strengthening the institutional context and rooting managerial control in a set of values and procedures.

These roles of workers' voice in corporate governance are not bound by a particular organisational model. Whether a company has a single or a two-tier board structure, a parity of seats or just a number of non-executive directors on the board does not alter the role of workers' voice.

Preconditions for workers' voice in corporate governance

As argued above, the role of workers' voice in corporate governance is not confined to situations with dominant block holders who pursue a long-term strategy of growth. Workers' voice can improve the performance of corporate governance in other contexts too. Even in the context of dispersed ownership, workers' voice can contribute to improved company performance and transparency and, therefore, help to avoid the costly route of corporate takeovers. For instance, workers' voice can be an early warning system of declining profitability and productivity as well as of corruption and bad business practices.

The precondition for a productive employee role in corporate governance is a set of rules and roles which include:

- the access to information on the performance of the company for other board members which goes beyond the disclosure of public information in publicly listed companies
- the participation of employee representatives in board meetings as non-executive directors, worker directors or as members of supervisory boards
- the opportunity to voice opinions and positions that reflect the views of the company's employees in order to support good practices in the company and avoid bad ones.

These rules and roles are not bound to a specific institutional setting. The basic institutional precondition is the legal right to have one or several persons who, on behalf of the company's employees, can take on the above functions and are aided by the necessary administrative and personnel support. How workers' voice takes place can take many different forms. They range from co-determination, ombudspersons or workers' directors on company boards or mandatory consultation proceedings. How these persons are chosen, and what the precise position is, remains open and should be defined in the wider industrial relations – corporate governance institutional setting.

⁶⁷ Aguilera, Ruth V., Desender, Kurt, Bednar, Michael and Jun Ho Lee (2015)

Current debates

Recent and current proposals towards workers' voice in good corporate governance exist in Italy, the UK and France. In Italy, the government of Mario Monti in 2012 suggested legislation which would allow listed companies with a two-tier structure and more than 300 employees to permit employees to participate as members of the supervisory board with the same rights as all other members (Legge Fornero).⁶⁸ In the UK, the Prime Minister, Theresa May, declared that she would build an economy that not only works for everyone but, moreover, suggested modifying the UK corporate governance model to include workers' representatives on company boards. In France, an extension of workers' representatives on company boards was discussed in the context of the labour market reforms of 2017 but dismissed. A group of influential academics and lawyers have now launched the appeal "European Appeal – Companies and Employees – Blazing a New European Trail".⁶⁹

Governments tend to be open towards these proposals, often pushed by trade unions in historically critical times. This supports the argument that crises are conducive for involving workers' voice in corporate governance models in Europe. Moreover, these initiatives show that the positive contributions of workers' voice can arise in very diverse institutional settings.

Recommendations

From a workers' perspective, current trends in corporate governance debates are the hardest issue to tackle for two reasons: firstly, in some member states, workers' voice is part of corporate governance, while in others, it is not. Secondly, company law, at the level of the EU and the member states, does not include workers' voice as part of corporate governance reform debates but as the vaguest reference towards stakeholder involvement.

The expert group discussed corporate governance and identified a number of important functions for workers' voice in corporate governance and company management, such as enhancing transparency and combating corruption; communicating good standards; channelling employee concerns; protecting companies through monitoring the strategic orientation of management on behalf of long-term growth and survival, and influencing strategic management decision-making.

These functions build on the capacity of workers' representatives to channel information both upwards and downwards and can influence decision-making at the highest level of management. Employee representatives are aware of the concerns of the workforce and the feedback of employees on current practices. They are able to communicate these in board meetings or vis-à-vis the top management. The expert group, therefore, recommends providing a productive role for employees in corporate governance through a set of rules including:

- to reform directors' duties so that directors are required to promote the long-term success of the company as their primary aim, rather than promoting shareholder interests
- to promote evidence-based corporate governance codes that are based on empirical data
- to actively include workers' voice as part of corporate governance reform proposals
- to provide access to information and consultation on the performance of the company to workers' representatives. This goes beyond the disclosure of public information in publicly listed companies.
- to facilitate the obligatory participation of employee representatives in board meetings as non-executive directors, workers' directors or on supervisory boards
- to ensure the opportunity of voicing opinions and positions that reflect the views of employees in the company in order to support good practices and inform company strategy more broadly
- to adopt enforcement mechanisms in the form of sanctions and the suspension of corporate decisions.

⁶⁸ There is no requirement for companies to have a supervisory board, and only a few Italian companies would be affected by this.

⁶⁹ The European Appeal addresses the issues of democracy at work, enforcement of employee rights (including through a European agency dedicated to this effect), the fight against the destructive practices of shell companies, the need for a fairer and more efficient corporate tax system and the necessity of implementing binding measures regarding the social and environmental responsibility of companies. The European Appeal was launched in mid-April. It has the support of more than 450 persons from 30 countries, including more than 60 Members of the European Parliament, 15 Members of Parliament from various countries, five former Prime Ministers and Ministers, 40 trade union representatives and 250 academics. See: <http://descartes.law/>

CHAPTER 4

TOWARDS SOCIALLY RESPONSIBLE RESTRUCTURING

Corporate restructuring is defined as the change of corporate structure that affects employment and working conditions.⁷⁰ It has many different causes and forms, and differs depending on sectors and regions across Europe. Since the recent economic crises, types and drivers of restructuring have changed and set new challenges. Apart from well-known forms of restructuring such as business closure, mergers, outsourcing and the offshoring or relocation of business, corporate change and restructuring is reported to be driven increasingly by the aim of 'optimising' or 're-engineering' companies in order to increase the return on investments.

As highlighted in the quote from the European Economic and Social Committees of 2013, socially responsible restructuring, with a strong involvement of workers' voice from the workplace to the company boardroom that is based on a "fair relationship", can avoid and mitigate negative effects on workers and contribute to the sustainability of the company. The "fair relationship" of workers, management and owners, and the coordinated interplay of actors and action levels, are preconditions in enabling well-functioning information, consultation and participation at the anticipation of change and decision-making stages in the context of managing restructuring.

These tools should already be enhanced to protect workers' rights and guarantee workers' voice at the stage of an anticipation of corporate change. Early involvement of workers' voice within the process diminishes the risk of a disadvantageous restructuring process for the workers. In cases with insufficient workers' voice at the very beginning of a restructuring process, there is a greater danger of a negative impact on employment. The Expert Group on workers' voice discussed various scenarios and perspectives to determine measures for socially responsible restructuring in order to achieve long-term change.

"The "sustainable company" can function successfully only if it follows a specific management principle: the "fair relationship" principle. This principle gives all stakeholders (management, employee representative bodies, investors and relevant regions) the possibility to have a say in any changes to the business, adopting a targeted and problem-solving approach and without any attempt to interfere with the management's right to issue instructions. In this way, restructuring can be dealt with and anticipated more effectively, especially in times of crisis."⁷¹

European Economic and Social Committee

"Although expected to be less desired by management, the provisions of the Recast Directive amount to an important opportunity for workers' representatives and trade unions at the national level to develop and deepen their communication and cooperation processes on a day-to-day basis at the company level and beyond."

Valeria Pulignano

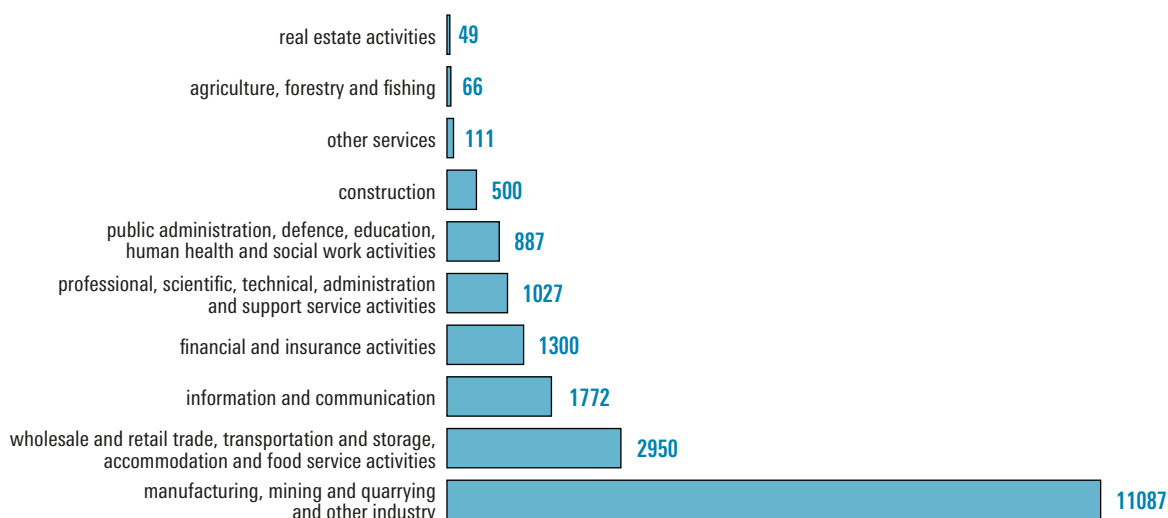
"More attention should be paid to studying those processes of corporate restructuring leading to workplace inequality and dualisation. Thereby activities of outsourcing and offshoring, global value chain, and benchmarking strategies by MNCs should be researched; but also processes of financialisation, mobility of labour and their integration to restructuring should be studied more attentively."

Valeria Pulignano

⁷⁰ The Expert Group agreed on this definition of restructuring in April 2016 in Prague. More detailed definitions can be found in: Pulignano, Valeria (2011); Pulignano, Valeria and Norbert Kluge (2007)

⁷¹ Employee involvement and participation as a pillar of sound business management and balanced approaches to overcoming the crisis. Opinion of the EESC. SOC/470. Brussels, 20 March 2013

Number of restructuring events by sector, 2002–2015



Source: Eurofound

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Restructuring trends in transnational companies in Europe

When it comes to hard facts and figures about restructuring in Europe, reliable data – even simple data on collective redundancies – is scarce. The only EU wide source that exists since 2002 is the “European Restructuring Monitor” that is run by the European Foundation for the Improvement of Living and Working Conditions, which has its methodological as well as analytical weaknesses⁷² but covers more than 22,000 restructuring cases, compiled in the database between 2002 and 2017. When only accounting for those restructuring events in the EU that meet the criteria of the ERM database and that were announced in the national press, we find, on average, around 3 events per day, affecting between 250,000 and 500,000 employees per year.

Although the ERM differentiates between several types of restructuring⁷³ (not exclusively associated with staff reductions), more than 90% of all restructuring cases and more than two thirds of job loss cases reported in the ERM are from internal restructuring. Internal restructuring is a catch-all

category, used to classify all restructuring cases which do not fall under any of the other pre-defined categories. A case is classified as ‘internal restructuring’ in the ERM when the majority of job reductions is not attributable to other more specific forms of restructuring (for example outsourcing, offshoring, relocation or merger/acquisition).

According to a recent research paper based on ERM data for 2002–2015, almost 10% of all restructuring cases are European ones.⁷⁴ As transnational companies tend to be bigger than national companies, European transnational restructuring cases affect far more employees than purely national restructuring. The proportion of jobs at stake in European transnational restructuring cases amounts to 27%, compared to 10% in national restructuring.⁷⁵

Restructuring is heavily concentrated in the manufacturing sector, as is shown in figure 4.1. The focus of restructuring in the manufacturing sector is remarkable, considering the fact that the nature of multinational companies has shifted markedly towards services.⁷⁶ Today, only about half of the global multinational companies are located in manufacturing and about a third are in the service sector. In comparison, in 1990 three quarters of multinational companies were in manufacturing.⁷⁷

The drivers of corporate restructuring are diverse and are closely related to the changing po-

72 The “Eurofound Restructuring Events Database” includes only larger restructuring events, which involve the creation or destruction of at least 100 jobs or affect 10% of the workforce at sites employing more than 250 people. The source of information is local media reports and country experts. The information collected is indicative, rather than representative, of the extent and effects on employment of restructuring. See Eurofound (2013)

73 These include: bankruptcy, closure, internal restructuring, merger/acquisition, outsourcing, offshoring/delocalisation, relocation, as well as business expansion, which is not exclusively associated with staff reductions.

74 de Spiegelaere, Stan (2017). This research paper is also based on data from the Eurofound Events Database.

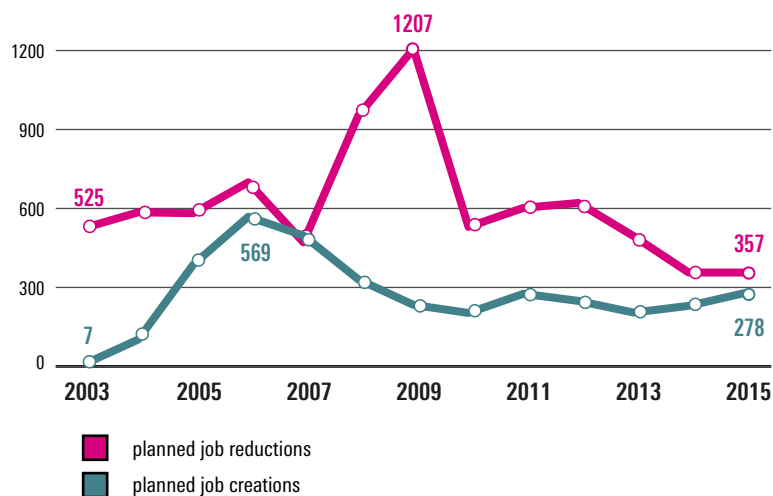
75 ibidem, p. 3

76 It should, however, be noted that the ERM events database, due to its methodological weaknesses, is likely to underrate restructuring in the service sectors, as they are less frequently reported in the press.

77 UNCTAD (2017), p. 28

Figure 4.2

Planned job creations vs planned job reductions, 2003–2015
in thousands, per year of restructuring event



Source: Eurofound Restructuring Events Database

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litical economy of the European Single Market. In the aftermath of the Eastern enlargement, companies were involved in offshoring and relocating their production to Eastern Europe. In recent years, market clearing processes and the impact of the financial crisis have been dominant drivers of restructuring. The Expert Group discussed the different aspects of corporate restructuring and pointed out that restructuring has not only become part of the everyday management of large companies but is increasingly purely cost-driven and characterised by short-termism. In order to satisfy investors' interest on returns, this kind of restructuring takes the form of 'company optimisation' or 'financial re-engineering' that is driven by regulatory arbitrage, as tax rates, social security and labour law are still highly diverse in Europe and give companies the incentive to take advantage of weak regulation and legal loopholes. Moreover, restructuring is increasingly pre-empted by the increase in precarious and temporary work, as precarious work replaces more comprehensive restructuring processes.⁷⁸

Three features are particularly prevalent in more recent trends of corporate restructuring: firstly, an ongoing process of cost reduction; secondly, a continuation of plant closures as part of restructuring and thirdly, restructuring has become part of portfolio management, as companies decide on the kind of operations they see fit to run as part of their business model.

The financial crisis in 2009 had a strong effect on corporate restructuring in Europe. The crisis led to a contraction of gross domestic product in the industrialised world by 2% and increased unemployment in Europe from 8 to 10% in just 2 years, between 2008 and 2009. Figure 4.2 shows that, on the whole, restructuring has reduced the number of jobs rather than led to job creation. This is particularly clear during the crisis years 2008 and 2009.

The financial crisis also contributed to long-term structural problems in a number of manufacturing sectors, particularly metal, steel and automotive sectors, for which it served as an exit-strategy.⁷⁹ In the car industry, restructuring is about balancing volumes between plants and between different parts of the supply chain (components versus body or gears).

Ultimately, however, restructuring decisions made by the management were seen as short-term solutions to prioritise shareholders' interests, with the result that "workers bear the costs (loss of employment, loss of income, skills, opportunities and often health...)." ⁸⁰

Besides changes in the production process, drivers of corporate restructuring also include the transformation of capital markets and the invention of new mechanisms of corporate finance and credit instruments.⁸¹ Companies undergoing restructuring for financial reasons are often technically still profitable, and restructuring is also considered profitable as part of the portfolio management.

The spread of digitalisation, the most recent initiatives of the EU Commission on company law, to facilitate the use of digital technologies throughout a company's lifecycle, and recent trends of cross-border mergers and divisions⁸² indicate a new phase of economic restructuring in Europe. While some sectors show more restructuring in the form of outsourcing (for example, IT-outsourcing in the banking sector), others show decisive changes in corporate structures through digitalisation.⁸³

⁷⁸ Such practices were highlighted at the Expert Group meeting in Prague in April 2016. See also: Voss, Eckhard (2017a), p. 15

⁷⁹ ETUC and SDA (2011), p. 4

⁸⁰ Voss, Eckhard (2016), p. 16

⁸¹ Bruun, Niklas (2011)

⁸² It should be noted that, in contrast to cross-border mergers, there is no EU directive or regulation that protects workers' rights in regard to cross-border divisions.

⁸³ At the European Union level, several recent initiatives deal with digitalisation within the internal market of the EU. E.g. The Commission's Work Programme for 2017 announced an initiative on company law to facilitate the use of digital technologies throughout a company's lifecycle and cross-border mergers and divisions (EU Company Law Upgraded: Rules on digital solutions and efficient cross-border operations).

Examples: Digitalisation and corporate restructuring

In 2017, the insurance company Allianz SE announced plans to cut 700 jobs over the next three years (mostly in Germany). The cuts were part of a restructuring process that had already begun and involved more than 1,200 jobs. Many of them were already taken care of through early retirement, part-time contracts and outsourcing. The management of the company declared that the decision was forced upon them by increasing competition due to digitalisation. Workers and trade unionists disputed this view and assumed the real reasons were simply cost-reduction measures and the maximisation of profits in favour of the shareholders. The announcement shows the complex process of restructuring and its drivers.

Another example illustrates the impact of digitalisation on the retail sector that is characterised by a high share of female and part-time employ-

ment: In January 2018, Carrefour, a French multinational retailer, announced the dismissal of more than 1,200 of its Belgian employees – around 10% of the whole workforce of the company in Belgium. According to the company, the decision, that has been condemned by the trade unions as a “blood-bath”, is part of a larger, strategic operation to cut back on costs incurred through investments in e-commerce.

The increase of online platforms, whether in financial services, hotels and tourism, transportation, retail or the computerisation of cashiers in supermarkets, is also affecting job quality: The emerging new forms of work in the ‘platform economy’, that we are currently experiencing, is often precarious and carried out by workers without a collective voice.⁸⁴

Socially responsible restructuring

There is a strong need for socially responsible restructuring, i.e. effective measures and instruments that are guaranteed for all workers in transnational companies in Europe in order to avoid negative effects on workers. Workers’ voice at every step of the restructuring processes is a precondition of socially responsible restructuring.

In our Expert Group discussions, we identified several harmful effects on workers caused by restructuring:

- collective dismissals, often accompanied by the closure of plants or sites
- forced reduction of working time
- pay cuts
- involuntary early retirement
- increased workloads due to staff reductions.

The most common and harmful effects are collective dismissals, often accompanied by the closure of plants or sites. In addition, forced reduction of working time, pay cuts, early retirement or increased workloads due to staff reductions deteriorate the initial working conditions at the expense of workers. Despite the often strong negative effects on workers and communities, most cases of restructuring cannot be avoided.

There are already a number of measures to minimise the negative effects on the workforce that have proven successful. In cases of major corporate restructuring, management and workers’ representatives have negotiated ‘social plans’ that

mitigate the negative fall-out. For example, social plans may regulate internal job placement, training measures, severance pay or early retirement opportunities. Workers are often offered the opportunity to move to a transition company. Further instruments to reduce harmful effects of restructuring are framework agreements between workers’ representatives (e.g. trade unions or works councils) and management. Transnational, but in particular European Company Agreements, have addressed restructuring by defining corporate principles of minimum social rights in restructuring situations, such as internal job transition schemes, social plans or early intervention and anticipation procedures.

The variety of restructuring requires a flexible toolbox of measures for workers and workers’ representatives in order to anticipate and deal with threats in a proactive and individual manner. The main reasons for particularly negative effects on workers due to restructuring are: (1) the lack of workers’ voice in the context of anticipation of change, (2) neglect of information and consultation of workers’ representation and (3) restructuring

⁸⁴ de Stefano, Valerio (2016); Codagnone, Cristiano; Abadie, Fabienne and Federico Biagi (2016). On workers’ voice see: “Frankfurt Paper on Platform-Based Work. Proposals for platform operators, clients, policy makers, workers, and worker organizations”. Austrian Chamber of Labour, Austrian Trade Union Federation (ÖGB), Danish Union of Commercial and Clerical Workers (HK), German Metalworkers’ Union (IG Metall), International Brotherhood of Teamsters Local 117, Service Employees International Union, Unionen Sweden, 6 December 2016

Examples: European agreements aimed at socially responsible restructuring

- RWE: "Agreement on the application of minimum standards for restructuring in the RWE Group between the European works council and RWE AG while acting on behalf of the companies represented in the European works council" (2010)
- Alstom "Agreement on the anticipation of change or developments" (2011)
- AXA Assistance: "European agreement on anticipating changes within AXA Assistance" (2012)
- BNP Paribas: "European Social Charter Employment Management" (2012)
- Novartis "Agreement on Euroforum" (Supplement) (2013)
- Unilever "Responsible Restructuring Guidelines" (2014)
- Schneider-Electric: "European Agreement on the Anticipation and Development of Competences and Employment with Respect to the Schneider-Electric Business Strategy" (2017)

decisions that are based on rash decisions, where profound analyses are missing, and serious efforts to avoid negative effects on workers are not made.

A better toolbox for restructuring

There are a number of EU directives, which address corporate restructuring issues, such as Directive 98/59/EC on collective redundancy (initially released in 1975), Directive 2001/23/EC on transfers of undertakings (1977), the EWC Directive 2009/38/EC (1994), Directive 2002/14/EC on information and consultation (2002) and the Directive on worker involvement in the European company – Directive 2001/86/EC. In addition, the European Commission introduced the Quality Framework for Anticipation of Change and Restructuring (QFR) in 2013. Reacting, not only to strong demands from the European trade unions⁸⁵ and the call from the European Parliament for a European framework on the management of change and restructuring⁸⁶, the

QFR intends to provide guidance for companies, workers and their representatives, and public administration to facilitate the process of restructuring while minimising the social impact. The QFR has a purely voluntary character and contains general principles and recommendations to anticipate and manage restructuring in a socially responsible way. It recommends measures such as a strategic, long-term monitoring of market developments, a continuous mapping of jobs and necessary skills, the involvement of external actors at an early stage and making full use of EU structural funds. In order to protect workers individually, it recommends measures such as training, career counselling and assistance to facilitate professional transitions. The lukewarm and voluntary approach of the QFR was evaluated in 2016. However, the evaluation report was neither published nor did the EU Commission come up with, or announce, any results and conclusions regarding the impact of the QFR.

Thus, while there are several instruments to ensure or enable workers' voice, the European toolbox for restructuring remains insufficient and needs improvement. Apart from a strong and legally binding framework, there is a need for more guidance on all levels to show how to use the existing tools.

We direct attention to three main steps in restructuring processes: Firstly, the anticipation of change, secondly, the restructuring decision and finally, the effect on workers. Workers and workers' representatives need specific tools for every step of the process in order to act adequately. In addition, a monitoring system for the entire restructuring process is necessary, including the different actors engaged in workers' voice.

An important issue in corporate restructuring is the secret nature of corporate decision-making and the fact that local sites are frequently confronted with final decisions. An early involvement of workers' representatives in decision-making can both address alternatives to job losses as well as plan long-term for the workers who are affected by the decision. The aim should be that, in every individual restructuring case, management and workers' representatives should work together on effective measures to avoid negative consequences for workers.

This, however, requires the early participation of workers who take information and consultation seriously, i.e. with the aim of developing balanced and fair solutions.⁸⁷ The Expert Group collected several examples for measures that may promote socially responsible restructuring:

⁸⁵ ETUC (2012)

⁸⁶ In early 2013, the European Parliament endorsed the so-called Cercas report on "Information and consultation of workers, anticipation and management of restructuring".

⁸⁷ A recent study on management perceptions of EWCs strongly shows that there is a clear correlation between informing and consulting workers before restructuring decisions were taken and outcomes, i.e. the socially responsible implementation of restructuring plans. See: Pulignano, Valeria and Turk, J. (2016)

Anticipation of change

- through a multi-level exchange of information and consultation
- improve information and consultation rights at all levels of the transnational company, including the subcontracting chain
- better monitoring of companies
- implement existing obligations
- strengthen forms and interlinkage of workers' voice, like EWCs, trade unions and workers' board-level representatives
- anticipative and proactive training of the workforce
- actively shape digitalisation processes (Industry 4.0)
- maintain the quality of employment, particularly full-time jobs.

Restructuring decision

- influence strategies and present alternatives
- negotiate social plans (retraining, job placement, active labour market, early retirement, short-term working).

Effect on workers

- ensure fair job-to-job transitions through job search support, further training and severance packages to actively manage transnational restructuring
- strengthen the sanctioning of non-compliance in regard to the inclusion of workers' voice in restructuring and managing change
- career counselling
- severance pay.

Improving workers' voice in corporate restructuring: actors and levels

Considering existing provisions and tools for workers' voice at the local, national and European level, we gathered the main barriers, problems and risks in order to strengthen the influence of workers or their representatives. Here, we focused on actors of workers' voice and the different levels (vertical and horizontal).

Workers' voice in restructuring processes involves various actors of workers' representatives. Particularly important are trade unions, works councils, board-level employee representatives (BLER) and workers' directors at the national and European level as well as European works councils and SE-works councils at the European level.

There is research evidence on company take-overs in the EU showing that, in countries where works councils (e.g. the Netherlands) or board-level employee representation (e.g. Denmark, Sweden, Norway) are well-functioning, workers may better intervene at an early stage of the restructuring

process.⁸⁸ About 70% of companies that were involved in European restructuring in 2013, 2014 and 2015 had a European works council. In 30% of the announced transnational restructuring cases workers' voice was excluded.⁸⁹ Therefore, European works councils play an important role for facilitating workers' voice in restructuring.

While recognising its weaknesses⁹⁰, the Recast EWC Directive 2009/38/EC, according to the Expert Group, brought a number of concrete improvements: The directive provides the explicit obligation of the central management of undertakings to transmit information required for commencing negotiations to the EWC (i.e. information about the structure of the undertaking or group and its employees). In addition, the composition of the special negotiating body (SNB) has been broadened. Trade unions participating in the negotiations are now able to monitor the establishment of new EWCs, promote best practices and act in the capacity of experts.

The Recast EWC Directive also comprises the right to training and qualification measures, provides resources for external experts and empowers EWCs to hold follow-up meetings without management being present. These issues often cause conflict between EWC and management.⁹¹ However, a key weakness and problem of the Recast Directive is the lack of sanction mechanisms in case of breaches of the EWC regulation.⁹² Against this, the demand of the European trade unions to establish the institution of a European EWC ombudsperson, that would have a mandate to address issues that arise out of the transnational exercise of workers' participation rights, could be a helpful instrument in strengthening the enforcement of regulation.⁹³

The existence of EWCs or SE-WCs alone does not guarantee that workers have a voice in cases of restructuring. Their role and impact in restructuring depends on several factors: the geographical location and economic sector of the company; the management's view on EWCs and finally, the financial and personnel resources of EWCs.⁹⁴

Therefore, trade unions at the local, national and European level are important players in transnational restructuring cases, in particular as regards articulation, information and coordination. Furthermore, experts claim that trade union or trade union federation involvement is considered a necessary

88 Cremers, Jan and Sigurt Vitols (2016)

89 de Spiegelaere, Stan (2017), p. 5

90 Jagodzinski, R. (2015). See also de Spiegelaere, Stan (2016)

91 Voss, Eckhard (2016)

92 Jagodzinski, Romuald (2014), p. 4

93 For further details see the ETUC resolution on a "Strategy for more Democracy at Work", adopted by the Executive Committee Meeting of 7-8 March 2018.

94 Voss, Eckhard (2016)

precondition, as they provide resources and expertise as well as coordinate the interest for EWCs to become active in restructuring situations.⁹⁵

As the European trade unions' landscape is characterised by different types and structures of unions, union learning and knowledge exchange is important in addressing restructuring situations.⁹⁶ These two factors enhance the capabilities of unions and workers' representatives and contribute to a strengthening of early warning systems in the area of restructuring.⁹⁷

Especially in transnational restructuring situations, cross-border trade union cooperation or alliances are very important as regards the coordination and integration of different levels of interests.⁹⁸ In order to strengthen EU level integration and coordination, it would be important to strengthen local and national union capacity through a European multi-level system of industrial relations (see chapter 6). In theory, board-level employee representatives are in a better position than trade unions and EWCs with respect to getting access to early information on restructuring. Restructuring decisions are usually either made or ratified by the board, and national legislation often requires an agreement by the board. In restructuring cases posing a threat to workers, board-level employee representatives are able to represent the interests of workers. However, research evidence shows that in "an environment where board-level employee representatives report high rates of company restructuring, they also report having limited influence on the outcome of restructuring events."⁹⁹ On balance, the majority of workers' representatives on boards regard their voice as not very influential in restructuring.¹⁰⁰ This is due to the fact that official board meetings are often formal events, whereby important decisions have already been agreed beforehand between key actors, but without involving employee board-level representatives. In addition, board-level employee representatives are often excluded from participation in subcommittees.

Legal barriers to workers' voice in corporate restructuring

Regulation plays a significant role for workers' voice in transnational restructuring cases. The question of legal barriers to workers' voice in restructuring leads us to two different aspects. We must take into account: (1) the different levels (e.g. national and European law) and (2) the different fields of law (e.g. company and labour law).

All actors in the field of transnational, corporate activity face the problem of conflicting law. Although recent studies¹⁰¹ address this problem, they still focus on shareholders' interests and largely ignore the interests of workers and workers' representatives. The problem of conflicting law remains an issue for workers' voice in transnational companies. On the one hand, national provisions conflict with European law; on the other hand, company law collides with labour, tax or social law etc. The Netherlands and Finland are examples of conflicting regulation between the timing requirements in securities law and the rights in labour law, as far as information on takeovers is concerned.¹⁰²

Another issue is the insufficient degree of implementation of European directives by member states. In cases of restructuring, missing or insufficient implementation of information and consultation rights dilutes workers' voice.¹⁰³ Furthermore, missing or incorrect transposition of provisions blocks the access to justice to protect and demand existing rights for workers' representative in cases of restructuring – or to sanction for breach of these rights. The Recast EWC Directive contains the provision of sanctions for breaches of EWC law, but the uptake by the member states has been very limited.¹⁰⁴ Apart from legal uncertainty, especially regarding cross-border litigation, the fear of high and unexpected costs and expenses makes the access to legal redress difficult.

National provisions regarding confidentiality are another notable example for conflicting law (horizontal) and the problem of an insufficient implementation of directives. Confidentiality rules protect company secrets, whose broad dissemination could harm the legitimate interest of companies. Still, confidentiality requirements are often in contradiction with the EWC members' task to report back to workers. While sanctions for EWC members breaching confidentiality rules are common, when companies abuse confidentiality to circumvent information and consultation rights, judicial

⁹⁵ Voss, Eckhard (2016)

⁹⁶ Pulignano, Valeria and Paul Stewart (2013); Voss, Eckhard (2006); Lévesque, Christian and Gregor Murray (2010)

⁹⁷ An example is the 'Trade Unions Anticipating and Managing Change in Europe' (TRACE project) of ETUC (Pulignano 2013) or the study on EWCs in new member states. Interviewees of both studies voice the importance of "learning from each other, support in cases of restructuring (for example, socially responsible restructuring)". Voss, Eckhard (2006), p. 38

⁹⁸ Meardi, Guglielmo; Marginson, Paul; Fichter, Michael; Frybes, Marc; Stanojević, Miroslav and András Tóth (2009); Lévesque, Christian and Gregor Murray (2010); Pulignano, Valeria and Paul Stewart (2013)

⁹⁹ Waddington, Jeremy and Aline Conchon (2016)

¹⁰⁰ Waddington, Jeremy and Aline Conchon (2016), p. 128

¹⁰¹ See e.g. "Study on the Law Applicable to Companies" by researchers from the University of Oxford (published on 6 June 2017) or the draft report on cross-border mergers and divisions by Enrico Gasbarra (adopted by EP on 13 June 2017)

¹⁰² Cremers, Jan and Sigurt Vitols (2016), p. 246

¹⁰³ Jagodzinski, Romuald (2014), p. 4

¹⁰⁴ Jagodzinski, Romuald (2014), p. 4

redress is missing.¹⁰⁵ Moreover, the number of cases where management has withheld information on the grounds of confidentiality has increased.¹⁰⁶ It should be noted here as well that the increased use of confidentiality clauses by management also result from increased uncertainties about which information can be disclosed as well as the uncertainties of the EWC steering committee as to which information can be shared without problems to national and local workers' representatives. Thus, in dealing with confidentiality, it seems to be necessary to apply a broader approach of compliance within the specific corporate culture of a company.

The Recast EWC Directive contains the significant clause in Art. 8 that workers' representatives are not authorised to reveal information "when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them". As a result, management has to justify the confidentiality clause by objective criteria as being seriously harmful to the functioning of the company. Therefore, the nature and extent of the transposition into national law is crucial to the efficiency of workers' voice and its key element of articulation.

Not only EWCs are confronted with confidentiality requirements and the problematic use by management. The same problem arises within board-level employee representation. Due to fears about legal liability and legal uncertainty, board-level representatives do not always share their early knowledge of impending restructuring measures with other workers' representatives.¹⁰⁷

Recommendations

Corporate restructuring is a part of economic development and cannot be avoided. It almost always causes negative consequences for workers. The most common and harmful effects are collective dismissals, often accompanied by the closure of plants or sites. Transnational restructuring cases appear particularly harmful when taking into account the number of collective redundancies. Since the 2008 crisis, new forms of corporate restructuring have become more numerous that aim at tax and/or labour cost 'optimisation' in order to increase shareholder value returns. Such practices are facilitated by legal loopholes within national as well as European company, tax and labour law.

The Expert Group discussed a number of tools to achieve socially responsible restructuring practices and came to these conclusions and recommendations for policymakers:

- improve the enforcement mechanisms of existing legal obligations of information and consultation (see also chapter 7)
- improve anticipative and proactive training opportunities for workers
- develop a set of tools for negotiating restructuring, such as retraining, job placement, active labour market policy, short-term working, career counselling and severance pay
- give trade unions and European trade union coordination a clear role in the process
- strengthen sanctioning mechanisms for non-compliance regarding the inclusion of workers' voice in restructuring and managing change
- develop efficient responses at EU and national levels against short-termism and purely cost-driven forms of restructuring and 'company re-engineering' that exploits legal loopholes, and promote socially responsible restructuring that strengthens sustainability as regards competitiveness, employment and working conditions.

¹⁰⁵Jagodzinski, Romuald (2014), p. 45

¹⁰⁶See: Jagodzinski, Romuald (2015). See also Pulignano, Valeria and Turk, J. (2016)

¹⁰⁷Cremers, Jan and Sigurt Vitols (2016), p. 246

CHAPTER 5

WORKERS' VOICE FOR RESPONSIBLE COMPANIES

The rise of the global company has put the issue of company responsibility clearly on the agenda. The role of workers' voice is a central component of these discussions, as labour rights are a fundamental part of the human rights agenda, and virtually all policy instruments surrounding corporate responsibility (CR) include labour as a key component.¹⁰⁸

The Expert Group has discussed the complexity of the role of workers' voice in the corporate responsibility discourse and concluded that now is the time to expand the agenda, from using business responsibility to enforce labour rights, such as organising workers and collective bargaining, to using the role of workers' voice for monitoring and being a driving force for responsible business itself. Fair globalisation requires responsible companies. Workers' voice can contribute to this issue.

Trends in corporate responsibility regulation and practice

Multinational companies have been on the rise during the last few decades and are becoming ever more powerful. They are a vital element of today's modern, global economy. Over the last few decades, the traditional regime of international labour regulation was based on governments' compliance with international law. However, this traditional regime has been re-shaped, towards a global labour governance regime involving different actors. The new regime of labour regulation involves different actors and uses mainly soft law – or a "smart mix" of regulations. It provides incentives and information, and addresses new responsibilities, primarily to companies rather than governments.

Today, it is almost unequivocally accepted in the global business and responsibility discourse that companies should make a positive contribution to economic, environmental and social progress to achieve sustainable development. Businesses have a responsibility to avoid and address the adverse impacts of their operations. This agenda of corporate responsibility has two components: the activities and measures of companies to compensate for their enormous power over social, environmental and political affairs, and the policy instruments on the national and international level, which aim to set global standards for corporate conduct.

"I believe that corporate responsibility and strong workers' voice go hand in hand."

Fernando Vasquez

Companies: Corporate social responsibility

Multinational companies utilise their corporate social responsibility (CSR) activities to govern their global economic activities.¹⁰⁹ CSR is voluntary and unilateral, i.e. the management of the company decides for itself what kind of activities it wants to pursue. CSR often takes the form of philanthropic and social activities, but can also include membership in sustainability fora and the adoption of social standards for the supply chain of the company.

CSR, as a company tool, has been proliferate in multinational companies since the 1970s. It is more highly developed in Anglo-Saxon, liberal market economies and has been characterised as compensating for the lack of strong welfare provisions and institutionalised labour rights.¹¹⁰

With the increase in scope and power of transnational companies, the expectation, by the public and in politics, that these companies have a responsibility towards society at large has grown. There have been very active and lively debates about the role of companies in society, especially since the early 1990s. They were prompted by corporate scandals along the supply chain, which stimulated a growing community of activists and specialised NGOs working on sustainability and responsibility issues. Many companies responded to the criticism by issuing codes of conduct, in which they stipulate, for example, the application of the ILO's Core Labour Standards and/or signed up to the UN Global Compact, a platform which issued 10 guiding principles for companies, in the areas of human rights, labour rights, the environment and anti-corruption.

However, CSR activities cannot be a substitute for adequate laws and state regulation. The key criticisms of CSR can be summarised as follows:¹¹¹

- CSR is voluntary and often additional to core business operations in companies. CSR managers mostly deal with voluntary initiatives and not with legally-required processes.

¹⁰⁸This is reflected in a number of discourses in the realm of business and human rights, Responsible Business Conduct (RBC), but also in the many facets of Corporate Social Responsibility (CSR).

¹⁰⁹Jackson, Gregory and Nikolas Rathert (2017)

¹¹⁰Matten, Dirk and Jeremy Moon (2008)

¹¹¹Roel Nieuwenkamp, Chair of the OECD Working Party on Responsible Business Conduct, 2016: CSR is dead! What's next? Jan 22, 2016, online: <http://oecdinsights.org/2016/01/22/2016-csr-is-dead-whats-next/>

- CSR is frequently associated with blue or green-washing. CSR activities are often criticised for being compensation mechanisms for faults in the business model. Companies with high CSR ratings can, at the same time, be in the spotlight for tax evasion, environmental damage, corruption and the like.
- The voluntary nature of CSR is associated with quasi-voluntary and often inadequate social audit systems. These are mechanisms for evaluating the implementation of social and environmental standards. Research on social audits has shown that audits are often ineffective, as companies are notified of inspections in advance, for example, and that audit reports do little to change and improve the business models of companies. Recent tragedies in the garment industry in Bangladesh, Cambodia and Pakistan have shown that the audit-focused, social responsibility model adopted by companies is inadequate in many situations.
- Voluntary CSR does not ensure whether and to what extent non-compliance with environmental, social and governance standards is connected to additional costs. Rather than taking responsibility for the externalities of corporate activities, CSR serves to gloss over the costs of non-compliance. This is not just with regard to reputation and productivity, but also regarding social costs for local communities, taxation for national governments and general well-being.

International organisations: Defining international standards

As a result of increasing economic globalisation in the 1980s and 1990s, national governments and international organisations face strong pressure to regulate transnational businesses and their global supply chains. Transnational social and labour standards, as well as environmental standards, have gained importance over the last two decades.¹¹² International organisations increasingly adopt policies to build up the expectation that companies should adhere to a particular set of standards. The regulatory framework of responsible business emphasises the integration of responsible practices within the business conduct and often within supply chains as well. However, these international instruments are often criticised for being mostly non-binding and non-enforceable in courts of law.

The International Labour Organization (ILO) operates within the frame of “decent work” and specifies it as follows: social dialogue, social protection, rights at work and employment.¹¹³ Closely related

are green jobs, which, according to the ILO, produce goods or provide services that preserve or restore the environment. The ILO stresses that green jobs are central to sustainable development, and governments, workers and employers must be engaged as active agents of sustainability. Still, the ‘greening’ of enterprises and the labour market requires a socially just transition. To promote these processes, the ILO published, in 2015, the guidelines for a just transition towards environmentally sustainable economies and societies for all.¹¹⁴

The regulation of multinational companies in the area of corporate responsibility is a patchy, multi-level governance endeavour that establishes transnational standards but does not create new legal obligations. Important international instruments are the United Nations Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for multinational enterprises and the ILO’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

In 2011, the UNGP were endorsed by the UN Human Rights Council. They define expectations for responsible business behaviour for all companies, irrespective of their size and geographical location, for implementing the United Nations’ ‘Protect, Respect and Remedy’ human rights framework. A central element is the implementation of due diligence processes in companies to address adverse human rights impacts. The OECD Guidelines are recommendations providing principles and standards for responsible business conduct for multinational companies. Governments that have signed the guidelines are required to set up a National Contact Point (NCP) to promote and implement them. In 2011, the OECD Guidelines were amended with a new human rights chapter, which is consistent with the UNGP. The ILO MNE Declaration is an international instrument designed to guide private initiatives, such as codes of conduct, and industry-wide initiatives in the promotion of social dialogue. Since its update in 2017, the MNE Declaration includes a reference to global supply chains and became aligned with the UNGP.

In 2014, an open-ended, intergovernmental working group, with the mandate to elaborate on an internationally, legally-binding instrument for transnational corporations with respect to human rights, was established by the UN Human Rights Council. Work on this treaty is still ongoing and, as yet, its content, scope and level of support by states is unclear. Such a binding treaty could impose legally-binding obligations on the states that sign it and may also seek to bind corporations directly, irrespective of the country in which they operate.

¹¹²Auld, Graeme et al (2009); O’Rourke, Dara (2006)

¹¹³Guidelines for a just transition towards environmentally sustainable economies and societies for all http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf

¹¹⁴ILO, What is a green job? 13 April 2016, http://www.ilo.org/global/topics/green-jobs/news/WCMS_220248/lang-en/index.html (19.07.17); <http://www.ilo.org/global/topics/green-jobs/lang-en/index.html> (19.07.17). Stevis, Dimitris and Romain Felli (2015)

Moreover, transnational, voluntary labour standards are defined and set by transnational public-private or private-private initiatives, such as the Global Compact, Social Accountability International, the Business Social Compliance Initiative and the ISO 26000.¹¹⁵ The ISO 26000 attempts to establish a common understanding of social responsibility, for example, inter alia with regard to human rights and labour practices. The standards include references for enabling rights, such as freedom of association and collective bargaining, as well as protecting rights, such as no child labour, no excessive overtime and no forced labour.

Governments: Increasing market transparency and corporate accountability

At the national and European level, legislators are responding to the challenges of globalisation with various regulatory measures. Approaches for regulating the CSR activities of companies are usually measures for increasing market transparency. At the European level, a regulatory framework for CSR, comprising, for example, of the 2001 Green Paper on CSR and the Non-Financial Reporting Directive 2014/95/EU, complements the transnational assemblage. A recent publication on CSR and sustainability reporting finds that, during the last few years, CSR and sustainability reporting have increased significantly worldwide.¹¹⁶ The European Commission argues that companies should take responsibility for their impact(s) on society, by having “in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders.”¹¹⁷

Together with the European Commission’s strategy 2011-14 for corporate social responsibility, the adopted UN 2030 Agenda for Sustainable Development, the 17 UN Sustainable Development Goals¹¹⁸ and many other sustainability standards build a set of global goals to challenge current global trends, such as increasingly scarce natural resources, the ongoing climate change, growing social inequality, poverty and the globalisation of companies’ value chains.

¹¹⁵Brühl, Tanja (2006); Dingwerth, Klaus (2007); Hurd, Ian (2003)

¹¹⁶Bartels, Wim, Fogelberg, Teresa, Hoballah, Arab and Cornelis T. Van der Lugt (2016)

¹¹⁷European Commission (2011), p. 6

¹¹⁸The 17 UN Sustainable Development Goals unfold specific targets to be achieved over the next 15 years, from “good health and well-being” (goal 3) to “affordable and clean energy” (goal 7) and “responsible consumption and production” (goal 12). Goal 8 aims to promote “inclusive and sustainable economic growth, employment and decent work for all”. Sustainable work is, furthermore, defined as work “which promotes human development while reducing and eliminating negative side effects and unintended consequences”, by creating work opportunities, ensuring work for future generations and workers’ well-being.

In the context of sustainable development goals, which go beyond the realm of European production sites and cover global supply chains, there is a specific role for workers’ voice to protect not only workers and employment but also, in a wider sense, to facilitate and implement sustainability issues.

On the national level, there is a more recent trend to move away from the “soft law” approach and to go towards “hard law” when it comes to reporting and supply chain regulation. For example, the California Transparency in Supply Chains Act of 2010 requires companies doing business in California and with a worldwide turnover exceeding US\$100 million to report on their efforts to eradicate slavery and human trafficking from their direct supply chains. The UK Modern Slavery Act of 2015 requires companies to release an annual slavery and human trafficking statement.

The French Duty of Vigilance Law (2017) requires French companies with more than 5,000 employees in France, or 10,000 worldwide, to formulate an effective vigilance plan to address environmental, health and safety, and human rights, both in their own operations and at their suppliers and sub-contractors.

Example 1: EDF’s first vigilance plan, 20th June 2018¹¹⁹

In June 2018, the French company EDF (Électricité de France SA) presented its first vigilance plan.

The vigilance plan consists of:

- a mapping of risks (by production site and by risk)
- evaluation procedures for subsidiaries, subcontractors and suppliers with whom a business relationship is maintained
- adopting appropriate actions to mitigate risks and prevent serious harm
- a whistleblowing mechanism to gather alert reports
- a mechanism for monitoring the measures implemented and evaluating their effectiveness.

Groupe EDF Press Release, 26 June 2018¹²⁰

¹¹⁹Despite the obligation, according to the EDF’s press release from 26 June 2018, due to deadlines, the plan was not developed in cooperation with workers’ representatives.

¹²⁰Translated from French by the authors.

Increasing importance of responsible business conduct

Due to several developments, the discussion on sustainable companies has become a lot more sophisticated over the last few years.¹²¹ Four major trends can be identified:

Firstly, the pursuit of responsible business has become a core business concern in many companies. Increasing numbers of transnational companies have developed global brands, which are vulnerable to public campaigns and have to protect their reputation. Reputation and risk management has been behind many corporate initiatives to make codes of conduct more effective throughout the supply chain, to commit to reductions in CO₂ emissions or engage in due diligence procedures to avoid human rights violations in countries with weak regulatory standards. It is now generally accepted that bad practices lead to operational, legal, reputational and financial risks. For example, the large public visibility of the UNGP, and the large number of companies which have signed up to the UN Global Compact, indicate that the concern for environmental, social and governance standards (ESG) have moved centre stage in corporate behaviour. There is also increasing empirical evidence that companies with strong ESG standards are more profitable.¹²²

Secondly, ESG has become an increasingly important guide for mainstream investing. Investors have become more critical and apply higher standards to companies. It is now estimated that \$8.7 trillion, amounting to more than a fifth of the funds under professional management in America, is screened on socially responsible investment criteria (SRI), compared to just over 10% in 2012.¹²³ In Europe, Australia and New Zealand, roughly half of all managed assets fell into the SRI category in 2016.¹²⁴

Thirdly, the environmental challenge is getting ever more visible and is stronger today than ever before. Climate change, volatile weather, and air and water pollution have a direct impact on the quality of lives in all regions of the world. Governments in advanced, industrialised countries – with the notable exception of the USA – are committed to the goals of the Paris Agreement on climate change and will have to deliver on the agreed

measures in order to achieve these goals. This will affect industries and companies.¹²⁵

Fourthly, as mentioned above, there is an international, multi-level but fragmented regulatory framework covering CSR and sustainability management.¹²⁶ International standards, such as the UNGP, the Global Compact, the OECD Guidelines on Multinational Companies as well as the ILO Core Labour Standards and the ILO MNE Declaration, provide a comprehensive set of corporate guidelines and create expectations about the responsible business conduct of companies worldwide.

The OECD Guidelines: A promising starting point

A strong instrument for enforcing responsible business practices are the OECD Guidelines.¹²⁷ The OECD Guidelines are part of the OECD Declaration on International Investment and Multinational Companies and apply to all 34 OECD countries and 12 adhering states. The guidelines are recommendations to the member states of the OECD. The most recent revision of the OECD Guidelines, in 2011, took up some of the demands by trade unions and civil society organisations: to include due diligence for supply chains, a stronger focus on human rights – a result of the UNGP – and the inclusion of fair pay in transnational companies, to name but a few.

The OECD Guidelines have a complaint procedure for violations of the guidelines through National Contact Points (NCPs). These procedures, which are still seen as weak by many observers and lack support by some national governments, can help to profile cases of business irresponsibility, and facilitate discussions and increase scrutiny towards corporate behaviour.¹²⁸ Cases of companies' irresponsible behaviour that are brought to the attention of the NCPs can result in bringing parties together and facilitating mediated outcomes that lead to concrete improvements and, in some cases, compensation. Some NCPs undertake fact-finding missions and issue clear final statements

¹²¹For an overview, see Hassel, Anke (2008); Hassel, Anke and Nicole Helmerich (2016)

¹²²Financial Times: Companies with strong ESG credentials make better investments, 26 October 2017, quoting research by the Boston Consulting Group: Total Societal Impact: A new lens for strategy

¹²³The US Forum for Sustainable and Responsible Investment, a lobby group, stated in The Economist: Sustainable investment joins the mainstream, 25 November 2017

¹²⁴Boston Consulting Group: Total Societal Impact. A new lens for strategy. 2017. <https://www.bcg.com/de-de/publications/2017/total-societal-impact-new-lens-strategy.aspx>

¹²⁵The Trade Union Development Cooperation Network (TUDCN) is heavily involved in the SDG process at the global, regional and national level. https://www.ituc-csi.org/IMG/pdf/tudcn_agenda_2030_strategy_nov_2017_en.pdf

¹²⁶See Brundtland Report, World Commission on Environment and Development (WCED) (1987); Elkington, John (1997); Carroll, Archie B. (1979); Jones, Thomas M. (1980)

¹²⁷See <http://www.oecd.org/daf/inv/mne/48004323.pdf>

¹²⁸See the ECCHR Policy Paper from 2011: A Comparison of National Contact Points – Best Practices in OECD Complaints Procedures, online: https://www.ecchr.eu/fileadmin/Publikationen/OECD_A_comparison_of_NCPs_Policy_Paper_2011-11.pdf; see also Müller-Hoff, Claudia: The OECD complaint mechanism: remedy or complicity?, online: <https://www.business-humanrights.org/en/the-oecd-complaint-mechanism-remedy-or-complicity>

that determine whether the guidelines have been breached.¹²⁹

The OECD Guidelines have a chapter on employment and industrial relations, which is explicit about the rights of workers and their representatives to organise and engage in collective bargaining. It also raises a number of additional issues, such as labour standards, skills and socially responsible restructuring. It, thereby, refers to the ILO Core Labour Standards and other ILO conventions and recommendations, for instance, Recommendation No. 94, which concerns consultation and co-operation between employers and workers at the level of the undertaking.

Trade unions use the NCPs mostly for launching complaints about violations of standards in the chapter on employment and industrial relations of the OECD Guidelines. This chapter includes the right to organise and collective bargaining, which are in the focus of most union complaints. The following text box gives an example of a complaint, which was submitted to the Swiss NCP by the global union federation BWI.

According to the UNGP and OECD Guidelines, companies should conduct due diligence processes in order to identify, prevent or mitigate and account for actual and potential adverse impacts on human rights. Therefore, in 2018, the OECD Council adopted a guidance to promote a common understanding of due diligence requirements.¹³⁰ In addition, the OECD published sector-specific guidance, for example, for the garment and footwear, and the extractive and mineral sectors.¹³¹

The general guidance on due diligence is an implementation tool that aims at preventing adverse human rights impacts by prescribing a detailed programme for implementing the OECD Guidelines. Key components of due diligence comprise a 6 step process, shown in figure 5.1.

A key message from the revision of the OECD Guidelines and the adoption of the OECD Due Diligence Guidance is that, at the global level, the main body of rights, responsibilities and processes is already in place to promote a more responsible business conduct.

Moreover, the guidance makes it clear that engagement with stakeholders is important throughout the due diligence process. As TUAC points out in its comment on the OECD Due Diligence Guidance:¹³²

“In May 2015, Building and Wood Workers’ International (BWI) submitted a case to the Swiss National Contact Point against the Fédération Internationale de Football Association (FIFA) for failing to meet its responsibility to respect the human rights of migrant construction workers, building the Stadiums and infrastructure for the FIFA 2022 World Cup. BWI requested that the Swiss National Contact Point offers its good offices for mediation between FIFA and the BWI. The purpose of the mediation would be, first, to identify steps to be taken by FIFA itself to meet its responsibility to respect human rights and secondly to address FIFA’s responsibility to use its leverage with the Government of Qatar to accelerate labour law and other human rights-related reforms, including the abolishment of the Kafala system.

On 13 October 2015, the Swiss NCP accepted the case and invited the parties to participate in mediation. Both parties agreed to participate in mediation.”¹³³

- Some forms of stakeholder engagement, including the right to form or join a trade union and to bargain collectively, are human rights in themselves, and on matters related to these rights, companies should engage with trade union representatives, instead of individual workers.
- The guidance recognises that industrial relations are a form of stakeholder engagement.
- The guidance identifies company-trade union agreements (enterprise, sectoral, international) as a way for companies to avoid and address adverse impacts on workers: collective bargaining agreements, GFAs, protocols and Memoranda of Understanding are all part of due diligence.

The mechanism of recognising labour rights and trade union representation for better business conduct can also be found elsewhere. For instance:

¹²⁹See <https://www.oecdwatch.org/filing-complaints/instructions-and-templates/good-and-bad-ncp-practices>

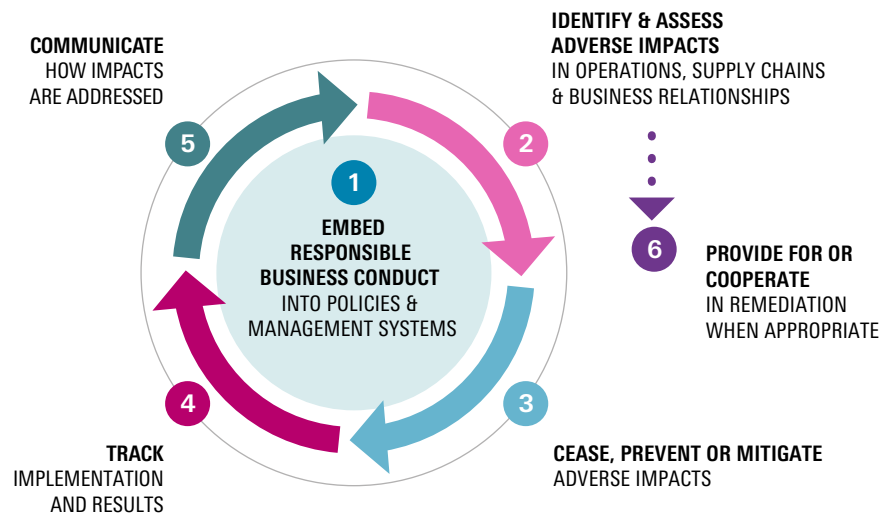
¹³⁰Bonnitcha, Jonathan and Robert McCorquodale (2017)

¹³¹See <https://mneguidelines.oecd.org/guidelines/>

¹³²TUAC (2018)

¹³³See <http://www.tuacoecdmneguidelines.org/CaseDescription.asp?id=185>

Due Diligence Process and Supporting Measures



Source: OECD Due Diligence Guidance, 2018, p. 21

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- *Public procurement* has become an arena where labour standards are increasingly part of socially responsible procurement. A common way to include ethical standards into the procurement process is through asking the bidder to sign a so-called graduated bidder declaration. To demonstrate that the bidder upholds social and labour standards in its supply chain, the company can either provide a certificate or undergo an audit procedure.
- *Export credit agencies* have started to include social and labour standards in their regulatory framework. Some countries, such as France and Denmark, bind their ECGs to social and labour rights standards. The French agency, COFACE, has been a member of the United Nations Global Compact since 2003. The Danish agency, EKF, binds business to social and labour rights standards from the Global Compact and the Equator Principles.¹³⁴

In other words: workers' voice in the form of collective bargaining, consultation and participation as well as stakeholder involvement is part of the international legal and policy discourse on responsible business conduct. The arena in which workers' voice can play an important and useful role for corporate responsibility is set up. Key labour rights are recognised at the global level, through the OECD Guidelines, the UNGP and the ILO Core Labour Standards, for example. The challenge is now to use these channels for workers' voice as effective instruments to ensure responsible business and the enforcement of labour rights.

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 2011 EDITION

Chapter on Employment and Industrial Relations – Excerpt:

2.

a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.

b) Provide information to workers' representatives, which is needed for meaningful negotiations on conditions of employment.

c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

(...)

3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern. (...)

8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

¹³⁴See on both mechanisms: Hassel, Anke and Nicole Helmerich (2016)

The role of workers' voice in corporate responsibility: monitoring, communication and agenda setting

Better corporate governance, as outlined in chapter 3, as well as a broader focus on stakeholder value and sustainability goals are at the centre of responsible business. This includes an emphasis on long-term responsible investments concerning social and environmental impacts. Employees and their representatives are key stakeholders who are involved in responsible business, either directly through their work or through workers' voice.¹³⁵

European Works Councils:

A wide range of practices

The relationship between EWCs and CSR is ambiguous. Practices range from no engagement at all to full participation in the definition, the decision-making process and the monitoring of company specific CSR practices, as the example of Solvay shows. However, the European works council database shows that only 20 out of 1,100 active EWCs in Europe use the expression "corporate social responsibility" in their agreements.¹³⁶ It should also be noted that the Recast EWC Directive does not mention CSR specifically as a topic for informa-

tion and consultation. According to research on the issue, mainstream practice in EWC members is limited to receiving information, rather than being actively involved in CSR policy-making.¹³⁷

Transnational company agreements:

Negotiating employee participation on the international level

Trade unions and European works councils also engage in CSR issues through transnational company agreements (TCAs). Over the last few decades, the number of transnational company agreements in Europe has constantly increased. Starting in the late 1990s, the number of TCAs today stands at 265 in total.¹³⁸ In contrast to company codes of conduct, TCAs are negotiated agreements between companies and workers' representatives that refer e.g. to labour rights, environmental standards and human rights. TCAs can be categorised into European framework agreements (EFAs) and global framework agreements (GFAs), though EFAs are often more precise and comprehensive than GFAs. Moreover, EFAs often focus on restructuring. GFAs have a broader scope, regulate labour standards and industrial relations within companies worldwide and often refer to supply chains. Both instruments enable workers' representatives and unions

Example 2: Solvay's EWC working group on "sustainable development"

The EWC of Solvay has a sub-working group on "sustainable development". This working group has 8 members from the EWC, 5 industrial relations managers from the biggest countries in Europe, the global industrial relations manager and the corporate manager from the sustainable development department. The working group has the possibility to give feedback, input, proposals or remarks about the sustainable development policy, such as the 'Solvay way' or HSE (health, safety and environment) topics.

The EWC is a part of the Solvay sustainability policy. The Solvay EWC working group on "sustainable development" may serve as a model for an institutionalised cooperation between workers' representatives and management on sustainability issues.

Albert Krufft, Solvay EWC

Example 3: GFA between Solvay Group and IndustriALL Global Union

In February 2017, Solvay Group and IndustriALL Global Union renewed their global framework agreement on social responsibility and sustainable development. This agreement is an example of a negotiated policy with a broad range of sustainability topics. The agreement not only includes topics, such as health and safety, risk management and environmental protection, but concrete indicators to measure the performance in labour rights and environmental standards. It also contains implementation and monitoring processes and assigns unions an explicit, supervisory role. This agreement could serve as a new benchmark for global framework agreements, as it directly combines labour rights and sustainability issues and is exceptionally detailed regarding the implementation and monitoring process of the agreement.

IndustriAll Global Union, 2017

¹³⁵Vitols, Sigurt (2011)

¹³⁶See www.ewcdb.eu

¹³⁷Kerckhoffs, Thijs and Joseph Wilde-Ramsing (2010)

¹³⁸EU COM Database on transnational company agreements

to shape CR within the transnational company and its supply chain.¹³⁹

GFAs, in particular, have the potential to become a collaborative tool in due diligence processes under the UNGP and OECD Guidelines. The agreements can help companies to identify human rights risks in suppliers and subcontractors and track the effectiveness of responses. Moreover, GFAs can constitute grievance mechanisms to raise complaints and enable remediation.

Board-level representatives: Sustainability reporting is likely to become more important

Similar to EWCs, the range of participation in corporate responsibility issues of board-level representatives varies as well. Usually representatives on the board focus primarily on topics regarding finance, companies' organisation and human resources. Research evidence shows that only 9% of board-level employee representatives in Europe cite CR as an important issue discussed at the board, compared to human resources (56%), finance (48%) and the structure and organisation of the company (35%).¹⁴⁰ Considering that corporate responsibility tends to become more prominent in corporate governance and the European Non-Financial Reporting Directive 2014/95/EU, this number might rise.

Further examples for the involvement of workers' representatives

Sometimes trade unions also actively participate in policy formulation and the implementation of corporate responsibility. Here, specific topics function as a bridge between responsibility and workers' voice. For example, occupational health and safety policies not only protect workers from physical and mental harm or reduce the contamination of water and soil, they also enable workers to voice concerns and participate at the workplace through health and safety committees.¹⁴¹ In many developing countries, where unionisation in many sectors is weak, these topics enable workers to have at least some voice within the company.

Other examples for the involvement of workers and their organisations in multi-stakeholder initiatives are the Bangladesh Accord and the ACT (Action, Collaboration, Transformation) initiative. The accord is an independent, legally-binding agreement between brands and trade unions designed to work towards a safe and healthy Bangladeshi

Ready-Made Garment Industry.¹⁴² ACT is an initiative between international brands and retailers, manufacturers and trade unions to address the issue of living wages in the textile and garment supply chain, by establishing industry collective bargaining in key garment and textile sourcing countries.¹⁴³

The factors that influence workers' participation in issues of corporate responsibility are mostly the same factors that can hinder or promote workers' voice in general: regulatory issues, industrial relations contexts and practices, sectoral variations etc.

Example 4: TCA between ETEX Group S.A and the EWC

ETEX Group S.A. and their European works council negotiated, in 2010, the health, safety and environment issue in the workplace charter. It regulates the following issues: basic procedures to eliminate risk in the area of health and safety, the necessary information to be provided to employee representatives, the structure of the workplace and the working environment, handling of hazardous substances, exposure to dust, noise, vibrations and work on electrical installations etc. The charter also involves employee representatives in its implementation and monitoring. This example shows the pivotal role of European works councils in sustainability management.

ETEX Group S.A., 2010

The importance of workers' voice for CSR

Corporate responsibility poses challenges and opportunities for workers and workers' representatives. On the one hand, several sustainable development goals specifically aim to protect workers and employment. On the other hand, the 'greening' of enterprises and the labour market may pose a threat to workers and requires a socially just transition. The transition to ecological sustainability and the creation of green jobs, in particular, are often accompanied by job losses. In fact, sustainable development is one of the reasons for corporate restructuring in Europe.

Board-level representatives, in particular, find themselves in the difficult position of being workers' representatives and making decisions in

¹³⁹González Begega, Sergio and Mona Aranea (2018); Dehnen, Veronika (2013); Fichter, Michael, Helfen, Martin and Jörg Sydow (2011); Niforou, Christina (2011); Fairbrother, Peter, Lévesque, Christian and Marc-Antoin Hennebert (2013)

¹⁴⁰Waddington, Jeremy and Aline Conchon (2016), p. 99

¹⁴¹Liu, Jinyun, Root, S. Lawrence, Beck, John P. and Roland W. Zullo (2012)

¹⁴²See <http://bangladeshaccord.org/>

¹⁴³See <https://www.ethicaltrade.org/act-initiative-living-wages>

favour of sustainable company growth. However, the evidence concerning workers' voice and structural change is that, in countries with strong workers' voice at the board-level, restructuring often works smoother and more efficiently than in countries without.¹⁴⁴

In sum, the role of workers' voice in corporate responsibility can serve the following functions:

- improve the quality of implementation of CSR and sustainability policies
- increase access to information on irresponsible business practices
- improve consultation and participation rights
- build capacity by forming long-term networks of relevant actors and strengthening transnational and multi-level alliances on the trade union side.

Recommendations

As companies face severe crises of legitimacy, issues of corporate responsibility move to the centre of policy debates. Responsible companies not only pay attention to environmental concerns but also embrace a long-term orientation of the company and its impact on employment and regions. While the non-binding nature of many international instruments and company initiatives can be criticised for limiting meaningful progress on corporate responsibility and accountability for human rights violations – workers' voice and sustainability can reinforce each other in several ways: workers' voice can improve the quality of the implementation of sustainability policies, and sustainability management can improve consultation and participation rights. Moreover, sustainability discourses can build capacity, by forming long-term networks of relevant actors and strengthening transnational and multi-level alliances on the trade union side.

Looking to the future, corporate responsibility provides opportunities for workers and workers' representatives to consolidate capacities for workers' voice, in the form of workers' representatives, to engage in CR in a meaningful way. Moreover, the concepts can function as a door-opener to a dialogue on labour rights. Through several institutions and approaches, workers' voice can be involved effectively in sustainability issues: through participation in the national or European CSR discourses, engagement in CSR policies, for example, through board-level employee representation or EWCs, engagement in CSR organisations (Public-Private Partnerships, Principles for Responsible Investments), engagement in the implementation and monitoring of CSR standards in the supply chains, or through TCAs.

Workers are a crucial part of a company and play a key role in managing a responsible company. Effective CSR and corporate responsibility approaches form part of a company's long-term strategy, and good corporate governance can strengthen labour rights. Workers' voice needs to be a strong and expressive part in the process of CSR and sustainability policy-making.

The Expert Group identified recommendations for fostering the role of workers' voice in responsible business:

- recognise the importance of labour rights and the long-term orientation of top management for corporate responsibility
- provide capacities for the enforcement of labour rights at the company level
- encourage the use of TCAs for communicating and implementing due diligence in the supply chain and strengthening EWCs
- make compliance with ESG standards compulsory for European companies
- work towards a stronger role for hard law compared to soft law in responsible business conduct.

¹⁴⁴See chapter 4

CHAPTER 6

CAPACITY BUILDING IN A MULTI-LEVEL SYSTEM OF WORKERS' VOICE

The institutional diversity between different national models of industrial relations and corporate governance in Europe, as regards the key actors involved and their roles and relationships, has, in the past, mainly been perceived as a barrier rather than a facilitator of developing a common European Social Model. Due to historical legacies and a lack of political will, it was not possible to take a more comprehensive view of workers' voice and participation that would combine the most advanced elements of different systems of industrial relations and workers' participation and build a framework or jigsaw of functional elements that support workers' rights and social protection effectively in cross-border operating companies.

In order to avoid the narrative of legal and/or institutional harmonisation, and based on the assumption that different paths and institutional settings might lead to the same results, the Expert Group discussed the concept of functional equivalents for dealing with institutional diversity. Similar functions of workers' voice are exercised by different institutions in European member states. Moreover, workers' voice takes place in a multi-level system, in which different levels (local, national and European) continuously interact.

Europeanisation of industrial relations in transnational companies has been evolving in an uneven pattern. This is illustrated by the stark differences in EWCs' effective role, influence and 'embeddedness' in transnational corporate practices, ranging from purely symbolic practices of once a year high-level meetings with management representatives to the establishment of a real and continuous working structure and the institutionalisation of effective information and consultation as well as participation at the EU level. In the future, such functioning European bodies of workers' involvement and participation should be strengthened and disseminated more effectively. Given the acceleration of transnational corporate structures, trade unions themselves should aim to use the tools of EWCs more systematically and consider investing more resources in European workers' voice.

Functional equivalents: a useful concept and euphemism

Given institutional and organisational diversity, how can a common European model be designed and achieved? The concept of functional equivalents denotes different institutional structures that perform the same functions. Once the function of workers' voice is defined and agreed upon, different institutions might work towards that function.

"At Unilever, decisions are taken at the international level in the headquarters in Rotterdam and London. The participation of works councils, however, only takes place at the national level. The board-level employee representation is politically important. The employee representatives gain access to information and data, which they would not otherwise have. A real influence on decisions taken at international headquarters is not really possible."

Hermann Soggeberg, Unilever EWC

"For me, the workers' voice plays an important role. In the Solvay group, especially in Europe, we have a long experience with workers' voice. Twice a year the select committee of the EWC has an informal meeting with our CEO. During this meeting, he expects from us a clear message about the climate and challenges from the shop floor. He gives us an overview about the objectives and the future of Solvay. On the global level, Solvay has signed a social framework agreement with IndustriALL. In this agreement, workers and union representatives play a key role. This agreement led to the founding of the global works council, Solvay Global Forum."

Albert Krufft, Memo

"I always experienced them [the different workers' voice systems] as problematic, especially because there is a lack of trust between the different systems. In fact, there is also a clash of power and, in some cases, a real conflict of interest."

Lucia Peveri, Deutsche Bank EWC

Workers' voice aims at influencing and monitoring strategic decisions at the corporate level for the protection of workers' rights and interests by autonomous workers' representatives. Workers' voice, therefore, is broader than just board-level employee representation (BLER). It can be exercised through collective bargaining and (European) works councils in a similar way. A broader definition of workers' voice allows us to move our attention away from a legalistic discussion on the thresholds of company size, and the number of seats and legal rights for workers on the board. While these issues are important and need to be discussed, in particular with regard to policy proposals, the Expert

Group used its intellectual freedom to contemplate other avenues of achieving the goal of ensuring workers' voice.

The advantage of a broader perspective is that it links European developments to domestic institutions. If domestic industrial relations do not prioritise BLER, but rather focus on workplace representation or collective bargaining, these institutions can be seen as equivalents if they can achieve the same or similar effects.

This is not new to European policy-making. The mode of functional equivalent instruments has been at the heart of soft governance mechanisms within the EU. The open method of coordination is based upon the agreement of targets, with a plurality of methods as to how to get there.

In the realm of workers' voice, there is a precedent. The draft of the 5th Directive "on the structure of public limited companies", from 1983, explicitly states that it was not intended to "make rules uniform for all member states but leaves them to choose between a number of equivalent arrangements".¹⁴⁵

If workers' voice is an agreed target among the member states of the EU, the exact form of workers' voice can be left to national actors and be accomplished by European channels of workers' voice, such as EWCs or an optional legal framework for transnational company agreements.¹⁴⁶

The European Commission in the 5th Company Directive (see above) repeatedly referred to the term equivalence as well as the "sufficient degree of equivalence" (Art. 4) to be reached among the existing systems of workers' participation within the member states, by defining the minimum standard to be respected.

The concept of functional equivalents serves as a tool to facilitate a comparison in contexts where simple institutional comparisons lead to a dead end.¹⁴⁷ It implies that, despite different terminologies – such as actors, powers or positions, instruments or institutions – processes performing similar functions are comparable. It is frequently used in legal contexts, comparing legal concepts among different institutions, companies or countries.¹⁴⁸ By shifting focus from the simple denomination to a number of different tasks or functions, such as who is responsible for ensuring a health and safety regulation at the workplace, the spectrum included in the comparison is enlarged.

Within the context of workers' voice, functional equivalents refer to institutional structures that perform the same tasks but are subject to national specifics and, therefore, embedded in dif-

fering institutional settings. The project, therefore, looked at different levels and settings for workers' voice beyond BLER, such as collective agreements and (European) works councils. Functional equivalence allows, first of all, for the inclusion of new instruments, beyond the classical institutions traditionally in charge of workers' voice. Policy instruments might help to facilitate other, new instruments that might become equivalents in the future, where traditional institutions are weak or non-existent. We need to assess which institutions can carry out functions, such as corporate monitoring for instance, through information and consultation rights, transparency rules or restrictions of shareholder rights. The narrower the functional definition, the easier it is to identify gaps and discrepancies and, hence, evaluate the outcome.

When discussing functional equivalents, the functions of workers' voice are seen in a wider context. Workers' voice is the core of industrial relations and a key component of workers' representation. It does not cover the whole array of trade unions' functions, as it does not include wage bargaining or industrial action for wage setting, which should be the exclusive right of trade unions. Workers' voice generally describes the representation of interests at the company and plant level, irrespective of the specific form (dual interest representation, interest representation by trade unions or alternating forms). More specifically, we can identify four functions of workers' voice:

- representing workers' concerns: Workers' voice not only communicates, but also represents, workers' concerns and interests. Representation is an active display of confrontation towards management from the perspective of its workers. It also allows for negotiations with management about its decisions.
- enforcement of rights: Beyond the representation of rights, actors of workers' voice, such as works councils, representatives on boards and trade unions, are not only the bearer, but also the enforcer, of rights and negotiation power.
- communicating workers' interests: Workers' voice is a way of collecting and channelling workers' interests and concerns. It is crucial for the management of transnational companies in Europe to know about workers' concerns and take workers' perspectives into account when engaging in corporate change, such as restructuring and sustainability management.
- monitoring management decisions: Workers are immediately affected by good and bad management in the companies they work for. They know exactly how a company is performing. Workers' voice is a form of monitoring and, therefore, part of corporate governance – whether it is part of the institutional structure of corporate governance or not.

¹⁴⁵European Commission (1983)

¹⁴⁶ETUC (2016a); Sciarra, S., Fuchs, M. and A. Sobczak (2014); See also: Ales, E. (2018)

¹⁴⁷Gold, Michael (2009)

¹⁴⁸Šarčević, Susan (1997); Weston, Martin (1991)

These functions are not specific to the institutional context, but can be carried out in different forms, such as trade union representation, works councils, collective bargaining and board-level representation. Obviously, the institutional context will allow for certain kinds of workers' voice and can either strengthen or weaken its effects. But, in principle, workers' representatives can perform these functions in a variety of institutional contexts.

At the same time, there are a number of principles which need to be in place for those functions to operate. These principles are also independent of institutional context, although again the context influences the effectiveness of workers' voice. The principles are:

- *Obligatory*: Workers' voice is not voluntary or optional but obligatory. On a very general level, workers' representation at the company level is enshrined by ILO norms and the European primary law. There is a general right for workers to express their voice.
- *Sanctionable*: Enforcement of the general right to voice is, however, not universally possible, and the lack of workers' voice, or the rejection of workers' voice, is often not punishable. The role of sanctions in enforcement is an important principle, which should be addressed when discussing workers' voice.
- *Individual and collective rights*: Individual and collective labour rights are complementary and not substitutions. We need an individual right to consultation as well as the direct right to exercise collective rights. Both need to be protected by law.
- *Multi-level*: We need to accept and positively embrace the notion that all forms of workers' voice in transnational companies are multi-level, in the sense that local representation is complemented by company-level and sometimes industry-level or national-level representation. Hereby, company actors cooperate with trade union representatives and others.
- *Capacity building*: Capacity refers to the resources available to those who are active as workers' representatives. Workers' voice is based on, and dependent on, a sufficient supply of resources to increase the capacity for effective representation.
- *Institution building*: Even though a functional perspective aims at strengthening functions and not institutions, ultimately workers' voice in transnational companies in Europe aims at building effective institutions for exercising rights.

Functional equivalence is, however, also a euphemism, as it hides the fact that not every kind of workers' representation is equally effective. We may assume that workers' voice might be performed by a number of organisational forms, such as BLER, EWC or collective agreements. But what

if none of these instruments are available or exercised? The Expert Group discussed several solutions for this problem:

Firstly, it concluded that policy instruments that facilitate similar functions, such as ways towards corporate monitoring by stakeholders, extended information rights, consultation duties, transparency obligations or restrictions of shareholder rights, should be considered. Where forms of collective representation of workers at the company level are weak, and works councils and BLER non-existent, companies should be obliged to ensure quality social dialogue with supporting trade unions in order to develop stronger information, consultation and participation practices.

Secondly, existing forms of European workers' voice have initiated processes of institutional learning at the national level. Europeanisation allows for a meeting of national traditions and an exchange of different perspectives. Shared experiences and common practice have developed in transnational companies in Europe. Here the evolution of good practices in EWCs and workers' involvement in SEs should be regarded as a practical "learning journey" to organise workers' voice on relevant transformation processes at the cross-border level. These experiences will feed back into national orientations, institutions, policies and strategies. This is a breeding ground for European labour relations. Eventually, it will be necessary to think about, and go beyond, information and consultation as a top-down process: There is a need for an obligatory place at the top of the company where exchange, formalised consultation and workers' involvement is guaranteed continuously in management and investment decisions.

A multi-level system of workers' voice

Workers' voice in transnational companies takes place on several levels:

- the plant or site level, by elected representatives, works councils or unions, regulated by national institutions and laws
- the national level, by national-level, elected representatives, group works councils or union representation as well as employee involvement on company boards, regulated by national institutions and laws
- the European level, by European works councils, regulated by the EWC Directive or transnational company agreements (TCAs)
- the global level, by international framework agreements (IFA).

The different levels refer to different tasks. The plant or site level is usually particularly constrained to issues of workplace conditions and does not deal with the strategic decision-making of transnational

companies. The other three levels can potentially deal and interact with top management. The division of labour between national, European and global forms of workers' voice is, however, often not clear cut. Depending on the strength and type of company headquarters, the main arena of workers' voice, vis-à-vis the company board, can be situated at different levels. The strongest level of workers' voice remains the national level, as national regulations and institutions have been dominant for the first three quarters of the 20th century and for the main part of the evolution of transnational companies. The Expert Group discussed the example of Unilever, where interaction with management regarding the hostile takeover bid moved between national (German) board-level representation and the European works council, often involving the same representatives.

Over time, there has been a clear trend towards the globalisation and Europeanisation of workers' voice, in line with the evolution of global companies.¹⁴⁹ This is most visible when taking into account the increase in the number of European works council agreements (currently more than 1,000¹⁵⁰). Many EWCs have concluded transnational company agreements with a purely European scope, on issues such as restructuring and employment, health and safety, competence development and the right to continuous training.¹⁵¹ In the context of workers' voice, those TCAs that have been signed by global or European union federations are particularly important.¹⁵² As reported in the Expert Group, there has also been a positive trend as regards quality, implementation mechanisms as well as the enabling and facilitating role of TCAs as regards local industrial relations and workers' voice structures.

In particular pro-active EWC practices that are supported by EU level trade union coordination and functioning horizontal as well as vertical articulation can function as learning platforms for aligning different practices into one joint framework of workers' voice.

It is important that, for workers' voice to be effective, the existing multi-level system must

create synergies rather than competition between different levels and between different parts of the company. European market creation and corporate restructuring may induce regulatory arbitrage and site competition within a company. Different sites might have to compete over investments by offering concessions to management.

The question remains as to whether this change in industrial relations and new, multi-level and multi-actor alliances will lead to new and strong configurations in Europe, or whether regulatory competition and power games will inhibit the transnational alliances of workers' voice in large European companies.¹⁵³ In general, researchers find that, in order for workers' voice in large European companies to influence corporate governance strategies/decisions, such as restructuring, investment, relocation or health and safety, European works councils, European union federations, workers' representatives and national unions need to form an alliance, addressing a specific issue at a specific transnational corporation with one voice, joint strategies and in various bodies (boards, EWCs, SE WCs) and through different agreements (TCAs, ECAs).¹⁵⁴ For example, a multi-level approach to workers' voice, combined with local level pressure through "employee-side organization and activity [...] is found to have the greatest impact on management decision-making concerning multinational restructuring."¹⁵⁵

Best practice examples show several factors that contribute to international forms of workers' voice:

- "the willingness and capacity of national trade union and workers' representatives to conduct negotiations
- management interests that view agreements that are concluded as an (additional) aspect of their CSR strategies and either accept these defensively or exploit them proactively
- national codetermination mechanisms that lead to the signing of IFAs as part of conflicts, exchange processes, and compromise balances
- and finally, corporate cultures and national traditions in labour relations that are based on cooperative consensus-oriented principles."¹⁵⁶

¹⁴⁹See Ales, Edoardo and Lacopo Senatori (2014); da Costa, Isabel, Pulignano, Valeria, Rehfeldt, Udo and Volker Telljohann (2012); Helfen, Markus and Jörg Fichter (2013); Whittall, Michael, Lücking, Stefan and Rainer Trinczek (2007)

¹⁵⁰de Spiegelaere, Stan and Romuald Jagodziński (2015), p.12, figure 1

¹⁵¹See the database on transnational company agreements that has been established by the EU Commission jointly with the ILO: <http://ec.europa.eu/social/main.jsp?catId=978&langId=en>

¹⁵²Though the legal and binding character of TCAs is still weak and based on joint agreement, rather than an obligation that can be enforced, those TCAs that have been signed, not only by EWCs or global works councils but also by European and global union federations, go beyond purely voluntary CSR mechanisms.

This was confirmed by the joint presentation of the Head of Industrial Relations and Social Innovation, and the chairman of the EWC Secretariat of the Solvay Group on the industrial relations policy at Solvay. The presentation and ensuing discussion by the Expert Group show the key role of the inter-

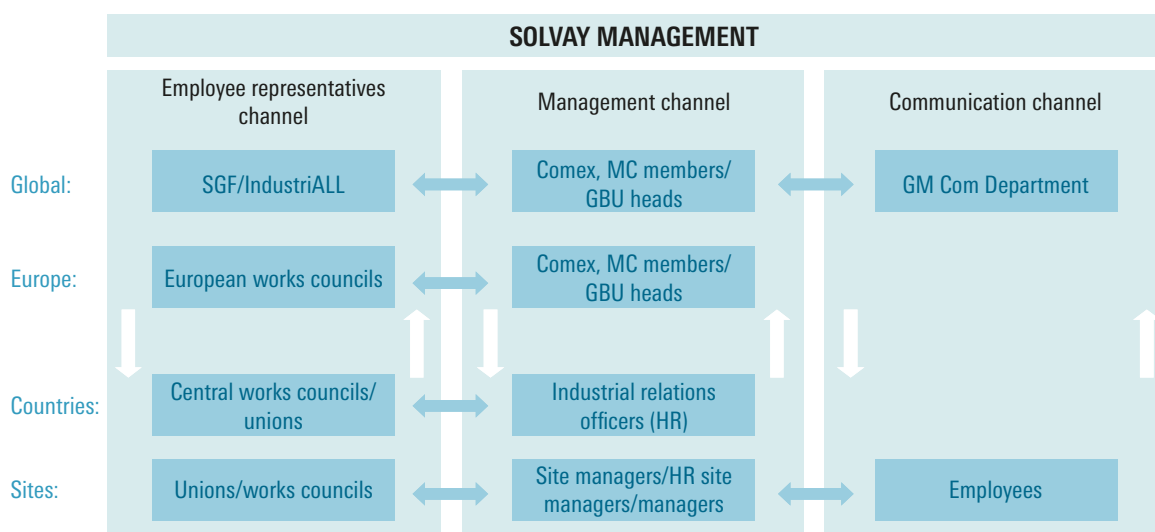
¹⁵³Pulignano, Valeria and Norbert Kluge (2007)

¹⁵⁴See da Costa, Isabel and Udo Rehfeldt (2007); Pulignano, Valeria and Paul Stewart (2013); Pulignano, Valeria, Telljohann, Volker, da Costa, Isabel and Udo Rehfeldt (2013)

¹⁵⁵Pulignano, Valeria (2006), p. 632

¹⁵⁶Platzer, Hans-Wolfgang and Stefan Rüb (2014), p. 7

Industrial relations channels at the Solvay Group

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action between collective bargaining and co-decision-making bodies.¹⁵⁷ While both have a different logic (autonomy versus cooperation), they present the institutional environment, in which a multi-level system of workers' voice can operate. The example of Solvay particularly emphasises the role of collective agreements. A contract creates mutual commitments, which increase credibility, a greater sense of responsibility and the use of a complementary channel of communication.¹⁵⁸

The Expert Group, therefore, concluded that both functions – consultation and interest representation – should be embraced as complementary components of workers' voice in multinational firms, and that it is necessary to work towards a contractual framework in which consultation can take place at an international and European level.

Capacity building in a multi-level system of workers' voice

With regard to capacity building in the context of workers' voice, there are hopeful developments as well as disillusionments. On the one hand, the sheer number of EWCs, SE works councils as well as TCAs can serve as an indication of the steady process of Europeanisation of workers' voice. On

the other hand, the speed of market integration and cross-border company restructuring increases at an even higher rate than those responses. The reorganisation of production and services across countries and the increasing mobility of capital, along with the associated ability of management to benchmark across different production units, by securing concessions on pay and working conditions while safeguarding employment, continue to weaken the capacity of local and national unions.¹⁵⁹

It has also to be mentioned in this context that the current political climate at EU level (Commission, Council) is not very supportive of any real progress as regards workers' voice and support for capacity building in the multi-level system. Though the 2017 TUI judgement of the ECJ clearly rules that workers' representation at the board level belongs essentially to the core of the European Union's social objectives¹⁶⁰, the EU Commission has not been a strong advocate of safeguarding this workers' right. On the contrary, the EU Commission remains passive and refrains from any further political or legislative initiative in order to safeguard workers' representation, for example in response to recent ECJ judgements that are an open door for company mobility in order to circumvent or make use of existing company law loopholes.¹⁶¹

¹⁵⁷This was also confirmed by Aline Hoffmann's presentation on "Functional equivalents of workers' voice: institutional communalities and diversity between actors and levels", which emphasized the complementary functions and tensions between interest representation and consultation at the fifth meeting of the Expert Group, September 2017, Stockholm.

¹⁵⁸Presentation by Sciberras and Krufft at the fifth meeting of the Expert Group, September 2017, Stockholm

¹⁵⁹Bieler, Andreas and Ingmar Lindberg (2010); Bernaciak, Magdalena (2010)

¹⁶⁰See "ECJ upholds German codetermination rights, but misses an opportunity", ETUI, available at: <https://www.worker-participation.eu/About-WP/What-s-new/ECJ-upholds-German-codetermination-rights-but-misses-an-opportunity>. See also: Videbæk Munkholm, N. (2018)

¹⁶¹In this context in particular, the recent ECJ judgment on the case of Polbud has to be mentioned (ECJ Case C-106/16).

Also the EU Pillar of Social Rights fails to offer any concrete proposals as regards the capacity building within the multi-level system of industrial relations and workers' voice. Instead of responding positively to the ECJ ruling and the calling of European trade unions for an integrated EU framework on information, consultation and board-level representation rights¹⁶², EU institutions have been silent when it comes to fostering a genuinely European dimension to workers' rights and industrial democracy, which is able to keep pace with the internationalisation of companies and prevent workers across Europe being played off against each other.¹⁶³ Research has identified the local level as the weakest link in the process. If the decentralised, local voice of workers is weak, fragmented or disappearing, the base of the multi-level system is fragile and eroding.¹⁶⁴ The weaker the local workers' voice, the more difficult it is for them to engage in multi-level worker organisation. This is simply a question of capacity and priority.

Considering the local capacity of workers and workers' representatives as well, the different forms of workers' voice at the European and transnational level need to have the capacity to proactively participate in the restructuring process. For example, many European works councils are not functioning sufficiently well and not sufficiently involved in the restructuring process, nor are they able to shape a restructuring process and outcome.¹⁶⁵

Furthermore, cooperation and coordination need to be a viable option for all actors involved. Specifically in cross-border restructuring processes, multi-level cooperation and coordination among different forms of workers' voice may not be the best choice for each actor and body involved. Workers and workers' representatives may have different interests and motivations in a specific restructuring process. Economic pressures within a specific sector or transnational firm and regime competition may lead to the absence of cross-border or multi-level cooperation of workers and workers' representatives.¹⁶⁶ At the same time, good practices of social dialogue and EWC practices, as regards anticipating and managing change and restructuring, clearly illustrates the concrete added value of a transnational platform of exchange, dialogue and consultation for successfully managing change on the basis of common interests and trust, resulting in outcomes that are good for workers and the

company. However, EU "Realpolitik" so far has not been able to facilitate such practices and approaches that would go beyond mere information and consultation by enabling and empowering workers' voice.

Capacity building to strengthen workers' voice in transnational companies should start by identifying and creating the best institutional environment in which learning can take place. In the context of the multi-level system, as outlined in the previous section, those who work on capacity building need to decide to locate a strategic starting point, from which transnational workers' voice is to be developed. Though the strategic centre does not have to be fixed, but can be distributed across different places and levels, a key role as regards horizontal and vertical coordination and articulation should be the EU level, i.e. European trade union federations at cross-industry and sector level. An innovative approach that has been developed by ETUFs, such as UNI Europa and industriAll Europe, has been the establishment of trade union alliances in order to strengthen the coordination of national trade union policies to promote and strengthen transnational workers' voice in transnational restructuring as well as generally within corporate decision-making at the transnational level.¹⁶⁷

These activities should also be regarded as practical learning and capacity building of all actors involved (national trade unions, local workers' committees/works councils, EU level unions). It is important to transform such activities into more sustainable and durable practices. This, however, will require the necessary resources as well as personnel capacities that are currently not sufficient.

When it comes to capacity building within the multi-level system of workers' voice, those who work towards it have to coordinate their work and to decide who is in charge of capacity development for specific companies or sectors. In other words, there should be a clear division of labour between national and European trade union organisations as to the strategic goals of European workers' voice and the focus on specific companies and industries. Trade union alliances and European works councils should be the primary focus, as they can serve as places for organisational learning.¹⁶⁸

In addition, learning platforms for workers' voice should be facilitated and encouraged. An inspiring model in the field of soft law for the development of organisational learning could be the Global Compact in the UN context, which invites global companies to sign up, not only to a set of values but also to a network of national learning centres.

¹⁶²ETUC (2016)

¹⁶³This has been underlined by the ETUC initiative for more 'democracy at work', which argues that the deepening of European integration has not been matched by a deepening of workers' rights in Europe. See ETUC (2018).

¹⁶⁴Pulignano, Valeria and Paul Stewart (2013); Pulignano, Valeria, Telljohann, Volker, da Costa, Isabel and Udo Rehfeldt (2013)

¹⁶⁵Meardi, Guglielmo (2007); Voss, Eckhard (2006)

¹⁶⁶Meardi, Guglielmo (2007)

¹⁶⁷See: Lévesque, Christian (2010). See also: UNI Europa (2017)

¹⁶⁸See, for example, the website "www.tobeeewc.eu" of UNI Europa that has been built on in the context of a project co-financed by the EU Commission.

However, this model is based on soft law and in no way could be regarded as an alternative to standards of capacity building based on legal rights.

In any case, as regards capacity building for workers' voice, the following strategic decisions and questions have to be addressed by European trade unions:

- How many resources are European trade union organisations prepared (and able) to invest in the establishment of transnational instruments of workers' voice, and where should these resources come from?
- How can new forms of communication and organisational coordination be developed? Is there a need for new experiments with regard to communication platforms, procedures and learning?
- Can the documentation and distribution of best practice examples be improved? In particular, can the approach of European trade union federations to coordinate workers' voice in transnational companies not only be strengthened and made more stable but could they be developed further with a view to facilitating organisational learning?

These questions should be addressed in the relevant committees of national and European trade union federations but also in the context of social dialogue, as facilitated by the European Commission.

Ultimately, capacity building should contribute to the strengthening and evolution of stronger institutions of workers' voice at the European level. Institutional development has a normative and a behavioral dimension. It aims at establishing a normative framework (the generally shared view that workers' voice is an accepted and legitimate instrument in the leadership of transnational companies) and a best practice. Both the normative and the practical dimension are complementary and reinforce each other. Best practice examples can show the way for those companies where workers' voice is absent or weak. They can also feed a normative Leitmotif, which emphasises the social integration of workers as a key ingredient for strengthening the European social model. Trade unions, but also other political and non-government actors, should aim at working together on building a normative reference in order to foster European workers' voice in the political discourse.

Recommendations

The diversity of industrial relations institutions across the EU member states is a challenge for workers' voice in transnational companies. In many cases, different institutions pursue similar goals. The expert group has, therefore, adopted a functional perspective to facilitate new discussions and perspectives. Based on a functional perspective, we can make the following recommendations for policymakers:

- Workers' voice has to be obligatory rather than optional. Regardless of the institutional setting, workers' voice has to be heard in the management of large companies.
- Given the diversity of traditions, cultures and regulation of workers' voice in Europe, the functional perspective implies a focus on the positive effects of workers' voice in the multi-level system, i.e. representation from the shop floor to the company and board level.
- New regulations at the European level, in the context of a company mobility package, should include the right to participation in decision-making at the headquarters of transnational firms in the EU.
- The violation of workers' voice has to be punishable. The enforcement of rights, including participation rights, needs to be strengthened.
- Workers' voice is ensured through a set of individual and collective rights. Individual rights refer to the right to join a union and to be represented at the workplace. Collective rights ensure the legality of trade unions and other forms of workers' participation. They reinforce each other. Collective rights should be strengthened and enforced, for instance through the European Pillar of Social Rights.
- The capacity to exercise workers' voice differs tremendously, not only across member states but also across companies. Examples of strong forms of workers' voice give rise to role models and organisational learning. Capacity building should be a priority.
- At the same time, the current European architecture of workers' voice is not sufficient and has worsened and eroded in many EU member states. In this context, the role of EU level institutions should be much more strongly in favour of safeguarding and promoting workers' rights and workers' voice at different levels and in different contexts.

CHAPTER 7

A EUROPEAN LEGAL FRAMEWORK FOR WORKERS' VOICE

Europe and the European Union have a long history of political commitment to workers' voice, as shown by the European Social Charter in 1961, the Social Action Programme in 1974 and the Community Charter of the Fundamental Social Rights of Workers in 1989. These were important political initiatives towards enabling workers' voice at the European level. The European primary law promotes social dialogue (art. 151 TFEU) and recognises the role of social partners (art. 152 TFEU). Art. 27 of the Charter of Fundamental Rights of the European Union (EU Charter) guarantees the right of workers to information and consultation. The European secondary law establishes, with a set of directives, a framework for informing and consulting workers: notably the SE Directive and the Directive on European Works Councils (EWCs). Today, EWCs are a key element of the European "Social Model."

On the other hand, Europe is facing and promoting a rapid process of economic liberalisation and the cross-border economic activities of companies. Legal provisions were passed to enable companies to restructure their production across borders. European company types were introduced in order to facilitate cross-border business, EU company law directives were adopted and the European Court of Justice (ECJ) has ruled on several cases, where structural differences between the national concepts of company law have caused legal conflicts. Still, a harmonised EU company law code does not exist. Corporate law codes of member states have very diverse regulations on liability, creditor protection, shareholder rights and employee representation.

The approach by the European Commission towards a harmonised European company law has a direct impact on the role of workers' voice in transnational companies. Incentives for companies to reincorporate or merge for the sole purpose of avoiding employee participation must be ruled out. In addition, European company law should not only give incentives for arbitrage but also actively address and support workers' voice at the board level.

The Europeanisation of workers' voice

Europe and the EU have a long history of political commitment to workers' voice. An early and important, legally-binding, international instrument was the European Social Charter in 1961, ratified by the Council of Europe. It was signed by 13 nations and set out basic rights for labour, employment and social security. At the European Union level, the EU Commission published a report on "multinational undertakings and community regulations" in 1973, in which it proposed a binding right for employees to receive information.¹⁶⁹ This was picked up in the Social Action Programme in 1974 by a reference to the participation of employees in the life of plants and companies.¹⁷⁰ This agenda was overshadowed by the discussion on the European Company (SE), but then rediscovered in 1980 by the proposal of Etienne Davignon, Commissioner for Industry, and Henk Vredeling, Commissioner for Social Affairs.¹⁷¹

We find few legal standards for workers' voice laid down in primary law today. Article 153 TFEU of the EU Social Policy (Title X) provides the legal basis for the EU to act in several fields of the labour market, inter alia, to improve and secure information for workers and their consultation. Art. 153 TFEU also authorises the EU to adopt directives with minimum requirements and under the consideration of art. 4 TFEU (shared competence). Some crucial directives establish a framework for informing and consulting workers: The General Information and Consultation Directive, The European Works Council Directive, the Company Law Directives, here especially the SE Directive and the Cross-Border Mergers Directive.¹⁷² Today we observe a wide palette of legal provisions for the information and consultation of workers.

Art. 151 TFEU promotes social dialogue, and art. 152 TFEU recognises the role of social partners at the EU level. But those articles lack a consistent approach. The treaties still do not provide a coherent social policy programme. A more pro-active attempt to define a European labour law was the Social Action Programme in 1974.¹⁷³ Furthermore, the Community Charter of the Fundamental Social Rights of Workers from 1989 was an important political instrument. Although not legally binding, the Community Charter was an initial point of reference for the ECJ. Several rights were subsequently integrated into the Charter of Fundamental Rights of the European Union (EU Charter). In 2009 (Lisbon Treaty), the EU Charter became part of the EU

¹⁶⁹European Commission (1973)

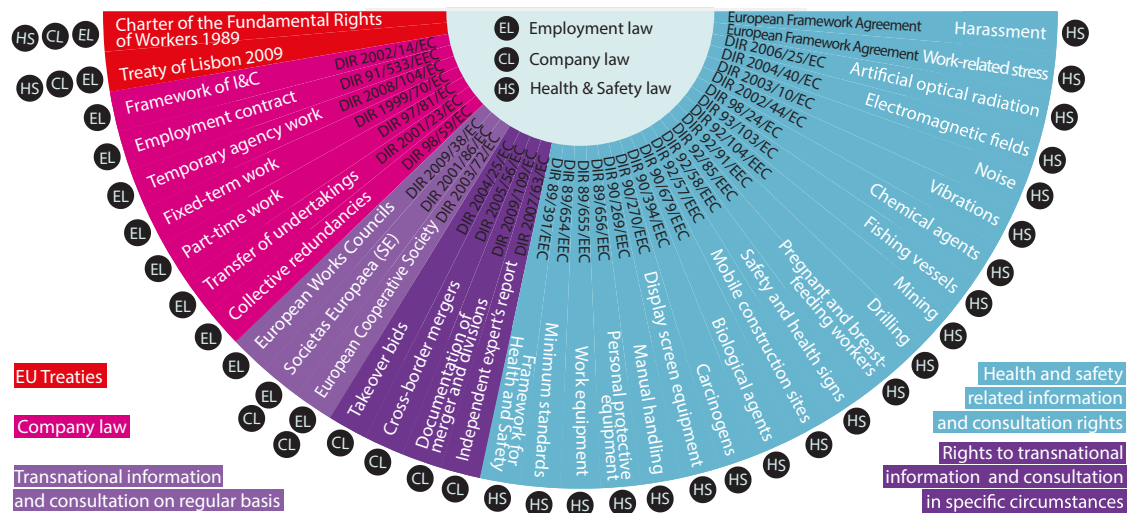
¹⁷⁰European Commission (1973a)

¹⁷¹European Commission (1980), 3; European Commission (1980a)

¹⁷²European Commission (2016)

¹⁷³Calliess, Christian; Ruffert, Matthias and Sebastian Krebber (2016)

Legal provisions for the information and consultation of workers in Europe



Source: Hoffmann and Jagodzinski (2017) in: ETUI 2017, Benchmarking Working Europe, p. 55

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treaties. Its social and welfare rights and principles are binding for EU institutions and need to be respected by the member states when they are implementing EU law.¹⁷⁴ Secondary law implemented many of those rights.¹⁷⁵

Art. 27 of the EU Charter guarantees the right of workers to information and consultation, although it is mainly classified as a mere principle, which does not constitute a direct right.¹⁷⁶ The ECJ declared that art. 27 must be specified by European or national law. In the ruling on AMS in 2014, the ECJ denied any subjective right for article 27.¹⁷⁷ In the case of AMS, trade unions disputed the refusal of a private, non-profit-making association in France to allow the establishment of worker representation. The ECJ did not recognise Directive 2002/14/EC as applicable, as directives generally do not apply in private litigation (no horizontal effect). At the same time, there is no legal protection for workers and their representatives in those cases at the European level. The decision on AMS, therefore, rendered the scope of art. 27 to be nothing more than an empty shell. Advocate general, Cruz Villalón, considered art. 27 of the EU Charter to be a principle and not a direct right, however, he recognised art. 3 (1) of Directive 2002/14/EU, providing the content of this

principle: “the personal scope of the right to information and consultation”. Therefore, Cruz Villalón concluded, art. 27 of the EU Charter is a principle “which may be relied on before the courts”, even in a dispute between individuals.¹⁷⁸

There are several options for addressing the structural weakness of legal protection for workers' voice at the European level. Firstly, there is hope that the ECJ will again have the opportunity to rule on the question of art. 27's applicability and revise its interpretation. In consideration of the key principle, that EU law must be interpreted with the goal of effectively achieving the specific purpose of law (*effet utile* doctrine) and other legal sources, the court will hopefully recognise the direct effect of art. 27, specified by Directive 2002/14/EU.¹⁷⁹

Secondly, the European legislator should consider a review of the regulatory framework and an improvement of the primary law. Legal scholars are already discussing reasonable options, such as a restriction of the scope of application of the fundamental freedoms, in order to curb the extensive interpretation of the European fundamental freedoms to protect workers' interests.¹⁸⁰ The exercise of the right of establishment must not act as a threat to workers' voice.

Thirdly, European and national policymakers are called to provide a functioning, legal framework with direct rights for workers and their represen-

174European Commission (2016)

175European Commission (2016)

176Jarass, Hans D. (2016)

177AMS (Association de médiation sociale) is a French association. The workers of ASM created a trade union section within the AMS. The French union Union départementale CGT des Bouches-du-Rhône appointed a member as representative, but the AMS challenged that appointment. European Court of Justice (2014)

178European Court of Justice (2014a)

179See also Heuschmid, Johannes (2014)

180For more details, see Heuschmid, Johannes (2018);
Höpner, Martin (2017); Höpner, Martin (2016); Kingreen,
Thorsten (2014)

tatives at the European level. The “escalator approach”, proposed by the ETUC, is a reasonable system for workers’ representation on the board, with an increasing proportion of BLER depending on the size of the company.¹⁸¹

Regarding secondary legislation, the proposal for a European Company Statute in 1970 and the proposed Vredeling Directive in 1980 were the first advanced initiatives towards enabling workers’ voice at the European level.

Further key steps were the inclusion of articles 17 and 18 into the social chapter on basic employees’ rights and the Social Action Programme of 1990, followed by the proposal for a European Works Council in 1991, which, at the time, included a uniform model for all companies.¹⁸² Due to strong opposition by the UK, a revised version of the EWC proposal was adopted by the Council in September 1994, which included the current model of negotiated EWCs with a fall-back solution of national rules. The price for the EWC Directive was that no further rights for workers were instituted in member states, where few or no rights existed, and that participation – in contrast to information and consultation – was no longer on the table.¹⁸³

Since then, the EWC Directive has set the model for European-level forms of workers’ voice: company mobility, in the form of transnational companies, cross-border mergers and the European Company Statute, are accompanied by the right to information and consultation that is based on the national law where the company is, or was previously, incorporated. National institutions are, thereby, protected, while weakly-institutionalised industrial relations are invited to participate in European works councils.

Today, with more than 1,100 active EWC or SE bodies in more than 1,000 multinational companies,¹⁸⁴ and with some 20,000 EWC delegates representing more than 17 million workers (ETUI 2017, p. 61), European works councils are certainly the most important and well-used, single, legislative framework in the field of transnational workers’ representation in the EU. EWCs are also a key element of the European “Social Model”, as article 27 of the Charter of Fundamental Rights of the European Union recognises that “workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time.” EWCs are, therefore, the nucleus of European industrial relations and the single, most important instrument of workers’ voice at the European level.

The assessment of the achievements of EWCs has so far led to mixed results. All EWCs are based on company-specific agreements and a negotiated solution. Therefore, there is a wide variation in EWC practice. The vast majority of EWCs are only “symbolic institutions” and have little practical relevance.¹⁸⁵ Still, there is a group of EWCs that could be characterised as institutions of transnational co-determination. Research shows that EWCs have the potential to influence company decisions, e.g. on restructuring. Negative effects on workers can be avoided, especially in member states where trade unions and other employee representation bodies are weak or non-existent.¹⁸⁶

The European legislative framework is still insufficient. Research on the impact of the EWC Recast Directive showed that the directive couldn’t improve significantly malfunctioning EWCs. Consequently, the legal and policy framework of workers’ voice at the EU level needs to be strengthened, especially regarding the consultation rights of EWCs. The ETUC already presented notable recommendations for a modern EWC Directive, including key issues like access to justice and a more efficient coordination between the levels of action.¹⁸⁷ In addition, management should be committed to using and accepting EWCs.

European company law on the move

The EU has been a driver of globalisation, both regarding the development of an open trading system as well as the completion of the internal market. It was the explicit aim of the Single European Act (SEA) to foster cross-border economic activities by facilitating the freedom of establishment (art. 49 of The Treaty on the Functioning of the European Union) and the freedom to provide services (art. 56 TFEU) in other EU member states. In the course of the creation of a common European market, barriers for incorporating companies from other member states, including their domestic legal forms, have been abolished.

An important aspect of European company law is the fact that the incorporation of companies is based on the national law of European member states. There is no unified company law code, but rather an incremental opening-up towards a mutual recognition of corporate law within the EU. Although the European law provides several directives and regulations, and the European Court of Justice (ECJ) has pronounced a series of important judgments, a harmonised EU company law or a *lex societatis* does not exist. The EU company law is a patchwork of ECJ case law and outdated or

¹⁸¹ETUC (2016)

¹⁸²The original draft of the European Works Council Directive (OJ/C39 1991)

¹⁸³Streeck, Wolfgang (1997)

¹⁸⁴About 40 % of all eligible MNCs in the EU have an EWC. See Confrontations Europe (2015)

¹⁸⁵Voss, Eckhard (2017)

¹⁸⁶Voss, Eckhard (2017)

¹⁸⁷ETUC (2017)

missing directives and regulations. These circumstances may be perceived as lacking a consistent, legal framework and lead to legal uncertainty. As the corporate law codes of member states have very diverse regulations on company conversions, mergers and divisions, liability, creditor protection, shareholder rights but also employee representations, the approach by the European Commission towards a harmonised European company law has a direct impact on the role of workers' voice in transnational companies.

Genuine European company types were introduced in order to facilitate cross-border business, such as the European Company (SE).¹⁸⁸ Directives were passed to enable companies to restructure their production across borders.¹⁸⁹ This process has not yet been completed. Policy changes, such as the Service Directive, the Cross-border Merger Directive,¹⁹⁰ and REFIT¹⁹¹, among others¹⁹², are likely to lead to a further harmonisation of corporate law. Recently, the European Commission published a proposal for a company law package to facilitate the use of digital technologies and cross-border mergers and divisions throughout a company's lifecycle.¹⁹³ The proposal comprises of two directives: a directive on the use of digital tools and processes in company law and a second one on cross-border conversions, mergers and divisions. Since the first Company Law Directive came into force in 1968, more than ten directives dealing with the business operations of companies have been adopted. The proposed directive on cross-border conversions, mergers and divisions potentially allows companies, for instance, to transfer their seat (registered office) to another member state without transferring the real head office through a cross-border conversion. Within the EU, the recognition of companies from another EU member state is generally guaranteed. However, structural differences between the national concepts of company law cause legal conflicts. Some member states – e.g. the UK, the Netherlands and most Nordic countries – follow the principle that law applicable to a company is determined by the member state in which the company has been incorporated (incorporation theory). The registered office alone fulfils the incorporation requirements; the exercise of an

economic activity is not demanded. Under this approach, companies are able to choose their company law, independent of where the company conducts its business activities. A company operating exclusively in Denmark can take advantage of the low capital requirements of UK company law solely because it was incorporated in the UK.

In contrast to the incorporation theory, the real seat approach was “developed to avoid the factual choice of company law and evasion of domestic rules.”¹⁹⁴ According to the real seat theory, the law applicable to a company is determined by the member state in which the company has its registered office and where its economic activity resides. Countries, such as Germany, France and Belgium, follow the real seat theory. Moreover, there is wide disparity regarding the question as to whether company law allows the inbound or outbound reincorporation of companies, namely the transfer of companies to the jurisdiction of another member state, with or without the change of location of real business activity.¹⁹⁵

The European Court of Justice has dealt with several cases concerning the cross-border activities of companies.¹⁹⁶ Even though the ECJ only rules on questions regarding European law, as with the most recent ECJ ruling on “Polbud” (2017), its judgements impact the discussion on seat theory.

The ECJ has made it clear that the establishment of a company or branch in a certain member state does not constitute a misuse of the freedom of establishment, even if it is clear that the sole purpose of the incorporation in another member state is to benefit from advantageous laws. With the recent “Polbud” decision, the ECJ went further and allowed solely the transfer of the registered office to another member state.¹⁹⁷

The issue of the cross-border movement of companies has a direct impact on workers' voice, as the norms on board composition and the participation of employees on company boards is regulated in national company law. If companies can (re)incorporate or transfer the registered office easily to other member states, while keeping their business activities elsewhere, they can easily circumvent the regulations of stronger board-level employee rep-

¹⁸⁸Societas Europaea

¹⁸⁹For instance through the Directive on Takeover Bids (2004/25/EC) or the Transfer of Undertakings Directive (2001/23/EC)

¹⁹⁰Societas Unius Personae, a Europe-wide, legal form for a single-member, private, limited liability company

¹⁹¹REFIT is the European Commission's regulatory fitness and performance programme.

¹⁹²There is a long list of directives and policies that contribute to market deregulation and facilitate corporate restructuring, including the Directive on Transfer of Undertakings and the Takeover Directive.

¹⁹³European Commission (2016a)

¹⁹⁴Schall, Alexander (2006), p. 4

¹⁹⁵See Gerner-Beuerle, Carsten et al (2016), p. 244

¹⁹⁶Significant cases were Daily Mail (1988), Centros (1999), “Überseering” (2002) and “Inspire Art” (2003), “Sevic” (2005), “Cadbury Schweppes” (2006), “Cartesio” (2008) and “National Grid” (2011).

¹⁹⁷European Court of Justice (2017), Judgement of 25 October 2017, Polbud, C106/16. The Polish company, Polbud, wanted to transfer its registered office to Luxembourg, while maintaining its real head office in Poland. The Polish registry court refused the application for removal. The ECJ clarified that the previous state of incorporation can only restrict the company's freedom of establishment in a way compatible with the treaty and that the Polish obligation of liquidation does not constitute a proportionate restriction.

resentation (BLER), unless European law provides requirements that explicitly protect existing forms of employee representation. With the recent Polbud ruling, there were growing fears of a European Delaware-effect among observers.¹⁹⁸ From the workers' voice perspective, the decision appears flawed. However, we understand the Polbud decision as an urgent call for the European legislator to provide cross-border, legal standards for companies, which sustain the real seat approach and recognise the interests of all stakeholders, notably workers. In the context of the new company law package, the ETUC expressed sensible demands for "a single or 'real seat' approach along the lines of the model laid down in the European company statute".¹⁹⁹

Art. 7 of the Council Regulation on the Statute for a European Company (SE) specifies: "The registered office of an SE shall be located within the Community, in the same Member State as its head office." This objective should apply for all cross-border companies, not only SEs. The SE Directive and the CBM Directive have established mandatory, legal frameworks to protect existing arrangements on employee involvement.

The core elements of the SE Directive are of particular importance for workers' voice in Europe. Firstly, the directive follows a negotiation approach. In all cases of an SE creation, the company must negotiate with the workers (a special negotiating body) to establish information and consultation procedures (section II). Secondly, the directive provides minimum standard rules in case negotiations do not yield any agreement (art. 5). Thirdly, the introduction of the 'before and after' principle, which guarantees (board-level) participation rights, if they already existed before (art. 4), is an integral and necessary component of workers' voice at the European level.²⁰⁰

Furthermore, the SE Directive provides useful definitions of the terms "information" and "consultation". In regard to BLER, it gives a specific definition of "participation". The SE Directive stipulates the "involvement of employees" as "any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company" (art. 2).

Very similar to the definition of the term "consultation" in the EWC Recast Directive, the SE Directive specifies "consultation" as "the establishment

of dialogue and exchange of views between (...) the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE" (art. 2). Even though this paragraph is an important starting point, the ETUC already expressed, with respect to the EWC Recast Directive, that "the definition of consultation should be strengthened so that the opinion of the EWC "shall" – instead of "may" – be taken into account by the management."²⁰¹ The same should apply for all transnational companies, including SEs.

The 'before and after' principle regarding BLER in SEs could also serve as a model for all transnational companies. Moreover, a welcome and beneficial improvement would be the introduction of a European minimum standard for workers' voice that goes beyond it. The ETUC has already called for a "new and integrated architecture for workers' involvement in European company forms".²⁰²

However, there is still the possibility for companies to reincorporate, either in another member state or as an SE in order to avoid employee thresholds, above which stronger rights apply. Incentives for companies to reincorporate or merge for the sole purpose of avoiding employee participation must be prevented.

Those solutions found for European works councils, as well as for BLER in the SE, reflect a genuine European approach of negotiated solutions against the backdrop of domestic, institutional guarantees.²⁰³ In principle, the company law package could address this issue and apply those enhanced mechanisms to the question of reincorporation.

In addition, European company law should not only avoid incentives for arbitrage but also actively address and support workers' voice at the board level. Member states and EU policymakers should accept that, with the European Treaties but also the jointly adopted Community Charter of the Fundamental Social Rights of Workers and the European Pillar of Social Rights, they have the obligation to facilitate information, consultation and also participation rights. Employees and their representatives should have legally-enforceable rights.

¹⁹⁸The U. S. state of Delaware is a leading domicile for U.S. and international corporations, because the Delaware General Corporation Law is the most flexible business formation statute in the U.S. The Delaware effect describes the phenomenon in which states compete to attract (re)incorporations and therefore promote the risk for regulatory competition and deregulation. de Arriba-Sellier, Nathan (2017); Thannisch, Rainald (2018); Wixforth, Susanne (2018)

¹⁹⁹ETUC (2017a)

²⁰⁰Art. 4 (4), 2001/86/EG

²⁰¹ETUC (2017)

²⁰²<https://www.etuc.org/issues/european-company>

²⁰³Gerner-Beuerle, Carsten et al (2016), p. 344

Information, consultation and participation for workers

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States. This shall apply especially in companies or groups of companies having establishments or companies in several Member States of the European Community.

18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:

- when technological changes which, from the point of view of working conditions and work organisation, have major implications for the work force are introduced into undertakings
- in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers
- in cases of collective redundancy procedures
- when trans-frontier workers in particular are affected by employment policies pursued by the undertaking where they are employed.

Community Charter of the Fundamental Social Rights of Workers, adopted on 9 December 1989 by a declaration of all member states, with the exception of the United Kingdom.

Recommendations

The European legal framework is still lopsided: the single market privileges mobility and market integration over social standards and rights. The Expert Group asks European and national policymakers to address this issue by pursuing the following steps:

- European company mobility must not operate to undermine national institutions providing workers' voice. Recent rulings by the ECJ, that facilitate the transfer of seat with the sole aim of circumventing national regulation, are in strong contrast to this objective. National and European policymakers should become more vocal on this issue. Whether the new proposal for a Company Law Package does indeed fulfil the necessary requirements remains to be seen.
- European policymakers should pay careful attention to the issue of workers' voice for future measures, for instance the proposed directive on insolvency.
- The personal scope of art. 27 of the EU Charter, specified by Directive 2002/14/EU, and therefore its direct and horizontal effect, should be recognised by the ECJ. National and European policymakers should actively support this interpretation.
- The European legislator should review the treaties and improve the primary law with a view to protecting workers and their representatives, for instance by the introduction of a restriction of the scope of application of the fundamental freedoms.
- The combination of approving national diversity with stronger participation rights at the EU level should be included in the debate on European policy-making on information, consultation and participation.
- EWCs still lack strong consultation rights and practices. National and European policymakers should work towards rectifying the function of EWCs.

ANNEX

In our analysis, all companies are stock market listed in at least one European country. In cases where companies are listed in more than one country, we selected the country where the company has the majority of its operations and/or its headquarters. The main data for the 855 listed companies in Europe draws on the database Thomson Reuters Datastream/ASSET 4 ESG. They systematically collect environmental, social and governance data from companies, news sources, stock exchange filings and non-governmental organisations. Data on economic performance contains variables on client loyalty, performance and shareholder loyalty. Regarding environmental performance, the following categories are included: resource reduction, emission reduction and product innovation. Social performance includes employment quality, health & safety, training & development, diversity, human rights, community and product responsibility. The last pillar, corporate governance performance, contains data on board structure, compensation policy, board functions, shareholders' rights, and visions and strategy.²⁰⁴

From the overall Thomson Reuters Worldscope database, we gathered company-level data on net sales and revenues, market value, return on equity, return on invested capital and staff cost (salaries and benefits expenses). In this report, we analysed the variables 'net sales and revenues' as well as 'market value'. The variable 'net sales and revenues' measures the net sales or revenues of the company, converted to US dollars using the fiscal year end exchange rate. The variable 'market value' measures the total market value of the company in US dollars.

For collecting data regarding European works councils (EWC) and SE works councils, we used the European Works Councils Database (EWCDB), provided by the European Trade Union Institute (ETUI),²⁰⁵ and the ETUI SE database (ECDB).²⁰⁶ The EWCDB provides data on works councils. Regarding international framework agreements (IFAs), Sydow/Fichter/Helfen and Stefan Rüb provided us with the data out of their respective dataset from former research projects.²⁰⁷

The Database on Transnational Company Agreements of the European Commission gave us the information on European company agreements (ECAs). We coded all agreements as European company agreements that were not coded by Sy-

dow et al. or Rüb as IFAs and that regulated company parts in Europe.²⁰⁸

In addition to European works council and framework agreements, we collected data on collective bargaining agreements (CBA) and board-level employee representation (BLER). For this, we asked academic experts and company experts, including trade union staff, shop stewards/union representatives, board-level employee representatives or works council members from the respective company in each country.

In the analysis, we also include a subgroup of the 100 largest companies of the ASSET4 dataset, ranked by their number of employees.²⁰⁹ These companies are the most important companies in Europe with regard to their workers' voice practices. Our data unit in the dataset is company per year.

Table 8.1 shows the number of employees in the companies listed in the dataset has remained relatively stable, except for a small increase between 2006 and 2008. Stability remained despite the fact that Europe was hit by the economic crisis. We see an increase in the number of employees after 2011, when Europe started to recover from the economic


Table 8.1

Total number of employees per year, 2006–2014

Year	100 largest companies	755 companies
2006	14,224,347	22,568,866
2007	14,823,500	23,708,022
2008	15,433,456	25,083,245
2009	15,439,696	25,166,131
2010	15,812,151	25,162,746
2011	16,437,498	25,943,314
2012	16,757,978	26,171,811
2013	16,780,288	25,840,624
2014	17,105,287	25,417,068

Note: Out of the 855 companies in the dataset, we decided to include only those for which data was available for all years in order to improve the comparability of employee development. Therefore, only 755 companies are included in this table.

Source: WV dataset Hassel/Helmerich

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²⁰⁴Thomson Reuters ny-a, 1

²⁰⁵Access data base here: <http://www.ewcdb.eu/general-information>

²⁰⁶This database provides information on established SEs and companies in the process of registering <http://ecdb.worker-participation.eu/>

²⁰⁷Fichter et al. (2013); Rüb et al. (2013)

²⁰⁸Access data base here: <http://ec.europa.eu/social/main.jsp?catId=978&langId=en>

²⁰⁹They provide the total number of employees worldwide. In some cases, the data on total number of employees was missing in the ASSET4 dataset. In these instances, we collected the information from the annual reports of the companies, their CSR report or their website.

crisis. However, we can also see that the number of companies for which we have data has decreased over time, increasing the explanatory power of our dataset after 2009. We can, therefore, see the impact of the economic crisis since 2009, but it would not be advisable to compare that with the data from 2006 or 2007, where we are missing 8% of employment data.

Table 8.2

Distribution 2014: Number of employees per country		
Country	Number of employees	Number of companies
Great Britain	7,143,417	319
France	5,828,332	97
Germany	5,009,404	87
Italy	1,625,323	46
Spain	1,533,193	44
Netherlands	1,428,269	35
Sweden	1,268,800	52
Denmark	856,140	27
Belgium	551,926	27
Poland	413,320	29
Austria	352,613	16
Finland	345,804	26
Portugal	187,904	11
Greece	170,215	18
Ireland	130,078	14
Hungary	85,903	4
Czech Republic	38,273	3
Total	26,968,914	855

Source: WV dataset Hassel/Helmerich

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Table 8.2 shows the distribution of employees per country, illustrating that the majority of companies listed in the dataset are in UK, followed by France and Germany and then Italy and Spain. It is noticeable that there are only a few companies that are listed in member states that entered the European Union after 2004 (a total number of 36 out of 855, which is approximately 4%). Looking at the number of employees, we can see that, whereas 37% of all companies are registered in the UK, only 26% of all employees in the dataset also work there. The differences are even stronger in the cases of France and Germany (11% of all companies and 21% of all employees in the case of France and 10% of all companies and 19% of all employees in

Germany). From this data, we would conclude that in Great Britain the companies listed have an average of 22,393 workers per company, whereas in France the average is 60,085 per company.

At the same time, we also see that, within this dataset, companies from UK, France and Germany represent exactly 58% of all companies in the dataset and 66.67% of all employees. In addition, 49.2% of all companies are registered in the Euro-zone, employing 61.95% of all workers in the dataset. 13.9% of all companies are registered in GIPS countries, employing 13.05% of all employees.

The dataset provides information on the sectors in which the companies are active, based on the Thomson Reuters Business Classification, including 10 economic sectors, 28 business sectors and 54 industry groups.

Looking at the economic sectors, we find that the majority of companies are in the financial sector, with 180 companies (21% of all companies), followed by industrials (20% of all companies) and consumer cyclicals (17% of all companies). However, only 12.7% of all employees are working in the financial sector, whereas 27.8% work in the industrial sector and 21.6% work in the consumer cyclicals sector. The financial sector contains banking and investment services, insurance, real estate, collective investments and holding companies.

The industrial sector contains industry groups, such as aerospace and defense, machinery, equipment & components, construction & engineering,

Table 8.3

Distribution 2014: Number of employees and companies per economic sector

Sector	Number of employees	Number of companies	Average per company
Industrials	7,500,123	175	42,857
Consumer Cyclicals	5,837,058	149	39,174
Consumer Non-Cyclicals	3,581,301	62	57,762
Financials	3,433,627	180	19,075
Basic Materials	1,919,066	88	21,807
Telecommunication Services	939,965	30	31,332
Energy	792,814	50	15,856
Healthcare	1,158,076	42	27,573
Utilities	1,001,424	35	28,612
Technology	805,460	44	18,305
Total	26,968,914	855	31,542

Source: WV dataset Hassel/Helmerich

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diversified trading & distributing, professional & commercial services, industrial conglomerates, freight & logistics services, passenger transportation services and transport infrastructure.

Consumer cyclicals contains the following industry groups: automobiles & auto parts, textiles & apparel, homebuilding & construction supplies, household groups, leisure products, hotel & entertainment services, media & publishing, diversified retail and other specialty retailers.

When we compare the distribution per economic sector with the average number of employees per company, we can see that the largest companies are to be found in the sectors of consumer non-cyclicals, financial services and industrials.

The consumer non-cyclical sector includes the business sector, foods & beverages including tobacco, personal & household products & services, and food & drug retailing.

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