

Overview of the European legislation on employee involvement, information and consultation rights and its role in IR

First Transnational Workshop

Brussels

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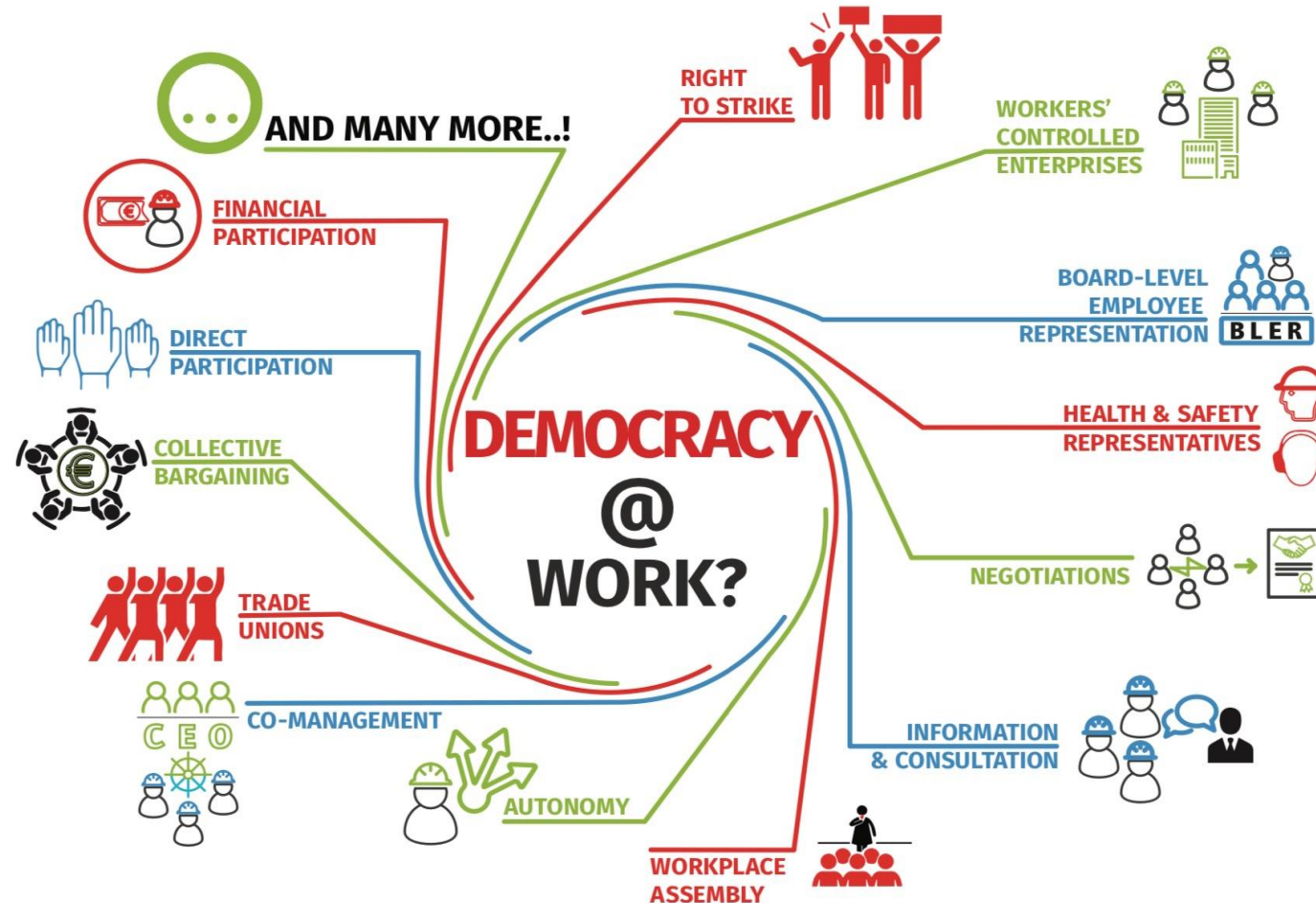


Why...



„Social dialogue improve risk anticipation and make work organisation more flexible“
(EC).

Employee involvement =
Information +
Consultation +
Participation +
(I,C and P)



Source:
Benchmarking
working Europe 2019
/ ETUI



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Several legislations...



- general/framework directives for transnational information and consultation rights ([2002/14/EC](#)) !
- workers' involvement rights in the field of health and safety ([89/391/EC](#)) !
- European Works Councils ([2009/38/EC](#)) !
- European Company ([2001/86/EC](#)) !
- specific circumstances such as transfers of undertakings ([2001/23/EC](#)), insolvency and collective redundancies ([98/59/EC](#))
- European Pillar of Social Rights (...)

More than 15 EU Directives deal with information and consultation on EU level!

Upcoming: Company Law Package



Fundamental right of EU citizens...



Article 27 of the [Charter of Fundamental Rights](#) (now annexed to the Lisbon Treaty)

- Ratified: 7.12.2000
- workers' right to information and consultation within the undertaking has been recognised.
- I+C - **fundamental right of EU citizens!**

life of the community.

TITLE IV SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services



One of the most important legislation...



Framework Directive on Information and Consultation 2002/14/EC

- complements the existing set of arrangements by laying down general minimum standards for national companies (at enterprise level)

Scope:

- (a) undertakings employing at least 50 employees in any one Member State, or
- (b) establishments employing at least 20 employees in any one Member State.

definitions
practical arrangements
scope
protection
timely information
confidential information

23.3.2002 EN Official Journal of the European Communities L 80/29

**DIRECTIVE 2002/14/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 March 2002
establishing a general framework for informing and consulting employees in the European
Community**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure referred to in Article

(6) The existence of legal frameworks at national and Community level intended to ensure that employees are involved in the affairs of the undertaking employing them and in decisions which affect them has not always prevented serious decisions affecting employees from being taken and made public without adequate procedures having been implemented beforehand to inform and consult them.

(7) There is a need to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training within the



When I + C are required on...

According to the [Framework Directive on Information and Consultation 2002/14/EC](#):

- the recent and probable **development** of the undertaking's or the establishment's **activities and economic situation**
- the situation, structure and probable development of **employment** within the undertaking or establishment and any anticipatory measures envisaged, in particular where there is **a threat to employment**
- decisions likely to lead to substantial changes in **work organisation** or in **contractual relations**.



Health and safety directive

- COUNCIL DIRECTIVE of 12 June **1989** on the introduction of measures to encourage improvements in the safety and health of workers at work ([89/ 91/EEC](#))
- „the employer shall take appropriate measures“
- Content:
 - object – scope – employer’s obligations – preventive and protective services - first aid, fire-fighting and evacuation of workers, serious and imminent danger – **worker information – consultation and participation of workers** – training of workers – worker’s obligations





European Works Councils (EWC)

Directive (94/45/EC) and Directive [2009/38/EC](#) „recast EWC directive“

Aim: bring together employee representatives from the different European countries in which a multinational company has operations.

EWC meetings: representatives are informed and consulted by central management on transnational issues of concern to the company's employees.

Applicable to: transnational undertakings and groups of undertakings employing in total more than 1000 employees in the EEA, and at least 150 of them in two member states.

Process: **initiative taken – SNB – agreement**

Revision: not high on the EU political agenda.

→ ETUI's EWC database





European Companies (SE)

- Aim: to reduce existing cross-border obstacles for companies and to make it easier for them to operate across European borders.
- 40-years long history, finally adopted in 2001
- The directive enabled companies to set up as a European public limited company.
- 3180 SE companies (2019) since 2004

Two-parts legislation:

- Regulation on the Statute for an SE ([EC 2157/2001](#))
- Directive on worker involvement „SE Directive“ ([2001/86/EC](#)) – obligatory negotiations on worker involvement (**introducing participation rights!**).
 - objective – definitions - SNB – content of agreement – duration of negotiations –rules / natural persons - confidentiality – protection of rights





European Cooperative Society (SCE)

- Aim: to reduce existing cross-border obstacles for cooperatives and to make it easier for them to operate across European borders.
- The SCE complements the legislation on European Companies (SE)

Two-parts legislation:

- Regulation on the Statute for an SCE ([1435/2003](#))
- Directive on worker involvement ([2003/72/EC](#)).
 - objective – definitions - SNB – content of agreement – duration of negotiations – **rules / natural persons** - confidentiality – protection of rights

The Regulation came into force from 18 August 2006, by which date the member states also had to transpose the Directive into national law.





European Cooperative Society (SCE)

What is it?

- a legal entity that allows its members to carry out common activities, while preserving their independence
- its principal object is to satisfy its members' needs and not the return of capital investment
- members benefit proportionally to their profit and not to their capital contribution.

A SCE might be created:

- from the beginning by 5 or more natural persons, by 2 or more legal entities, or by a combination of 5 or more natural persons and legal entities
- by a merger of 2 or more existing cooperatives
- by the conversion of an existing cooperative which has, for at least 2 years, been established or a subsidiary in another EU country.

The minimum capital requirement is EUR 30,000. An SCE may have a limited proportion of 'investor members'. They do not use the services of the cooperative and their voting rights are limited.

An SCE **must be registered in the EU country** where it has its head office.





European Cooperative Society (SCE)

- For tax purposes, an SCE is treated as any other multi-national company and pays taxes in those countries where it has a permanent establishment.
- **Voting in an SCE** is generally conducted in accordance with the cooperative principle of 'one member, one vote'. However, weighted voting may be allowed in certain circumstances to reflect the amount of business done with the SCE.
- An SCE must call **a general meeting** at least once per year. Decisions are taken by simple majority of members present or represented, except for changes to the internal statutes where a two-thirds majority is required.
- The internal statutes of the SCE must set out its management structure according to one of two possibilities: two-tier structure (management body and supervisory body) or one-tier structure (administrative body).





European Cooperative Society (SCE)

17 SCEs (2011) (~ 60 in 2018)

EC consultation - Synthesis document:

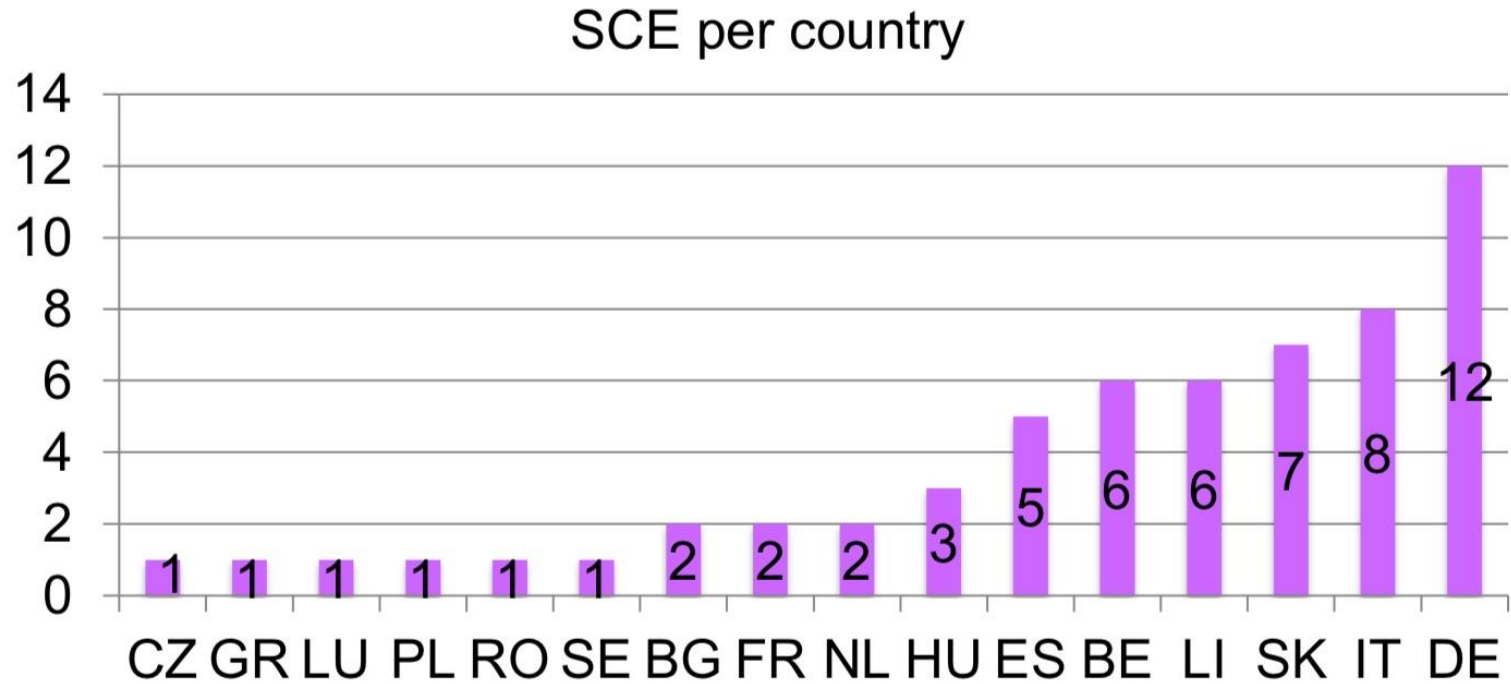
- there is a **serious lack of awareness**, combined with inadequate promotion by Member States;
- respondents declare that the SCE **has only a symbolic character**;
- **implementation has been late** in several countries and with a strong reference to national legislation; as a consequence, the SCE is or can become the 'prisoner' of national law;
- the existing national cooperative form is mainly used by national entities that are well anchored in their local territory, largely with activities that have **a domestic dimension**;
- most respondents question the added value; there are **neither real legal nor fiscal advantages** and national laws are seen as more flexible and simple.
- Employee involvement was not a „big“ issue (not an obstacle)

European Parliament resolution of 13 March 2012 on the Statute for a European Cooperative Society with regard to the involvement of employees



Numbers (source ETUI's ECDB.2018)

SCE in the ECDB (n ~ 60)



Only [one SCE EWC](#) (2015): **Westfleisch SCE Works Council (DE, Food, Hotel. Catering & Agriculture Sector- slaughter house)**



European Private Company (SPE)

- On the political agenda since 2001 (adoption of the SE legislation)
- Targets SMEs
- 2002: a High Level Group of Company Law Experts organized by the EC proposed the creation of the European Private Company, or Societas Privata Europaea ("SPE").
- 2003: the Commission adopted an SPE proposal in 2003, followed up by a proposal for a Council Regulation on the Statute for a European private company (SPE).
- Attempts to introduce since 2008
- Heavily criticized by many eg. ETUC (fear that this legal form could be used by companies to avoid national rules on worker involvement). Also: issues of separation of home and host country, minimum capital requirements and taxation issues and national counterinterests (Germany).





EWCs and SE bodies – the facts

- 1554 EWC and SE bodies ever created:
- **1140** EWC and SE bodies still active:
- 1115 Multinationals having an EWC or an SE works council:
- 315 Multinationals that used to have an EWC or an SE works council, now merged or dissolved:





Participation rights

The right of employees or their representatives to elect or appoint some members of a company's supervisory or administrative organ, or the right to recommend and/or oppose the appointment of some or all of the members of these boards.

Until 2004 there was no European standard of worker participation on the supervisory board or the board of directors of companies (SE Directive).



Participation rights in European Companies

Worker involvement in 'normal' SEs

At least **145** currently established normal SEs have arrangements on **information and consultation** at transnational level.

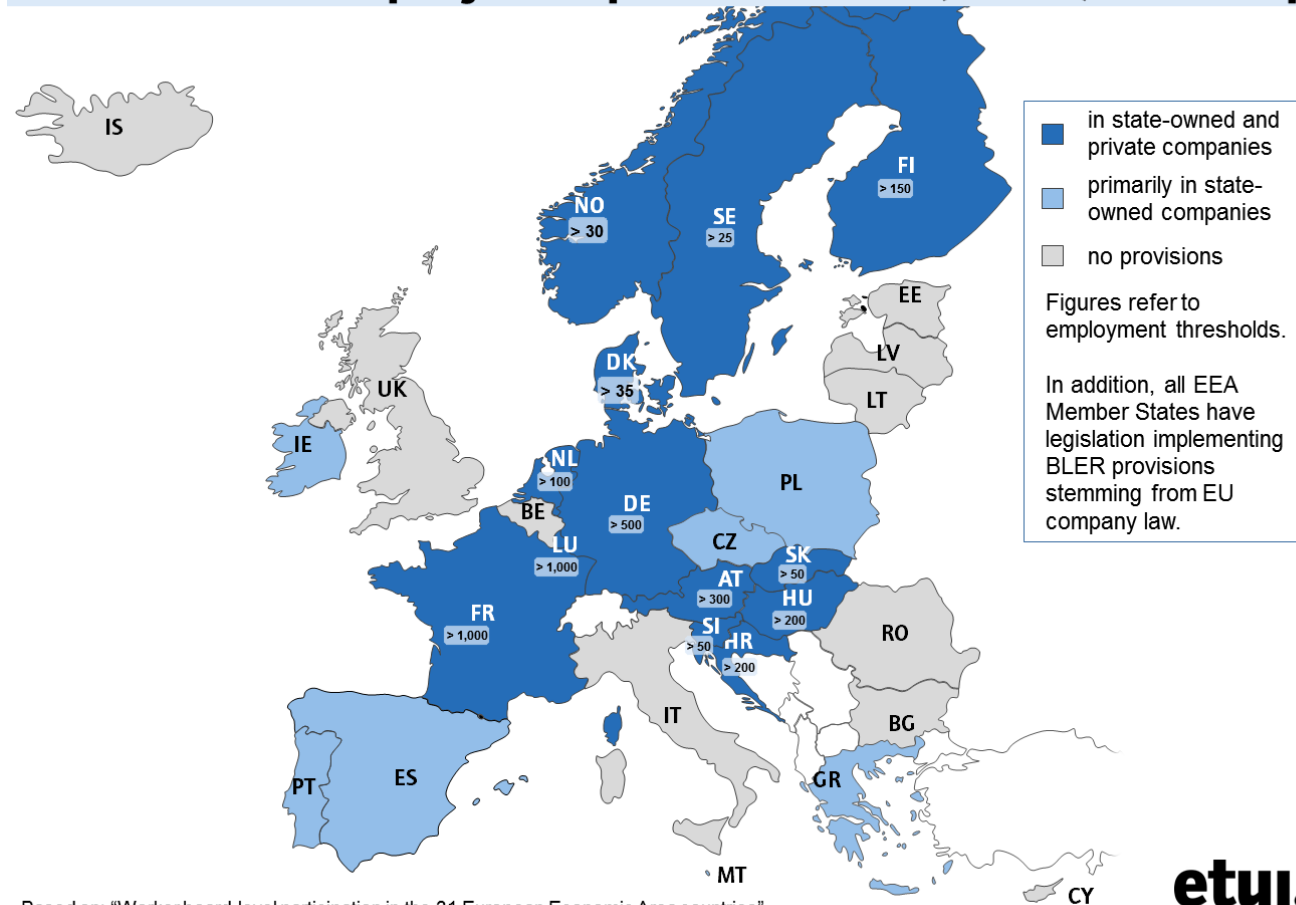
74 SEs have **board-level representation (participation)**, registered in:

- **Germany:** ADAC, AL-KO KOBER, Allianz Global Corporate & Specialty, Allianz Technology, Allianz, AMEVIDA, ARAG Holding, ARAG, BASF, Bilfinger, BP Europa, Clariant, CompuGroup Medical, DEKRA, Deufol, DNV GL, Drees & Sommer, DVB Bank, E.ON, Fuchs Petrolub, GfK, Global PVQ, Hannover Rück, Hansgrohe, HDI Global, IMW Immobilien, KAESER KOMPRESSOREN, KNAUF INTERFER, KSB Management, KWS SAAT, Lenze, MAN Diesel & Turbo, MAN, Papierfabrik August Koehler, Pfeiffer & May, Porsche Automobil Holding, PUMA, Renolit, RKW, RWE Generation, SAP, SGL Carbon, SURTECO, tesa, TOM TAILOR Holding, TRIMET Aluminium, UBS Europé, Uniper Global Commodities, Uniper, Wacker Neuson, WAREMA Renkhoff, Webasto Roof & Components, Webasto, Webasto Thermo & Comfort, WILO, WITTENSTEIN, WM, Zalando, ZIEHL-ABEGG
- **Austria:** STRABAG, Plansee
- **France:** Burgeap Igip Holding, Capgemini, Dassault Systemes, Eurazeo, Mutavie, Schneider Electric, SCOR (4 SEs), WENDEL
- **Cyprus:** Prosafe
- **Hungary:** Wamsler

Data: European Company (SE) Database,
<http://ecdb.worker-participation.eu> 12 March 2018

Participation in Europe (2015)

Board-level employee representation (BLER) in Europe



Based on: "Worker board-level participation in the 31 European Economic Area countries", Conchon, Kluge, and Stolt. ETUI. Worker-participation.eu. Last updated August 2015.

etui.



Sources, more information

- <https://www.etui.org/Topics/Worker-Participation> (ETUI's thematic website)
- <https://ec.europa.eu/social/main.jsp?catId=707&intPageId=210&langId=en> (European Commission)
- [http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635541/EPRS_BRI\(2019\)635541_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635541/EPRS_BRI(2019)635541_EN.pdf) (EC briefing on cooperatives)





Thank you.



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