

Social dialogue and worker representation in EU2020: underappreciated and underplayed

Introduction

Worker involvement, through institutionalised social dialogue and worker representation at company level, serves two intertwined purposes: implementing social rights so as to strengthen democracy in the working environment; and supporting companies, States and the European Union in their efforts to combine economic competitiveness with social progress. The second of these two purposes, i.e. the instrumentalist vision of social dialogue and worker representation, was central to the realisation of the Lisbon Strategy which stated: 'The European social dialogue (ESD) could constitute a tool for the modernisation announced at the Lisbon European Council for all key issues on the European agenda' (European Commission 2002b). This 'tool' was so prominent in the achievement of the growth and employment strategy that it led the European Commission to stress, on several occasions, that ESD should be considered 'a force for innovation and change' (European Commission 2002b) in the guise of 'a partnership for change in an enlarged Europe' (European Commission 2004). Despite the recognition of ESD and its clear positive contribution to EU policy during the 2000-2010 period, social dialogue and worker representation are a resource that the new Europe 2020 (EU2020) strategy appears to ignore. The aim of this chapter is therefore to boost the image of the missing dimension in EU2020 by demonstrating the fruitful outcomes so far achieved at European level by the institutions and practices of social dialogue and worker representation, as well as the need for these forms of action to enjoy recognition by the EU institutions and inclusion in the implementation and purposes of the EU2020 strategy.

Topics

> <i>The place of social dialogue and worker representation within EU strategies</i>	83
> <i>European social dialogue</i>	86
> <i>European Works Councils as a contributor to EU 2020 goals</i>	92
> <i>Transnational company agreements</i>	94
> <i>Societas Europaea</i>	96
> <i>The European Participation Index: measuring worker participation and Europe 2020 targets</i>	98
> <i>Conclusions</i>	100

The place of social dialogue and worker representation within EU strategies

Figure 8.1 Social dialogue and worker representation as European fundamental rights

Date	Source	Rights	
1961 (1996 version)	European Social Charter	Art.6	The right to bargain collectively
		Art.21	The right to information and consultation
		Art.22	The right to take part in the determination and improvement of working conditions and working environment
		Art.28	The right of workers' representatives to protection in the undertaking and facilities to be accorded to them
		Art.29	The right to information and consultation in collective redundancy procedures
1989	The Community Charter of Fundamental Social rights for Workers	Art. 11, 12, 13, 14	Freedom of association and collective bargaining
		Art. 17, 18	Information, consultation and participation of workers
		Art. 19	Health protection and safety at the workplace
2000 (2010 version)	Charter of Fundamental Rights of the European Union	Art. 27	Workers' right to information and consultation within the undertaking
		Art. 28	Right of collective bargaining and action



2010 Lisbon Treaty in force

“The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union [...] which shall have **the same legal value as the Treaties**” (art. 6 TEU, new)

Member States “Confirm[ing] their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers” (preamble, 5th paragraph)

Source: ETUI own input.

Channels for worker voice are a strategic goal *per se*

‘An important reason for employee involvement was the democratic deficit within the corporate world. Employee involvement gave corporate decision-making more democratic legitimacy’ (Bruun 2010: 3). This democratic deficit was (and to some extent still is) an issue of such importance that it required workers’ rights to information, consultation and collective bargaining to be officially recognised as European fundamental rights (see Figure 8.1).

Therefore, social dialogue and worker representation have to be seen as fully-fledged components of one of the core EU objectives, namely, ‘social progress’ as contained in the EU definition of ‘sustainable development’ (art. 3 TEU). However, while the EU Treaty and trade union actors insist on the fact that the economic, social and environmental aspects are the three mutually reinforcing dimensions of sustainability (ETUC 2010), the EU2020 policy limits its conception of ‘sustainable growth’ (‘promoting a more resource-efficient, greener and more competitive economy’, European Commission 2010b) to the economic and ecological dimensions alone.

Given the fact that the ‘social’ cannot be simply restricted to the fight against poverty, there is considerable room for

improvement within EU2020. Not only should social dialogue and worker representation be acknowledged as strategic contributors to the European strategy but their improvement must be envisaged as a vitally important goal *per se*. Sustainable development is an overarching goal in EU2020 and this must include a social dimension alongside the economic and ecological dimensions which cannot be solely restricted to the fight against poverty. Indisputably, fair wages, good working conditions and workers’ rights to information, consultation, participation and negotiation have to be seen as fully-fledged components of this social dimension, and their improvement as a vitally important goal.

The place of social dialogue and worker representation within EU strategies

Figure 8.2.a Social dialogue and worker representation as EU policy instruments



Sources: European Council Presidency conclusions 2000-2009 ; European Commission's contributions to Spring European Councils 2001-2007 ; European Commission's Communications on the Social Policy Agenda and related scoreboards 2000-2008 ; Council decisions on guidelines for Member States' employment policies 2000-2009.

Note: For ease of reading, we chose to retain the first formulation of the Lisbon Strategy in force before the 2005 renewal.

Crucial to the Lisbon Strategy: ESD, collective bargaining and EWCs

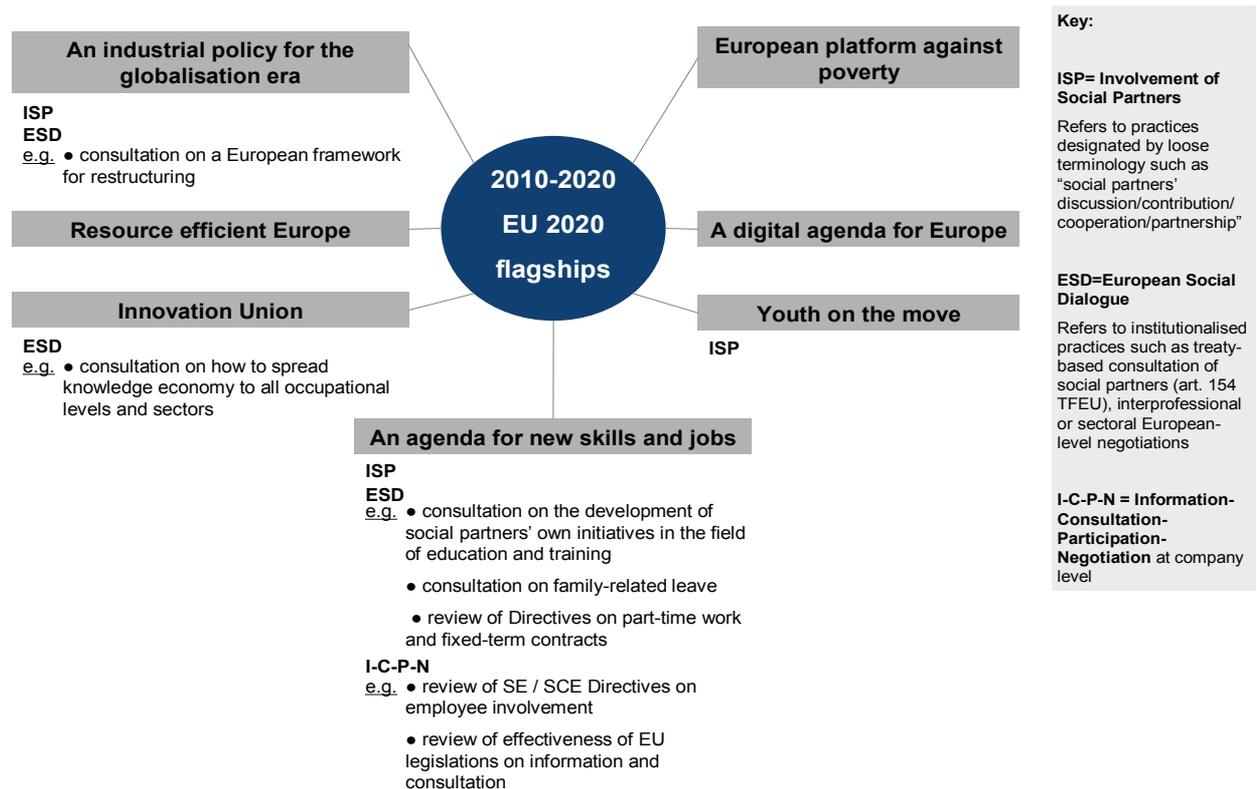
From an instrumentalist standpoint, the European social dialogue proved its relevance during the past decade in line with the Lisbon Strategy (ETUC and ETUI 2009). The innovative approach characterised by the conclusion of

social partners' multi-annual work programmes fostered the autonomous cross-sectoral social dialogue at European level. Major cross-sectoral autonomous agreements have been signed (on telework in 2002, on work-related stress in 2004, on harassment and violence at work on 2007 and on inclusive labour markets in 2010) and several framework texts for action have been drawn up (on the lifelong development of competencies and qualifications and on gender equality in 2002 and 2005 respectively). The scope of sectoral social dialogue has been extended, as can be judged from the growing number of established sectoral social dialogue committees (from 27 committees in 2002 to 40 nowadays) that are promoted and supported by the

European Commission. As for worker representation at company level, last year's issue of *Benchmarking Working Europe* (ETUC and ETUI 2010) demonstrated the strategic output of collective bargaining and worker representation in European Works Councils in tackling the consequences of the crisis by avoiding, as far as possible, the worst, i.e. mass redundancies and company closures.

The place of social dialogue and worker representation within EU strategies

Figure 8.2.b Social dialogue and worker representation as EU policy instruments



Sources: European Council Presidency conclusions 2010 ; European Commission's Communications on EU2020 flagships ; European Commission's work programme 2010-2011 ; Council decisions on guidelines for Member States' employment policies 2010.

Note: As of 3 December, the European Commission had not yet issued dedicated Communications on flagships "European platform against poverty" and "Resource efficient Europe".

Weak trade union and worker contributions to the EU2020 battle plan

Figures 8.2a and 8.2b aim to compare the extent to which social dialogue and worker representation were considered relevant EU policy instruments within the framework of the Lisbon Strategy on the one hand, and their role according to

the new EU2020 strategy on the other hand. Whereas it was envisaged that European social dialogue should contribute to five out of the six Lisbon objectives and actions, it is called upon in only three of the seven EU2020 flagship initiatives. Given that the flagship initiative 'Innovation Union' could be excluded, for it contains no more than a very vague reference to the European social dialogue, there remain only two flagships in respect of which ESD appears to be genuinely recognised as a relevant contributor: 'An agenda for new skills and jobs' and 'An industrial policy for the globalisation era'. This observation confirms a trend already initiated during the 2005 mid-term review of the Lisbon Strategy and its subsequent relaunch whereby social

partners began to be perceived as merely one unspecific EU policy stakeholder among many others. The formulations found in recent official documents only serve to support this conclusion regarding their definition of stakeholders: 'Stakeholders – business, local authorities, social partners, foundations, NGOs' (European Commission 2010f). This downplaying of the social partners' role was the reason for the European Parliament's reaction to the flagship initiative 'An industrial policy for the globalisation era', in relation to which it stressed that 'the sustainable development of European industry requires intensive dialogue with employees and workers' (European Parliament 2010).

European social dialogue

Figure 8.3 Institutional evolution of the European Social Dialogue



Source: ETUI own source.

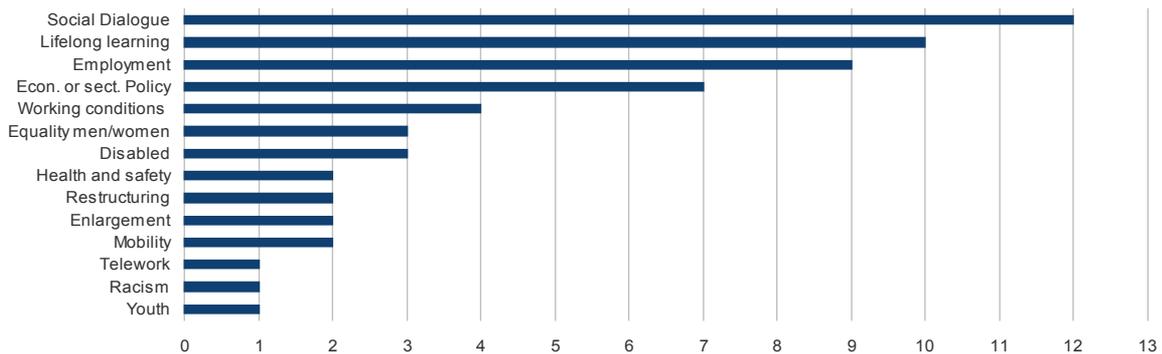
An institutionalised 'tool'

The European social dialogue was formally institutionalised when the Agreement/Protocol on Social Policy was first annexed to the Maastricht Treaty in 1991 and subsequently incorporated into the then articles 137-139 of the TEU Amsterdam Treaty. The European social partners were thereby offered (and took up) the opportunity to develop from being simply the most relevant stakeholders, in a position to deliver their opinion on policy initiatives, to becoming genuine co-regulators of EU (social) legislation and contractual relations (ESD). The new Lisbon Treaty further enhanced the important role of the EU social dialogue via the integration of the new article 152 of the Treaty on the Functioning of the European Union (TFEU) which states that all EU institutions should recognise and promote the role of the social partners at their own level and that they should facilitate dialogue between the social partners while respecting their autonomy. Furthermore, the Lisbon Treaty also institutionalises the Tripartite Social Summit for Growth and Employment (see Figure 8.3). Also on the sectoral level, the institutionalisation of the European sectoral

social dialogue committees (through Commission Decision 98/500 of 20 May 1998) created a powerful dynamic that has brought the current number of committees to 40. These cover more than 6 million companies which total some 145 million workers or more than three quarters of the workforce in the EU (European Commission 2010c/2010d). Rightly recognised as a pillar of the European social model, the European social dialogue is 'the essential means by which the social partners contribute to the governance of the European Union and the definition of European social standards' (European Commission 2010a, p. 6). The social dialogue, at all its levels, is considered by the European Commission to be 'essential for sustainable development, growth and employment creation, business performance and international competitiveness, job quality and good employment practices, as well as efficient and productive industrial relations' (ibid.).

European social dialogue

Figure 8.4 Number of interprofessional social dialogue texts per topic, with the exception of follow-up reports (1985-2010)



Source: OSE Internal database, ETUI own calculations.

The European social dialogue should be part of the EU2020 strategy

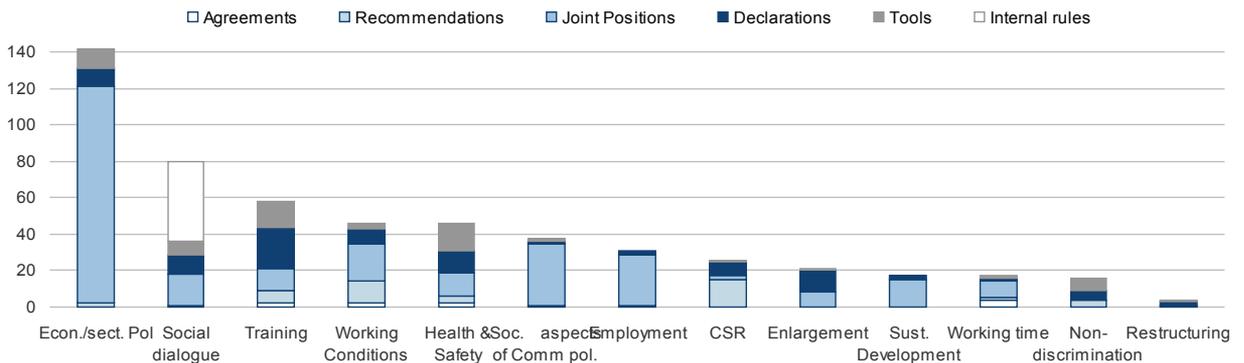
The European social dialogue – be it at cross-sectoral or sectoral level – was indeed a central tool for implementation of the Lisbon Strategy. Although the impact of the European social partners' activities is not necessarily always obvious, they have made every effort to contribute to the achievement of the strategy's objectives (Clauwaert *et al.* 2009: 67-76). Between them the two levels have issued almost 600 joint texts over time. Meanwhile, 'Lisbon's successor', the already infamous 'EU 2020 Strategy', is about 'smart, sustainable and inclusive growth', but it also sets 'exiting the crisis' as a priority. Here again, the European social partners have tried very hard – albeit with varying success – to contribute to this exercise (Clauwaert *et al.* 2010). It may readily be admitted that the most recent developments, in particular from the European cross-sectoral social dialogue, are hardly overwhelming (Clauwaert 2010). Yet, as Figure 8.4

shows, out of the 59 cross-sectoral joint texts issued in the period 1985-2010, 47 touch upon issues which are, in one way or another, focal or closely related to a central issue of the EU 2020 Strategy. Almost 20 of them (i.e. those on lifelong learning and employment) are, for instance, key to at least two flagships ('Youth on the move' and 'Agenda for new skills and new jobs'). Moreover, certain results of the cross-sectoral social dialogue refer or relate directly to the issues focal to EU 2020. Reference might be made, in this connection, to the autonomous framework agreement on inclusive labour markets of March 2010 (ETUC *et al.* 2010a) as well as to the joint statement on EU 2020 of June 2010 (ETUC *et al.* 2010b). The latter in fact points out that the challenges that existed when the Lisbon Strategy was first devised remain long-term challenges still faced by our societies today (e.g. globalisation, ageing society, etc.). Due to the crisis, however, the urgency of tackling them has increased considerably. For this reason the social partners stress, among other things, the need to: 1) combine and sequence exit strategies to cap public indebtedness with entry strategies investing in skills, technology and modern infrastructures, 2) promote the knowledge triangle (education, research and innovation), and 3) ensure a supportive public environment and access to high-quality, affordable and effective public services.

In fact in the last of these statements, the European social partners called for new governance mechanisms and procedures, including at the European level, as they consider their absence to be one of the main reasons why Lisbon failed to achieve what it was supposed to deliver. In the view of the social partners, 'a pre-condition for the success of new governance mechanisms is a stronger involvement of the social partners at all levels (European, national, regional and local levels) in the design and in the monitoring of both European and national reform strategies' (ETUC 2010a). Equally relevant in the EU 2020 context, however, are discussions on issues on which they are still working in the framework of their autonomous work programme 2009-2010 (and extended to 2011), such as monitoring the involvement of social partners in the implementation of the common guidelines on flexicurity, the social impact of climate change, (economic) migration, etc.

European social dialogue

Figure 8.5 Which issues are dealt with by instruments of SSD? (1990-2009)



Source: OSE Internal database, ETUI own calculations.

The sectoral social dialogue should be part of the Europe 2020 strategy

A similar picture arises for the sectoral social dialogue (Figure 8.5). It shows that the social partners at the sectoral level have been able to respond to all issues of relevance to the Lisbon Strategy and which continue to be part of the Europe 2020 strategy. It is thus appropriate to reiterate that 'this is why the European sectoral social partners are increasingly involved in the European policy-making process' as they 'have particular expertise in their sectors and in the realities of their workplaces' (European Commission 2010a: 6). Slowly but gradually, reflection has been or is now starting as to how the social partners can and should contribute to implementation of the different actions, activities and objectives identified in the different flagships and of relevance for their particular sector (electricity, chemical, commerce, etc.).

European social dialogue

The forgotten or missing link?

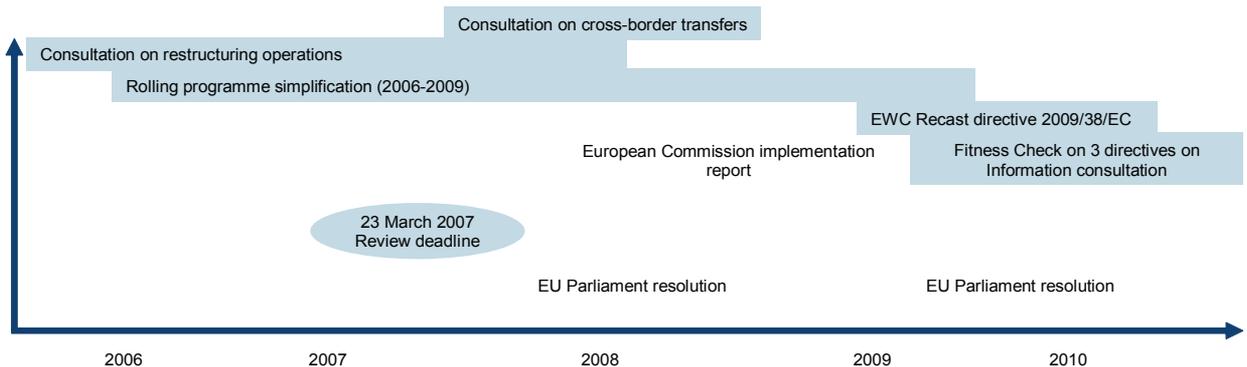
In view of all this, however, it becomes all the more surprising that the role of European social dialogue and social partners is hardly referred to in most EU2020-related documents (flagship initiatives). The ‘basic’ EU2020 Communication makes scant specific reference to the need for involvement of the European social partners. It does so only in the framework of the ‘2nd phase of the flexicurity agenda’, by referring to ‘the need for strengthened capacity and making full use of the problem-solving potential of social dialogue at all levels’ and in connection with a consultation for an initiative on implementing the principles of lifelong learning (European Commission 2010h: 17). The first Communication to be released relating to a flagship, i.e. that on the digital agenda for Europe, completely ignores the European social partners/dialogue (European Commission 2010c), while the second – on the flagship ‘Youth on the move’ – contains several references to social partners, albeit not a single one pertaining explicitly to the European social partners (European Commission 2010d). The Communication relating to the ‘Innovation Union’ flagship confines itself to a single reference according to which it will ‘consult the social partners to examine how the knowledge economy can be spread to all occupational levels and all sectors. It will ask the social partners for proposals on how to develop a sectoral labour market strategy for the caring sector’ (European Commission 2010e). A similar picture emerges for the ‘Industrial Policy’ flagship, one of the most relevant initiatives for the sectoral level. Here the link to the EU social dialogue seems to be limited to the Commission’s intention to consult on a European framework of restructuring (European Commission 2010f). Finally, the Communication on ‘An agenda for new skills and jobs’ contains the most references to the European social partners, although most

of these relate to sensitive and potentially contested debates like flexicurity and reviews of existing EU legislation (working time, posting of workers, information/consultation, fixed-term and part-time work, etc.) (European Commission 2010g). Taken together, these references certainly do not amount to an invitation ‘to enhance the (European) social partners’ participation and ownership’ of the EU2020 strategy in general or the new skills and jobs agenda in particular (ETUC 2010b). The general omission of the European social dialogue is all the harder to understand when one considers the vast amount of joint results achieved in the past both at the cross-sectoral and, more particularly, the sectoral, as well as the company levels.

In other words, EU 2020 suffers from a considerable participatory deficit by its failure to call ever more insistently on the European social dialogue. Whether this failure was caused by ignorance or was deliberate, or whether it resulted merely from the assumption that, since the European social partners had played a major role in attainment of Lisbon goals, it was superfluous to mention them in the new strategy, the EU 2020 has already received substantial criticism on different fronts (e.g. how realistic are certain targets, systems of governance, limiting the social to ‘poverty’ etc.; Pochet 2010a, 2010b). While implementation of the contentious EU 2020 will, in any case, definitely represent a challenge, it risks, in the absence of an input from the EU social dialogue, turning into a catastrophe. Therefore the ETUC’s call, in its resolution of October 2010, to provide a greater role for EU social dialogue should not merely be a subject for serious reflection; it should, much more and without further ado, be put into practice (ETUC 2010a).

European social dialogue

Figure 8.6 Community law on consultation and information, review process



Source: ETUI own input.

Information and consultation of workers is a fundamental social right that should be treated as such by the EU Commission and the member states

Adoption of rights pertaining to information and consultation of the workforce under Community law is a clear expression of the necessity to make workers citizens of their workplace. Workers' right to information and consultation within the undertaking has recently been recognised, in article 27 of the Charter of fundamental rights of 2000, revised in 2007 and annexed to the Lisbon Treaty, as having the same value as other treaty provisions, alongside civil and political rights. Clearly the social *acquis communautaire* in the field of the protection of information and consultation of workers has

evolved over the years, as more importance has been accorded to the 'social dimension' of the internal market in the legal bases of social policy. A milestone in this development was the transition from unanimity to qualified majority adopted in the Maastricht Treaty. In order to protect workers' interests, several directives contain provisions on workers' right to be informed and consulted, first and foremost in specific circumstances such as transfers of undertakings, insolvency and collective redundancies. More recently, the European Union has embarked upon the definition of a general framework of information in transnational undertakings, included in directives regulating the establishment of European Works Councils, the European Company (SE) and the European Cooperative Society (SCE). However, due to the fact that the right to information and consultation stemming from European directives is poorly implemented at national levels, it is largely fragmented and often ambiguous. This situation would be remedied if these directives were to be consolidated at Community level. Missed opportunities to do so have been, for example, the adoption of the SE directive in 2001 or the EWC recast directive in 2009.

European social dialogue

The ‘better / smart regulation’ mirage

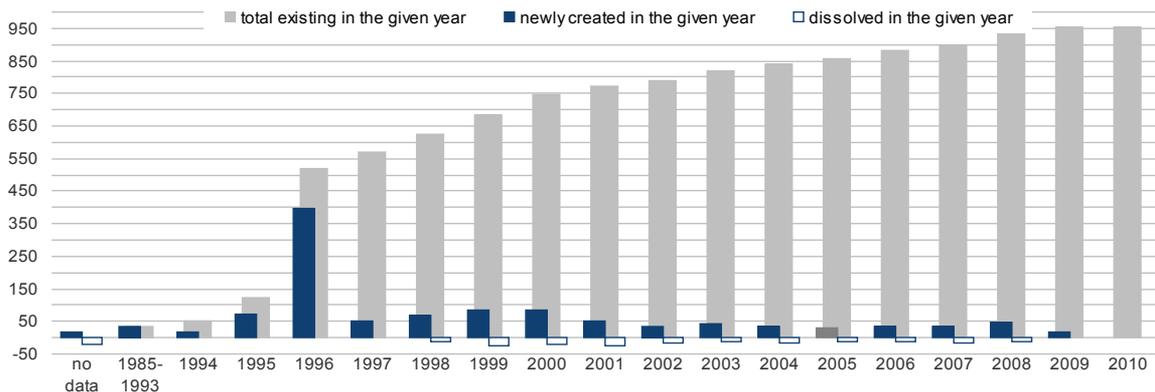
The option chosen by the Commission in its programme for better regulation (see Figure 8.6), initiated in 2002, is designed to ‘Simplify and improve the regulatory environment’ (European Commission 2002a). The EU Agenda 2020 refers to the goal of the Better regulation programme when mentioning that the EU should ‘adapt the legislative framework in line with smart regulation principles. This programme sets out to cut red tape on the EU level in order to boost growth. However, instead of strengthening the enforcement of existing EU social legislation suffering from a bad record over a long period of time, the better regulation agenda included in the 2010 Work Programme of the Commission (European Commission 2010t) provides for a ‘fitness check’ of EU legislation in selected policy fields. As a pilot exercise three directives on information and consultation are under scrutiny: directive 98/59/EC on collective redundancies, directive 2001/23/EC on the transfer of undertakings, focusing on its article 7 dealing with the information and consultation of workers, as well as framework directive 2002/14/EC on information and consultation. This exercise deliberately excludes other directives dealing with the issue of information and consultation of workers such as, for example, the 2009 recast directive on EWC or the 2001 SE directive. The Commission intends to perform a consolidation of the three directives in order to identify ‘potential benefits and costs’ and with a view to promoting coherence between all directives in the areas of information and consultation of workers ‘to examine the option of a recast’ (COM (2005) 535). Interestingly, while the issue of information and consultation of workers in general (directive 2002/14/EC) and in two specific cases (transfer of undertaking: directive 2001/23/EC and collective redundancies: directive 98/59/EC) is at stake, why should other directives on information

and consultation be excluded from the exercise if its real purpose is to ‘ensure the quality of legislation’? Furthermore, the official rationale for undertaking the fitness check on those directives should raise greater concerns within the trade union movement and workers. Indeed, the grounds are directly linked to the perceived burden represented by labour law in times of crisis and the declared political will to deregulate labour law by placing the emphasis on decentralisation of norms protecting workers (in point ix) of the EU Commission’s information note to the Social Dialogue Committee of 20.10.2010: ‘with the sweeping increase in the number of company closures and restructuring prompted by the financial and economic crisis, the exercise of IWC rights has become subject to greater challenges as social dialogue at company level gained a more crucial role. This created a further need for the relevant legal provision to be tested in practice with respect to their relevance, effectiveness and level of protection afforded to the workers concerned’.

Furthermore, the Commission’s information note states: ‘It is important to identify any unnecessary administrative burdens and other difficulties of application that EU legislation or the national measures of transposition may be causing for business national authorities or workers’ representatives.’ However, such fitness check or better regulation principles aimed at weakening existing rights do not take into account or even run counter to the social scope of EU social legislation (Vogel and Van den Abeele 2009). Indeed, how to safeguard the necessary balance between fundamental social and economic goals? If adaptation of legislation is needed, what method will then be the most appropriate, given the experience of the revision of the working time directive or the recast of the EWC directive? Would the coordination of legislation, as requested by the European Parliament, be better than the revision or consolidation of the three selected directives? Last but not least, how can the contribution best secure and improve the long and difficult path towards participative democracy in the company?

European Works Councils as a contributor to EU 2020 goals

Figure 8.7 Development of EWCs over the years



Source: ETUI (2010b) *EWC Database*. Note: for an additional 19 EWCs the date of creation and dissolution is not known.

European Works Councils: an important resource left out

European Works Councils (EWCs) did not come into existence under the Lisbon Treaty. Having emerged in the 1990s with a legal framework adopted in 1994 (directive 94/45/EC), they have, however, continued to proliferate and develop their functions during the past decade. At the end of the 'Lisbon era' a total of 1,156 EWCs have been created, of which 953 are still active today (Figure 8.7). Despite the fact that the major increase in their population was in 1996, under the Lisbon Strategy (2000 – 2010) 414 new EWCs (or 36% of all EWCs) were created. The 414 EWCs created in 2000 – 2010 represent at least 6.8 million workers employed in 412 multinational companies (excluding companies with EWCs for which no employment data is available). In 2010 all active EWCs represented 17.3 million workers in 911 Community-scale undertakings, giving European workers access to transnational information on company strategies and managerial decisions affecting workplaces and working conditions.

EWCs are, however, not merely passive recipients of data; they are also instruments for consultation and voicing workers' views and concerns. These prerogatives were strengthened and enhanced by the adoption of the recast directive 2009/38 upgrading the 'exchange of views' to formulation of opinions (ETUC and ETUI 2010: 71-72). In this sense, being the most widespread institution for transnational information and consultation and representing the significant population of workers, EWCs are an important potential 'tool' contributing to attainment of the ambitious goals set by Europe 2020. As clearly depicted throughout the past decade, EWCs have contributed to the advancement of Social Europe and the realisation of the Lisbon Strategy by helping to mitigate adverse consequences of financial and economic crisis (ETUC and ETUI 2010: 68-69) and contributing to socially sustainable restructuring (ETUC and ETUI 2009: 59-60). Moreover, as was shown in previous *Benchmarking Working Europe* reports, employee participation provides a driver for social cohesion and the 'high road' model for shaping restructuring and innovation (ETUC and ETUI 2009: 54). Given the positive contribution to the attainment of social goals under the Lisbon Strategy, it thus comes as a disappointment that no link between information and consultation of workers and sustainable growth of companies is made under 'Europe 2020'.

Nevertheless, the flagship initiative 'An agenda for new skills and jobs' (European Commission 2010g: 14) rightly recognises, in regard to the social *acquis*, the necessity to 'clarify the implementation or interpretation of rules (...) and to make them easier to (...) apply by citizens and businesses'. This is particularly important in the context of the prospective implementation of the recast directive 2009/38/EC in 2011. However, so far, actions aimed at transposing the directive have been undertaken in only nine countries (Austria, Belgium, Germany, Denmark, Norway, Sweden, Poland, Portugal, UK) and in a vast majority of them drafts of national implementation reveal a downgrading of substantial amendments of the recast to merely technical refinements. Important as it may be, the goal of reviewing and adapting EU social legislation (ibid.: 14) will not be sufficient if not followed by strict examination of measures adopted and, where necessary, effective enforcement including sanctioning. Despite its potential benefits, such an approach aimed at shaping the legal framework clearly fails to involve workers' representation (EWCs and other forms) in helping companies grow in a socially sustainable way. In the context of the above research outcomes and clearly proven positive contribution of EWCs to companies' sustainability, failure to use the EWCs suggests a departure from what used to be called the European Social Model and a very narrow-minded conception of what is to be understood by the sustainable growth of undertakings.

European Works Councils as a contributor to EU 2020 goals

Figure 8.8 EWCs and company reporting on sustainability

Logistic regression results

Indicator	EWC	Size (mcap)	Large shareholder
DJ Sustain	1.396	positive	not significant
FTSE	1.112	positive	not significant
Ethibel	0.903	not significant	negative
CDP	2.057	positive	not significant

Source: Vitols (2010).

Note: 289 European companies included. Country and industry dummies significant in all estimates. EWC coefficients all significant at 0.01 level.

European Works Councils: not a burden, but contributors to companies' sustainability

EWCs have in a few cases been criticised by managers who question the European added value of consultation with EWCs (Lamers 1998: 173ff.) and claim that this practice represents an administrative encumbrance (Weber *et al.* 2000; Nakano 1999; Müller and Hoffmann 2001: 79). This disparagement has sometimes been combined with remarks on the financial burden for companies generated by EWCs (Lamers 1998: 173ff; BusinessEurope in the process of negotiation of recast directive on EWCs, Jagodzinski 2009). Recent research on EWCs proves, however, the contrary. Evidence has been found of a positive association between EWC presence and company participation in CSR initiatives (ETUC and ETUI 2008: 80-81). Moreover, the charge that EWCs create negative impacts on shareholders and creditors has been empirically dismissed

(Vitols 2009). At the same time, it has been demonstrated that EWCs entail clear benefits for employees and managers and that they contribute to social welfare (*ibid.*).

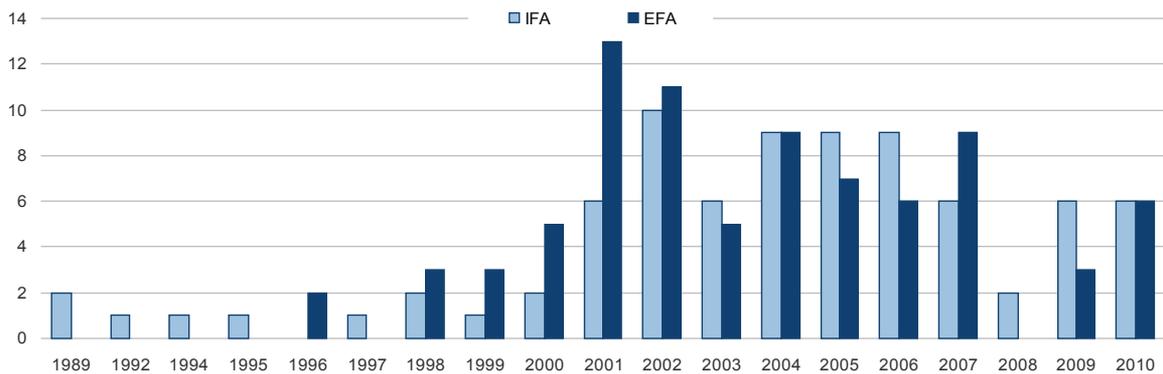
In addition to the above-mentioned positive associations, the EWCs' contribution to companies' sustainability has been recently quantified (Figure 8.8). An analysis of the 600 largest listed European companies shows that companies with an EWC are much more likely to have better sustainability performance than those without one. Better sustainability performance is measured here by whether or not the company is included in any of three of the major sustainability indexes: the Dow Jones Sustainability Index, the Ethibel Index and the FTSE4Good Index. In the case of the first two indexes, companies with an EWC are more than twice as likely to be included in the indexes and in the case of FTSE4Good the probability is almost twice as high as for companies without an EWC. As regards environmental sustainability, the Carbon Disclosure Project is an initiative supported by institutional investors for disclosure of environmental performance and strategies of the largest listed companies. Based on data on 289 of the largest European firms, companies with an EWC were more likely to participate in the project than those without one (92% versus 76% participation rate, respectively). Furthermore, among those that responded, companies with an EWC received a higher score

on average on a key performance indicator, the Carbon Disclosure Leadership Index, than those without a EWC (63.8 versus 56.5, respectively). This shows that EWCs, and employee participation at large, is not merely a benchmark for undertakings' sustainability but is itself a part of the equation, a contributor to sustainability.

The above evidence clearly demonstrates the potential of EWCs to contribute to attainment of goals set in the 'Europe 2020' strategy. With tools suitable for supporting undertakings' sustainability (Corporate Social Responsibility and social welfare, environmental aspects), improving working conditions, including health and safety (at least 322 EWCs currently active, i.e. 34% of all currently active EWCs, have been competent to deal with environmental issues on their agenda), having (co)signed transnational company level and framework agreements (Waddington 2010: 166-176). EWCs have been dealing with various ingredients of sustainable growth. A failure to recognise employees' and their representatives' role in contributing and shaping 'Europe 2020' undermines the strategy's legitimacy and raises doubts about its capacity to deliver a socially sustainable recovery from the recent crisis and to set a new economic model for the years to come. Nor is it an appropriate reaction to the finding that 'EU companies depend for their survival and expansion on a committed workforce (...)' (European Commission 2010g: 14).

Transnational company agreements

Figure 8.9 Number of IFAs and EFAs signed per year



Source: Telljohann *et al.* (2009) updated for 2009 and 2010.

Setting worker participation in a legal no man's land

In recent years transnational company agreements (TCAs) at global and European level have emerged as a new tool of regulation within transnational companies. Among them one should distinguish, mainly with reference to their geographical scope and content, between international framework agreements (IFAs) and European framework agreements (EFAs). The former are bilateral company-related agreements negotiated and concluded between transnational enterprises (TNEs) and international or European trade union federations (ETUFs). They normally aim at ensuring the respect of fundamental labour standards in all the company's locations. Contrary to EFAs, they tend therefore to have a global scope of application. EFAs, while characterised by a more regional – i.e. European – scope, cover a broader range of topics. Fundamental social rights – insofar as they are mainly protected by national Constitutions and EU legislation and are therefore already binding on firms operating in the EU – therefore play a minor role in EFAs, whereas they

are the classical field of IFAs (Telljohann *et al.* 2009).

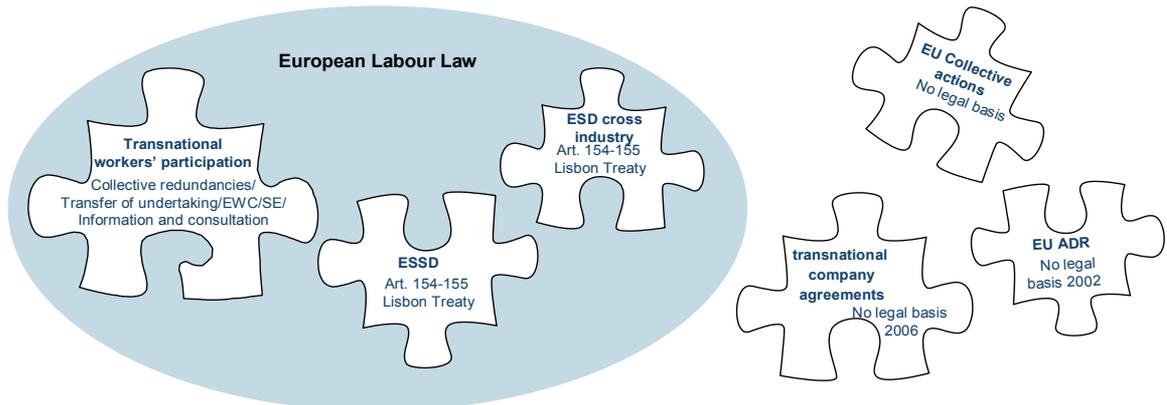
In terms of quantitative development over time, the dynamics of EFAs and IFAs are closely linked. The first EFAs were signed in 1996 – the year in which the 1994 EWC Directive became effective (see Figure 8.9). Indeed, EWCs have contributed to the spread of European framework agreements and even to that of IFAs, which have been negotiated, in the main, with TNEs headquartered in Europe. Since 1998, EFAs have quickly expanded in parallel with IFAs, with a first peak in 2001 and a steady development since then.

As a purely soft-law tool autonomously devised by the social partners, TCAs have been shown to produce a useful learning effect for the dissemination of negotiated standards between trade unions and management of multinationals. If this had been contained in a formalised – even optional – framework enshrined in a Community act, it is most probable that the quantitative increase in TCAs would have been much higher. As early as 2006 such dissemination of TCAs was endorsed also by the European Commission which commissioned a report from a group of experts (Ales *et al.* 2006). Those experts backed up the Commission's intention to propose an optional European framework for Transnational Collective Bargaining (TCB) in the Social Agenda 2005-2010 (COM(2005) 33).

Despite strong employer opposition to any legal framework on TCB, but counting on ETUC conditional support, the intention was formalised and incorporated into the Agenda. The Commission then reiterated its support for TCB announcing, in a new Commission staff working document issued in 2008 (COM SEC(2008) 2155, 11), 'with a view to promoting social dialogue and supplementing the action of the member states as regards the representation and collective defence of the interests of workers and employers, the Commission will support initiatives to conclude transnational company agreements without prejudice to compliance with the applicable national or Community provisions'. In addition, a constantly expanding number of academic studies, as well as various scientific reports commissioned and financed by the Commission, also provide strong support and refined theoretical grounding for the plans to adopt an optional legal framework for TCB. Yet, despite the growing support for TCB, a reading of EU2020 shows that the EU Commission, contrary to its earlier position, has excluded it from the EU's growth strategy for the coming decade. This is particularly astonishing considering the extent to which IFAs and EFAs have spread over the last 10-15 years to the point where they currently number around 200.

Transnational company agreements

Figure 8.10 European social dialogue and transnational social dialogue: towards a European industrial relations system?



Source: ETUI own input.

TCAs as milestones to promote core labour standards and working conditions

It has to be admitted that the impact of TCAs in promoting core labour standards, social dialogue and sound industrial relations at TNEs is still very difficult to measure. This impact can be investigated only on a case-by-case basis, given the current lack of social indicators supplied by the social partners at European and international level or by European legislation. However, case studies of a large range of TCAs clearly show that TCAs have a positive impact on core labour standards and working conditions, and strengthen trade union representation and participation in multinational activities worldwide, regardless of their regional scope of actions (Schömann *et al.* 2008; Papadakis 2008; Telljohann *et al.* 2009). Furthermore, TCAs give local trade unions the capacity to act globally, based on mutual trust and

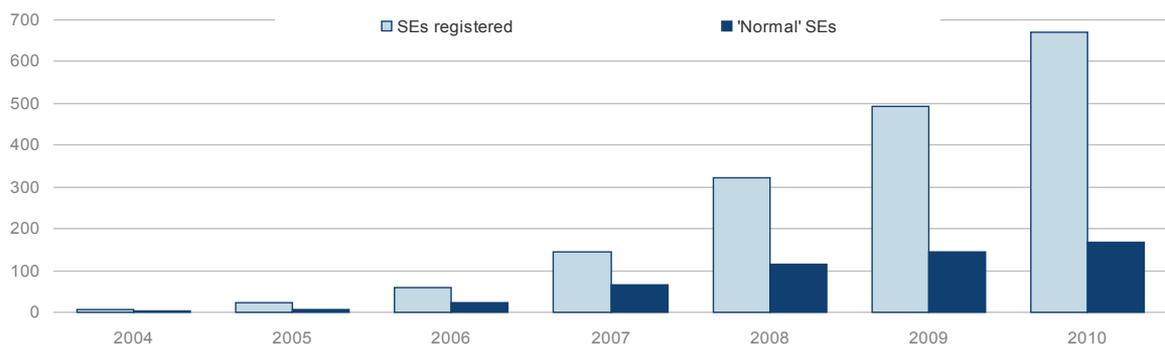
social dialogue. Despite significant differences among TNEs, TCAs represent a proactive approach to shaping company-wide industrial relations and social dialogue in the global and European context, building on structures of international and European trade union networking, social dialogue between management and workers' representatives in Europe, and the involvement of GUFs. This is what may be referred to as socially sustainable growth of undertakings and it is in addition to the existing structures of workers' representation that operate as facilitators or serve as 'stepping stones' to world works council–types of information, consultation and social dialogue, based on the active involvement of local management and trade unions.

However, such developments, while strengthening workers' rights, should not replace legally based obligation towards the respect of trade unions' rights. The soft-law instruments, while partly supplementing core labour law, cannot replace labour law. Given the current lack of legal and institutional settings in Europe and at international level in respect of cross-border social dialogue, management and labour of a growing number of TNEs are creating the negotiated tools necessary to tackle the social consequences of globalisation. In this way they are able to compensate for a lack of enforceable international tools. It seems that, in the case of the EWC, practice precedes law. This trend shows, at

the same time, the difficulty for the European Commission to act according to its mission, i.e. (as stated in Article 152 TFEU) 'to recognise and promote the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy'. The Commission faces strong lobbies, not least from the European employer associations, which are unwilling to look to alternative forms of regulation if they can prevent recourse to legally binding acts. However, an (optional) framework on transnational collective European framework for transnational collective bargaining would complement the existing European legislation on worker participation towards a European industrial relations system (see Figure 8.10). Adoption of such a framework would make the growth of international companies genuinely sustainable, thereby contributing to the achievement of the EU 2020 goals. Keeping this form of worker participation out of the mainstream of economic strategy for the next decade once again signifies profligacy in terms of resources and is incoherent with the goals of sustainable growth declared in the EU 2020.

Societas Europaea

Figure 8.11 Total number of registered European Companies (SEs)



Source: ETUI (2010a) *European Company (SE) Database*.

Balancing social and economic aims in genuine European Companies

After more than 30 years of protracted discussions, the SE legislation finally came into force in 2004 (after its adoption in October 2001), triggering a new momentum for the 'Europeanization' of corporations as well as the interest representation of employees. The SE legislation – consisting of the European Company Statute (Council Regulation 2157/2001/EC) and its supplementing Directive on employee involvement (Council Directive 2001/86/EC) – represents a milestone not only in the field of EU company law but also in that of the European regulation of employee involvement.

The compulsory link between the new European corporate structure and the existence of a European interest representation body (SE Works Council), plus, where applicable, the agreement-based presence of employee representatives in company boardrooms (participation), is the feature which allows the SE

to be regarded as a potential driver of Europeanisation. Historically, this has been the first time at European level that the development of cross-border business entities goes hand in hand with a social dimension through employee involvement on an equal footing with executive managers and shareholders.

Introduction of the SE is thus clearly in line with the aims of the Europe 2020 strategy, contributing to the competitiveness of the European economy and making employees into citizens in their workplaces. More than a decade ago the so-called Davignon report already provided arguments for understanding employee involvement as not only a 'social add-on' but, more importantly, an important feature for achieving economic goals:

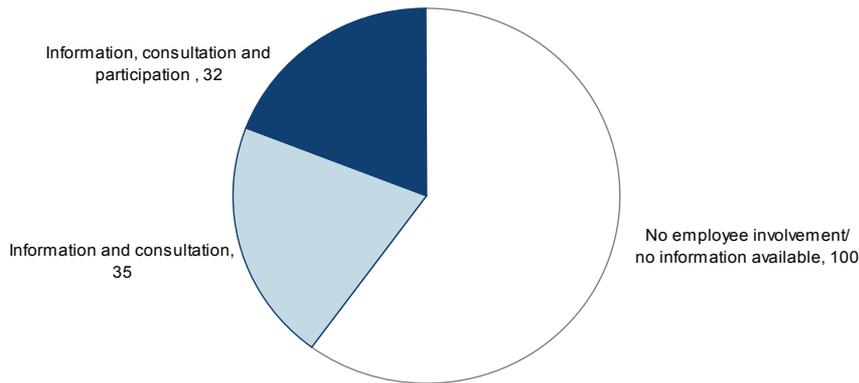
'The type of labour needed by European companies – skilled, mobile, committed, responsible, and capable of using technical innovations and of identifying with the objective of increasing competitiveness and quality – cannot be expected simply to obey the employers' instructions. Workers must be closely and permanently involved in decision-making at all levels of the company.' (European Commission 1997: 5 (paragraph 19)).

Since October 2004 an increasing number of companies have made use of the SE statute to organize their European business. Figure 8.11 shows, however, that only a minority of the SE companies

can today be classified as 'normal SEs' in the sense that they have both business activities and employees (ETUI 2010a). A large part of the SE inventory is made up of companies either with no employees ('empty SE') or with neither operations nor employees ('shelf SE'). Moreover, due to the apparent lack of information in the absence of a European registry, many SEs have to be referred to as 'UFO SEs' ('Unidentified Flying Objects'), there being insufficient information (e.g. on the number of employees) available for their classification.

Societas Europaea

Figure 8.12 Employee involvement in 'normal' SEs



Source: ETUI (2010a) *European Company (SE) Database*.

Employee involvement – a burden on the European Company (SE)?

The SE legislation has established an elaborate mechanism for employee involvement. Remarkably, however, as shown in Figure 8.12, out of the total of 167 'normal' SEs (those having both business activities and employees), only a minority of 67 SEs are today known to have concluded such an arrangement on employee involvement. These numbers indicate that the SE currently fails to unfold its full 'problem-solving potential of social dialogue' at company level (as envisaged in Europe 2020 in the context of the flagship initiative 'An Agenda for new skills and jobs'), due to a striking lack of implementation of the rules on employee involvement in many SEs. Particularly worrying in this respect is the situation of the so-called 'activated shelf SEs'. Here, a ('virtual') shelf company – registered without any arrangement on employee involvement – is sold to a third party and subsequently starts to operate.

For example, by November 2010, 24 of the 80 'normal' German SEs were set up via activation of a former shelf SE. At the same time, only 3 of these 24 SEs are known to have information and consultation rights. This means that an increasing number of SEs with a significant workforce exists in cases where no negotiations have taken place.

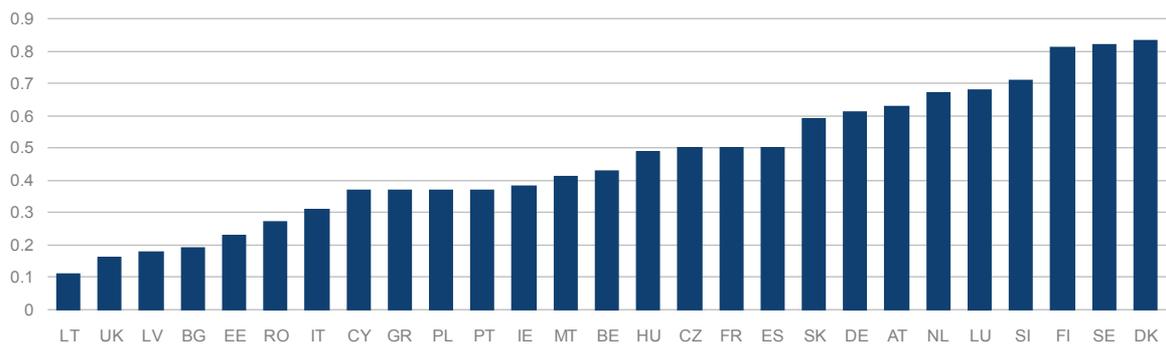
Both the SE Regulation and the SE Directive are currently under review by the European legislator. From an employee perspective, there are certainly a number of issues which require improvement, such as the problems just described with 'activated shelf SEs' and the prevailing lack of information on SEs in the absence of a central European Registry. In particular, the lack of currently available information on employee involvement is a virtual 'invitation' to circumvent the mechanisms of the SE legislation.

Surprisingly, however, an EU-commissioned study on the SE Regulation (Ernst & Young 2009) focused on the argument that employee involvement represents a key negative driver with regard to establishing SEs in many countries – a statement based on weak empirical foundations (Cremers *et al.* 2010). In November 2010, the EU Commission published its final report on the application of the SE Regulation which so far contains no clear recommendations for adaptation of the two legal acts (European Commission 2010q). However, any revision of the SE

legislation must take into account the fact that the current rules represent a balanced compromise, reached after more than 30 years of intensive discussions including the difficult issue of how to organise the workers' voice within the SE. Further flexibilisation and simplification cannot therefore be an aim or a value in itself. Employee involvement in the SE is certainly not just an unnecessary burden on companies, but a fundamental part of the SE. If a company decides to go for the SE Regulation, it 'buys' the SE Directive at the same time.

The European Participation Index: measuring worker participation and Europe 2020 targets

Figure 8.13 European Participation Index



Source: "Workplace representation" dimension based on own calculations based on raw data from Eurofound's 2009 European Company Survey. Other dimensions based on data from www.worker-participation.eu.

Figure 8.14 Comparative performance of countries with stronger vs. weaker worker participation rights (based on EPI 2.0) on the eight Europe 2020 headline indicators

Europe 2020 Headline Indicator	Group 1: Countries with stronger participation rights	Group 2: Countries with weaker participation rights
Employment rate, age group 20-64, 2009	72.1	67.4
Gross domestic expenditure on R&D (GERD), 2008	2.2	1.4
Greenhouse gas emissions (reduction in baseline between 2003-2008)	4.7	4.2
Share of renewable energy sources in gross final energy consumption, 2008	12.3	6.1
Energy intensity of the economy, 2008	171.2	181.7
Early leavers from education and training, 2009	14.0	16.1
Tertiary educational attainment, age group 30-34, 2009	36.6	31.1
Population at risk of poverty or exclusion, 2008	19.1	25.4

Source: Own calculations based on the EPI 2.0 and data from Eurostat ec.europa.eu/eurostat.

High consultation and participation countries performing better

What kinds of institution and arrangement are helpful in improving economic, employment, social and environmental performance, such as those included in the

EU2020 strategy? One useful approach is to look at the different EU countries and to see what kinds of practice exist in the countries that are closer to achieving the goals and comparing them with the countries that are further away from the targets. If specific institutions are stronger in the better-performing countries than in the less-well performing countries, this would suggest that these institutions might play an important role in explaining these differences. This approach was already followed in the 2009 edition of this *Benchmarking Working Europe* report, where it was shown that countries

that performed better on the Lisbon Strategy indicators had significantly stronger arrangements for worker participation than countries that performed less well) (ETUC and ETUI 2009). This suggested that strong worker participation could be supportive of the Lisbon Strategy of transition to a knowledge economy, more and better jobs and improved environmental performance.

This section repeats this exercise by focusing on the relationship between the strength of worker participation in the EU member states and their current performance on the EU2020 targets.

The European Participation Index: measuring worker participation and Europe 2020 targets

Worker participation supports economic and social performance

If countries that perform better on these targets have stronger worker participation than those that perform less well, this would suggest that strengthening worker participation across Europe could be supportive in helping the EU meet the Europe 2020 goals. This would be an additional argument in favour of policies supporting strong worker participation rights.

To summarise the results of the analysis below, countries with stronger worker participation already perform better than countries with weaker participation rights. This suggests that strong worker participation is a supportive mechanism that could be strengthened in order to help achieve the 2020 targets.

In the case of Europe 2020, five headline targets have been included in the strategy. These define a transparent benchmark for measuring the success of the strategy. The five headline targets are as follows:

- 75% of the population aged 20-64 should be employed
- 3% of the EU's GDP should be invested in R&D
- The '20/20/20' climate/energy targets should be met
- The share of early school-leavers should be under 10% and at least 40% of 30-34 years old should have completed a tertiary or equivalent education
- At least 20 million people should be lifted out of the risk of poverty or exclusion.

Progress on the five major Europe 2020 targets is measured in terms of eight headline indicators monitored by Eurostat. Due to their complexity, some of targets have more than one headline indicator. These eight indicators are as follows:

- Employment rate by gender in the age group 20-64
- Gross domestic expenditure on R&D (GERD)
- Greenhouse gas emissions, measured in terms of a baseline from 1990
- Share of renewable energy sources in gross final energy consumption
- Energy intensity of the economy
- Proportion of early leavers from education and training
- Proportion of the age group 30-34 with tertiary education, by gender
- Proportion of the population at risk of poverty or exclusion.

The strength of worker participation is measured in terms of an updated version of the European Participation Index (EPI) which was used in the 2009 Benchmarking Report (ETUC and ETUI 2009). The EPI 2.0 consists of three equally weighted components:

- 1) Board-level participation – measures the strength of legal rights in each country for employee representation in the company's highest decision-making body. This classification was developed by the SEEurope network of ETUI and classifies countries in three groups: 'widespread participation rights', 'limited participation rights' and 'no (or very limited) participation rights' (<http://www.worker-participation.eu/About-WP/European-Participation-Index-EPI>).
 - 2) Establishment-level participation – measures the strength of worker participation at the plant level. This is based on an analysis of Eurofound's 2009 European Company Survey, which includes data on the presence or absence of formal employee representation in more than 27,000 companies in the EU27 and other European countries.
 - 3) Collective bargaining participation – measures union influence on company industrial-relations policies, including an average of i) union density (i.e. percentage of workforce belonging to unions) and ii) collective bargaining coverage (i.e. percentage of the workforce covered by collective agreements).
- The EU27 countries were classified based on their overall scores on the Participation

Index. As shown in Figure 8.13, the score of countries on this index ranged from 0.11 (Lithuania) to 0.83 (Denmark).

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

The comparison of the EU27 countries classified by strength of workers' rights regarding information, consultation and participation (Figure 8.14) shows that the group of countries with stronger participation rights performs better on all of the eight Europe 2020 headline indicators than the group of countries with weaker participation rights. For example, in the case of the first target (a 75 percent employment rate in the 20-64 age group), the stronger participation group is already much closer to achievement of the target (72.1 percent) than the weaker participation rights group (67.4 percent). Similarly, the stronger rights group is already much closer to the target of 3 percent expenditure on R&D than the weaker rights group (2.2 percent versus 1.4 percent). The other six indicators also show better performance by the stronger rights group of countries.

Although of course many other factors are also involved in explaining cross-national economic and social differences, these results nevertheless suggest that strong worker participation is part of a set of institutions and practices which support better economic and social performance. Given that the Europe 2020 strategy is targeted at improving this performance, the European Union would be well advised to consider the strengthening of worker participation rights and taking them into account as one of the key instruments for achieving these targets.

Conclusions

European social dialogue, worker representation and EU2020: the call for an ambitious Social Policy Agenda

Countries with stronger worker representation and social dialogue rights perform better on all five EU2020 targets, as demonstrated by the European Participation Index. Each contribution to this chapter provides strong evidence that workers and their representatives at company level – through information and consultation procedures, including EWCs; through board-level employee representation as in SEs; and through negotiation procedures leading to transnational company agreements – make a significant contribution to sustainable economic and social progress. European social partners, moreover, have proved active in delivering relevant answers to the strategic dimensions of EU policy. ‘With the adoption of their joint work programme for the period 2003-2005, the social partners have taken a decisive step to act, in full autonomy, in support of the implementation of the Lisbon Strategy’ (European Commission 2003). The same may be said in relation to the third multi-annual work programme adopted in May 2009 for the period 2009-2010 and extended to 2011. European social partners are not only active but even proactive when, for instance, they develop proposals designed to foster the development of a ‘new labour market’ thanks to, among other things, the setting up of Sector Councils on Employment and Skills (ETUC 2010a). Against this background, it makes no sense whatsoever to question the willingness, involvement and commitment of workers, trade unions and their representatives in supporting the EU policy for growth and employment.

It does, conversely, make sense to question the European Commission’s willingness when it comes to developing the means that would contribute to its goal to ‘strengthen the capacity of social partners’ (European Commission 2010h: 18). Only very few reviews of existing mechanisms are scheduled to take place in the context of the EU2020 strategy: on employee involvement in SE/SCE, and on some of the EU legislative acts dealing with information and consultation. Is this to be interpreted as meaning that nothing remains to be developed in the realms of workers’ information, consultation, participation and negotiation rights at the transnational company level, and of social dialogue at the European level? Numerous considerations serve to testify that this is clearly not the case.

A total of 26 Directives secure the rights of information, consultation and participation (ETUC and ETUI 2008: 69). However, such fragmentation gives rise to confusion and legal insecurity for workers, employers and their representatives, and this uncertainty is compounded by the fact that most Directives, in particular Directive 2002/14/EC on a general framework for information and consultation, are poorly implemented.

In 2010, 953 EWCs are considered to be active, representing more than 17 million workers. However, given the total number of transnational companies covered by the Directive, the ETUI EWC database establishes a compliance rate of 38%. This specific issue of enforcement will become even more relevant in 2011 which is the deadline for national implementation of the recast EWC Directive that, so far, has been initiated by only nine member states.

The number of SEs is increasing as time goes on, disseminating a European model of employee involvement that includes representation on company boards. A couple of worrying developments should, however, be mentioned in this respect: the growing number of established SEs that do not conform to the standard definition – i.e. have neither employees nor operations –, coupled with a high number of SEs established without any negotiated agreement on employee involvement (in only 40% of ‘normal’ SEs has such an agreement been concluded),

pose serious problems with regard to the respect of workers’ rights.

Increasing numbers of European Framework Agreements are being developed and signed, illustrating the creativity of social partners in developing ‘problem-solving’ tools in the absence of a regulatory framework. However, this absence does give rise to serious concerns, such as the question of the legal value of the agreements concluded and the possibility for workers to claim their enforcement before a court, as well as the question of their place within the hierarchy of norms which led the ETUC to develop a firm position in favour of a non-regression clause towards previously negotiated collective agreement and national legislations (ETUC 2007).

The autonomous European Social Dialogue is both dynamic and prolific with some 600 joint texts having been adopted in the course of its history to date. The other aspect of European Social Dialogue, namely, treaty-based consultation, would appear, on the contrary, to be rather poor. In 2010, only two consultations took place under art. 154 TFEU: on the review of the Working Time Directive and on the protection of workers from the risks related to exposure to electromagnetic fields at work, neither of which dealt with genuinely new legislative proposals insofar as the focus was on the revision of existing Directives.

Though observers may indeed find in EU2020 policy a few references to targets to be achieved, in part, by delegation to the social partners, they will search in vain for any new and concrete means of ‘promoting quality in industrial relations’ such as was contained in the 2000 Social Policy Agenda (European Commission 2000). Indeed, one of the reasons why social dialogue and worker representation are underappreciated and underplayed in EU2020 lies in the absence of Social Action Programmes – such as existed in the 1990s – or Social Policy Agendas – which were a component of the Lisbon Strategy. In conclusion, therefore, our chapter endorses and confirms – if such confirmation be needed – the legitimacy of the European Parliament resolution of 6 May 2009 (European Parliament 2009) in which MEPs ‘call on the Commission to develop an ambitious social policy agenda for the period of 2010-2015’.