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DIRECTORATE - GENERAL FOR RESEARCH

WORKING PAPERS

EMPLOYEE PARTICIPATION IN WESTERN EUROPE

AN OVERVIEW

SOCIAL SERIES

W 1

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In view of the abundance of literature concerning employee participation, the Social Affairs Division has been prompted to present an overview of the existing work and different proposals on the subject.

The study is presented in English only. However, if there is sufficient demand for the study in other Community languages, translation could be envisaged.

This study does not necessarily reflect the opinion of the European Parliament.

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ABSTRACT

The paper provides an overview of regulatory frameworks for employee workplace participation in Western Europe. "Participation" is, in this context, defined narrowly as participative schemes which have a general and formal character, including statutory and collective agreements for employee participation through works councils and similar bodies as well as through employee representation on company boards.

The introductory part of the paper discusses the concept of participation and the fact that different actors - the management and labour or the legislative authorities - have different views on the objectives of employee participation.

Part two describes and analyses the general frameworks for employee participation in Western Europe, i.e. the regulatory frameworks on works councils and employee board-level representation. In outlining the different frameworks, attention is paid to the nature of employee involvement as well as to the moment and duration of participation. In the final sections of part two, employee participation in 3 specific issue areas is described: with respect to workplace health and safety, regarding the introduction of new technology, and with respect to employees' financial involvement in their company ("financial participation").

Part three describes European Community legislation and initiatives in the field of employee participation. Some relevant legislation exists, but most initiatives have been blocked by fundamental disagreement among the Member States and between the management and labour. However, recently, the question of employee participation has come to the fore again, primarily in the form of the renewed proposal for a European Company Statute, the proposal for European Works Councils in Community-scale undertakings and the proposal for a Council Recommendation concerning the promotion of employee participation inprofits and enterprise results.

The final sections of part three deal briefly with European Community legislation and initiatives with respect to employee participation in health and safety at work and the introduction of new technology. Thus, the participative elements of the 1989 framework directive on workplace health and safety are described and the "Val Duchesse" dialogue between the management and labour and the conclusions of these talks on the introduction of new technology is touched upon.

PART ONE: INTRODUCTION

1.1 Employee participation in Western Europe: national and European frameworks

This paper describes a number of practices of employee participation. The first part enlarges on the concept of participation and describes and analyses employee participation schemes in a number of Western European states. The focus will firstly be on the existing general forms of participation, secondly on specific participative schemes concerning three different issue areas: health and safety at work, introduction of new technology and financial participation. The second part of the paper concentrates on initiatives and legislation of the European Community in the field of employee participation. In outlining the different attempts at E.C. level legislation the paper directs particular attention to the positions of the employers and trade unions as well as to recent developments in the area.

1.2 The concept of participation

The basis of the concept of participation is the division of responsibilities between managers and labour. The task of the manager is said to be the conceptualization of the production process (such as the formulation of company strategy, the choice of the product range, and the outlay of the production process). The task of the worker is said to be the execution of work. Workers' participation relates to the degree to which this division of labour is overcome. In other words: the question on worker participation concerns the degree to which workers take part in the management of production of goods and services.

However, the concept of participation becomes more problematic when the concrete meaning and purpose of participative forms is delineated. Thus, since participation cannot be dissociated from questions of power, authority, legitimacy and control, it inevitably has a highly political aspect. In some national settings participation is seen as a method of installing industrial democracy, and as a necessary corrective that extends the rights conferred by political democracies into the industrial area. At the point at which political argument begins, however, participation and its definition is shaped by the conflict of interests between the management and labour reflecting basic differences in the views on how industry should operate and about how human activity should be regulated. Thus the term 'participation' is not politically neutral and it encompasses many different and conflicting stances.

1.2.1 Participation: different meaning for different actors

The actors in the discussion on participation are normally seen to be the individual employee, the union, the management and the legislative authorities. As mentioned already, these actors evidently have differing views on employee participation, views which again are based on the different motives of each actor as he enters the discussion.[1]

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[1] The following account is based on The European Foundation for the Improvement of Living and Working Conditions, Participation review: a review of Foundation studies on participation, Dublin 1988.

The employee: participation as an instrumental process. The common employee view on participation is that the process is a direct means of attaining concrete benefits in terms of higher pay, more agreeable work environment, greater responsibility and improved protection of health and safety. Wider problems of change or of procedural concerns which determine the power relationships are areas of secondary importance.

The trade union: participation as an agent in redistributing power. The common union view supports increased employee participation in so far as it protects the interests of union members. Unions also see participation as a tool for the redistribution of power in providing access to decision making. The support for employee participation is, however, not without reservation. This is so for two reasons: firstly, the form of participation, especially when it is introduced by management, may actually increase managerial control over the production process: by sharing control and increasing work force influence on specific functional problems, management at the same time appears to gain more hierarchical control as the production process becomes more transparent and workers more cooperative. Secondly, the involvement of unions in decision making may at the same time render them more responsible for the decisions and their - sometimes unexpected - consequences, such as job losses. Here, some unions are reluctant to take joint responsibility for organisational solutions which may bring short-term benefits to their members but which may subsequently constrain their freedom of action and their demands as trade unionists.[2]

Management: participation as a means for increasing efficiency. Evidently, management's primary aim is the increase of production process efficiency. Through employee participation, management may obtain an increase in workforce motivation. Participative schemes may make employees more responsible for their job and increase their commitment. In this way, managers may be able to gather more and better information about the ongoing production process, an increasingly important point at a time when production processes are growing in complexity. Further concrete benefits are the reduction of costs through the minimisation of waste, enlargement of control, and quality improvement. Less concrete consequences may be the increase of production process flexibility, the stimulation of learning and general improvement of industrial relations. Recent research argues that work organisational practices based on the principles of division of work and deskilling have already been counterproductive for a long time and are, to an increasing degree, being replaced with more participative schemes, including schemes where discipline is not imposed from the outside.[3]

Legislative authorities: participation as a form of macro-regulation. Concerned with socio-economic stability, political authorities may promote participation as a way of regulating conflicting interests of social groups. Participative structures can foster cooperative industrial relations, provide a stable economic environment and decrease income imbalances.

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2 Vittorio Di Martino, Participating in Technological Change, European Foundation for the Improvement of living and working conditions, Dublin 1987.

3 E.g. W. Buitelaar, Technology and Work, Gower, Aldershot 1988, H. Kern and M. Schumann, Das Ende der Arbeitsteilung? München 1984, and P. Brödner, Strategic Options for "New Production Systems", Fast report no. 150, Commission of the European Communities, Brussels 1987.

1.2.2 Forms of participation

It is useful here to distinguish between different aspects of concrete employee participation. The first aspect is the regulatory framework, consisting mostly of governmental regulations and collective agreements. Although a regulatory framework does not guarantee automatically workers' participation, it certainly may provide the basic preconditions for participation to develop.

Secondly, a participative process concerns a certain subject matter. Issues can vary from job-related, primarily plant-based questions, like workplace health and safety, to more strategic issues on the enterprise level such as work reorganization or investment plans. Particular forms of participation tend to correspond to different categories of issues.

A third aspect of participation is the nature of employee involvement. One can distinguish progressively between no involvement; information provision; right to collection of information; (admission to sources of information, right to carry out inspection, interviews etc.), right to consultation and negotiation, and finally, right to joint decision making. Consultation differs from negotiation in the sense that it normally deals with questions of perceived common interests whereas negotiation relates to problems where management and labour have adversary relationships. In terms of influence on management decision making, consultation means advising managers, leaving their freedom in decision making intact. Negotiation is more a bargaining procedure where both parties have to take into consideration each other's wishes.[4]

Finally, the level of involvement depends on the timing and duration of participation: in what phase of a particular decision making process does labour become involved? Is it during the planning of a decision, during the selection of a path of change or during the implementation of the change, after most important decisions have been made? Different timing corresponds to different degrees of involvement. Disclosing information prior to decision making gives labour more influence than information provision during decision making.

In the following sections of this paper different participative schemes are described and analysed with attention directed to these four aspects of participation. However, since the nature of issue areas influences the type of participation, this aspect of participation will be the dimension along which to order different existing schemes. We distinguish between employee participation in matters of health and safety at work with respect to the introduction of new technology, and financial participation, i.e. the employee's financial involvement in his workplace. First, however, the paper describes the general frameworks for employee participation in a number of Western European countries.

The analysis of different forms of employee participation is limited to participative schemes which have a formal and general character, i.e. statutory and collective agreement provisions for employee participation through works councils and similar bodies and through the different forms of employee board-level representation. The paper does not deal with "direct" employee

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[4] R. Blanpain, F. Blanquet, F. Herman, and A. Mouty, The Vredeling Proposal: Information and Consultation of Employees in Multinational Enterprises, Kluwer, Deventer 1983.

participation through management initiated workplace schemes, just as collective bargaining in itself is not discussed in any detail.

PART TWO: NATIONAL FRAMEWORKS FOR EMPLOYEE PARTICIPATION

2.1 General frameworks for employee participation: works councils and board-level representation

What are the typical characteristics of existing employee participation schemes in Western Europe on states? This is the question which will be addressed in the following sections.[5]

2.1.1 Regulatory framework

Employee participation - be it in the form of legislation or collective agreement - differs widely between the Western European states. At one extreme of the continuum is the United Kingdom where formal regulation of general employee participation is virtually non-existent. This does not, however, mean that workplace participation is non-existent: a 1984 study found that 34% of all workplaces in the U.K. had a joint consultative committee, created on the basis of local agreements.[6]

At the other end of the continuum is Germany placed. The German regulatory framework - constituted primarily by the Works Constitution Act (Betriebsverfassungsgesetz) of 1972, last amended in 1988, and the 1976 Co-decision Act (Mitbestimmungsgesetz) - provides the legal basis for both works councils with relatively comprehensive rights and obligations and for employee board-level representation and co-decision in certain areas.

Works councils

In most Western European countries, legislation or collective agreements guarantees the existence of works councils. The notable exceptions are Ireland, the United Kingdom, Italy and Sweden. In Sweden and Italy, regulation provides for trade unions in the workplace to perform many of the functions of works councils in other states (in the case of Sweden, trade unions are involved in even more areas and to a greater extent than is typical for works councils in other states), whereas this is not the case in Ireland and the U.K.

With respect to the establishment of works councils, German legislation lays down the lowest workforce threshold of the European Community: Employers are obliged to set up works councils on request once there are 5 permanent employees. Five is also the threshold in Austria. In Denmark the number is 35, in France and Spain 50, and in Belgium 100. In the Netherlands, there is a dual threshold: a company with more than 100 workers has a works council with more powers than a company with 35 employees. In Greece, companies may (there is no legal obligation) establish works councils. Portugal lays down no threshold at all.

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5 The following account relies primarily on European Industrial Relations Review report no. 4, "Employee participation in Europe", 1990, and European Trade Union Institute, "Workers representation and rights in the workplace in Western Europe", Brussels 1990.

6 "British Workplace Industrial Relations 1980-1984", Gover 1986.

The composition and size of works councils differ widely as well. In most countries, the councils comprise employee representatives only. However, in Belgium, Denmark and France, employers' representatives form a part of the structure as well. The employer chairs the meetings in France, whereas in Denmark the "group A" of a council represents "responsible management and technical and supervisory staff ineligible for trade union membership". With respect to the size of works councils, Luxembourg provides no regulations, whereas in Germany it ranges from one member to a maximum of 35. In other Western European states, the minimum size generally ranges from 3 to 6 with maximum sizes set between 11 and 35.

Board-level representation

In about half the Western European countries, there is a form of statutory employee representation on company boards.[7] Where national company law provides for a two-tier company structure (i.e. with a supervisory board and a management board), employee board-level representation typically entails some representation on the supervisory board. In unitary systems, board-level participation entails representation on the board of directors.

Legislation and agreements covering board-level representation generally apply to companies above a certain size or within a specified sector. In Austria, regulation on employee board-level representation applies for joint stock corporations, co-operatives, and limited liability companies with more than 30 employees. Similarly in Sweden, regulation covers joint stock companies and co-operatives, and in Denmark limited liability companies with a workforce of 50 or more. The German regulation of 1976 covers joint stock companies with an average of over 2000 employees. For companies with between 500 and 2000 employees the older regulation applies. Special regulation applies to companies in the iron, steel and coal industries with more than 1000 employees. In France, works councils appoint representatives to the board, which means that regulation applies to companies with more than 50 employees. In Spain and Ireland, board-level representation is restricted to certain publicly owned undertakings.

With respect to the extent of employee board-level representation, Austrian works councils may delegate a third of the members of the supervisory board. Danish employees are entitled to elect one third of the total membership of the supervisory board. In Germany employee representatives constitute 50% of supervisory board membership under the 1976 legislation, i.e. for companies with more than 2000 employees. This also applies to companies in the steel, coal and iron sectors. For companies with a workforce of 500-2000, employees appoint one third of the supervisory board.

In France, works councils may appoint representatives onto the management or the supervisory boards (French companies may choose either a unitary or a two-tier board structure). The number of representatives may, however, not exceed one third of the total membership. According to a 1987 act, Swedish trade unions have the right to appoint two members of the board of companies employing more than 24 workers (in Sweden a unitary company structure is the norm). Spain and

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[7] This is the case in 7 of the 15 countries covered in "Employee participation in Europe", European Industrial Relations Review, Report No 4.

Ireland allow employees to appoint representatives to board subcommittees and to boards of certain state owned companies, respectively.

2.1.2 The nature of employee involvement

The different Western European regulatory frameworks described above correspond to different degrees and types of employee workplace involvement.

Works councils

With respect to the works councils existing in most of the countries studied here, the main function, clearly, is to serve as a channel for information disclosure and consultation.

Works councils have specific rights to information covering aspects of financial, economic, and personnel policies. Such rights may be very general as in France where the employer must disclose information on the "global activities of the undertaking". On the other hand, Belgian law specifies detailed disclosure requirements, including regular information on cost, pricing and budgeting, financial stability, and the undertaking's scientific research. Somewhere in between is Austria, where works councils probably enjoy the most comprehensive information rights outside the E.C., including general rights of information in relation to the company's situation, orders, sales etc., and more specific rights in relation to new appointments, including their proposed deployments, pay, grading, and probationary periods.

Works councils furthermore have the right to prior consultation - to be informed of planned measures in advance and given an opportunity to express an opinion before implementation. The type of issue covered by right to consultation varies considerably, but emphasis is usually placed on prior consultation both over plans affecting working conditions and over issues affecting employment security, such as closures, mergers and relocations.

The negotiating powers of works councils are typically limited. In Belgium, Denmark and Luxembourg, the works councils have no negotiating role. In France and Germany negotiations are limited to a number of areas specified by law: in France, for example, this covers profit-sharing and share ownership schemes, while in Germany the list is longer. Negotiations are possible, though not included as a right, in Portugal and the Netherlands. In Greece consultation and negotiation rights are applicable only in the absence of a recognized union. Finally, in Spain works councils are fully integrated into the collective bargaining system and may conclude agreements on any subject.

Generally, works councils have no veto power. However, elements of co-decision are found in Austria, France, Germany, and the Netherlands. In France co-decision is restricted to a relatively small area (such as the appointment of the works doctor), while in the Netherlands it takes the form of a requirement of the council's "assent" to changes in personnel policy and employment security. If the council withholds assent, the employer must appeal to an industrial commission before proceeding. It is in Austria and Germany that co-decision is of the greatest importance. In Germany, the consent of the works council is required with respect to engagement, grading, regrading and the transfer of staff, as well as to matters such as pay procedures, the organisation of working time, and generally "matters relating to the operation of the establishment".

Board-level representation

In most of the countries with regulations on employee board-level representation, employee representatives have the same rights, duties, and responsibilities as other members of the board. This is the case for Austria, Germany, Sweden, Spain, Ireland and Denmark. In Denmark and Sweden employee representatives as other members of the board are explicitly bound by confidentiality clauses, which prevent them from informing employees on a range of "sensitive issues". In France, board-level representatives in the private sector have no right to vote.

Since employee representatives generally constitute only a minority on company boards, the real extent of employee participation may not go much beyond consultation and information. Germany might be an exception in this respect, as after the 1976 co-decision act employee representatives constitute 50% of the members of the supervisory board for companies with over 2000 employees. However, this scheme falls short of full parity co-decision: the chairman of the board, who is appointed by shareholders, has a double vote in the event of a tied vote. Full parity co-decision in Germany is found exclusively in the mining, iron and steel sectors in companies with more than 1000 employees, as according to the 1951 act on co-decision employees and shareholders each appoint 50% of the board members, and an additional and neutral member acts as independent chairman.

2.1.3 Timing and duration of participation

As for the timing of works councils participation, statutory provisions usually specify the time and regularity with which information must be provided. These provisions are most detailed in Belgium, where information must be given to works councils quarterly, annually, occasionally (i.e. whenever a particular need arises) and each time a works council is set up.

On the other hand, in Germany, Denmark and the Netherlands the employer is simply under a duty to disclose information "in good time" on the issues specified. In some cases, works councils may themselves trigger disclosure, as in Greece where works councils may request information within 20 days. In Austria employers are required to provide information about planned changes "as soon as possible". This includes a requirement to provide such information "sufficiently early to allow the works councils to be consulted over the way in which the changes are made".

Consultation by definition means exchanging views prior to decision being taken. Thus, where regulation provides for the right to consultation, it also formally ensures the involvement of works councils prior to decision making.

Employee board-level representatives may - where these representatives enjoy the same rights as other members - be assumed to be informed of and involved in decision making at the same point of time as other members.

2.2 Employee participation concerning health and safety at work

The issue of health and safety has been a prime concern for unions and employees and has been at the centre of negotiations for some time: in most countries,

the relevant legislation was introduced in the 1970s. Obviously, workers consider the issue of participation as important, since it affects immediately and visibly their working environment. Also, management generally accepts the value of a healthy and safe workplace. As a consequence of the general consensus, participative structures with respect to health and safety are reasonably well established, and the legislation of all Western European countries stipulates relatively comprehensive rights to workers' representatives.[8]

2.2.1 Regulatory framework

In the typical Western European regulatory framework, the control of health and safety at work is conducted either by individual persons appointed or elected from the workforce - workers' representatives or safety delegates - or by a workplace health and safety committee or the general works council.

Thus, the countries surveyed can be divided into three broad groups:

- In Belgium, Finland, France, Ireland, Norway, Denmark, Sweden and the United Kingdom, rights are granted exclusively to elected or appointed safety delegates and/or workers representatives on health and safety committees.
- In Austria, West-Germany, Greece and Spain, rights are granted to safety delegates and committees and to workers' representatives on work councils.
- In Italy, Portugal and the Netherlands, where there are no statutory health and safety committees, all rights are conferred on workers' representatives on work councils.

The establishment of both health and safety committees and individual safety delegates normally presupposes a certain company size. The threshold varies from 100 employees in Spain to 20 employees in Denmark, Finland, Greece and Ireland for the establishment of the health and safety committee, and from 50 employees in Austria to 5 in Sweden for a safety delegate. The most common way to select workers' health and safety representatives is simply election by and from the workforce. However, in Belgium election is made from trade union lists, just as trade unions appoint the representatives in Sweden and the United Kingdom.

Workers' representatives normally enjoy special protection against dismissal or discrimination. Only Ireland provide no special regulations. In most countries, a dismissal has to be approved by an external body. In other countries, e.g. in Germany and in Greece, dismissal of representatives is restricted to cases of serious misconduct.

2.2.2 The nature of employee involvement

The regulations of all surveyed countries, with the exception of Italy, include the right to information and consultation. In Austria, Denmark, Finland and Luxembourg, this is a general and unspecified right, whereas in Belgium, Greece,

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[8] The following account relies heavily on European Industrial Relations Review, vol. 183-184 1989.

Ireland, the Netherlands, Norway, Spain, Sweden and the UK, there is a legal entitlement to certain specific types of information and consultation on certain issues as well. Thus, in Belgium, which has the most specific framework, health and safety committees have a statutory right to a monthly report on health and safety conditions, information on potential health and safety risks, and a report on the activities of the firm's safety officer and occupational medicine service. Furthermore, the committees must be consulted on, among other, things the purchase of protective equipment, the formulation of the employer's annual health and safety action plan, and in general all health and safety policy.

In Finland, Greece, Ireland and Portugal, representatives are not legally entitled to carry out independent inspections of the workplace. In most other countries, there are some legal grounds, although general and unspecific. Only in France (four times a year), Luxembourg (weekly) and the UK (every three months) is the right to inspection legally established in details.

In five of the surveyed countries - Denmark, Finland, Norway, Spain and Sweden - workers' representatives have the unequivocal right to halt the work of an undertaking or parts of it on the grounds of danger to health and safety. In Belgium, France, West Germany, Italy, Portugal and the UK, representatives have no independent rights to stop work. In Austria, Ireland and Luxembourg, representatives can invoke the ministerial Inspectorate of Labour. In the Netherlands, individual workers can halt the work. In Greece, representatives are entitled to demand action from employers.

Only in Austria, the Netherlands, and Germany do health and safety representatives or workers' representatives on works councils have some rights of co-decision on health and safety issues. In Germany, which has the most far-reaching regulation in this respect, works councillors must be informed and consulted, see all relevant documents, and all decisions must be endorsed by them. The same rules apply regarding the appointment of company medical staff and employee safety representatives.

2.2.3 Timing and duration of employee participation

Participation on the issue of health and safety takes place continuously. Participation occurs whenever the health and safety committee or works council gathers and discusses health and safety problems and whenever the workers' representatives take time off from their regular work to perform their duties as representatives.

Furthermore, in all the countries surveyed, workers' representatives are entitled to paid time off to carry out their duties. In the majority of countries the amount of paid time off is not specified in the relevant legislation, but is covered by a formula such as the time off "necessary for the proper performance of their duties" (Germany). In Portugal, Greece, Italy, Spain, Ireland, and France, legislation specifies the amount of paid time off for safety representatives, ranging from 40 hours per month for works council representatives in Portugal (though health and safety is only one of their responsibilities) to a maximum of 2 hours every two weeks in Ireland.

2.3 Employee participation and the question of new technologies

Employee participation with respect to the introduction of new technology has been widely discussed since the second half of the 1980s. Increasing competition and diversification causes uncertainty which companies combat with technical innovation and structural reorganization.[9] One of the technologies concerned is information technology. The current wave of automation leads to an intrinsically more complex, flexible and at the same time systematic production process. A prominent view holds that the potential of new technologies is only fully exploited if technical innovation is accompanied by a reorganization of the work which allows greater worker involvement.

Correspondingly, it is the basic argument of a recent study that the nature of new technology increases the potential for participation. New technologies, processes of work reorganization together with more unpredictable market conditions increase uncertainty. Managers hope to cope with the increased uncertainty by invoking the participation of workers.[10]

2.3.1 Regulatory frameworks and the nature of employee involvement

The participative processes and structures in the field of new technology show a clear tendency towards the informal. The individual nature of technical innovation and the premise that a production process should remain under control of the producer make governments recognize that it is impossible to formulate concrete regulations. Although managers may consider workers' cooperation as vital for the success of a major technology investment, they generally prefer direct, informal ways of participation and oppose regulation of the field by legislation or collective agreements. However, during the 1980s Western Europe experienced a certain diffusion of national technology agreements. In the following paragraph, some important national technology agreements will be outlined.

France

In 1988 a number of major employers and employee organizations concluded a non-binding "orientation agreement" on technological change and company modernization.[11] However, the largest union, CGT, refused to sign. The general objectives of the agreement are to stimulate collective bargaining on sectorial level regarding the issue of technological change, and it generally emphasizes and encourages the establishment of joint regulation on a decentralized level.

In relation to major technology plans, the document motivates both sides on industry to identify at sectorial level the questions and procedures for

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9 M. Piore and C. Sabel, The Second Industrial Divide, Basic Books, New York 1984.

10 The European Foundation for the Improvement of Living and Working Conditions, New Information Technology and Participation in Europe: The potential for Social Dialogue, Dublin 1989.

11 The following account relies on European Industrial Relations Review, vols. 179 and 180, 1988.

information, consultation and negotiation which should be implemented. In relation to incremental innovations, it is suggested that 'a report on technological developments and technological change in the company should be submitted at regular intervals to the company or plant works council', since incremental innovations take place constantly.

The third and last section of the document drafts general guidelines for the sectorial negotiations. It suggests three general topics, to be borne in mind by the negotiators:

- the specific role of management staff during technical change;
- recognition of new qualifications and the coordination of training programmes;
- organizational restructuring providing more opportunities for career development and promotion for employees.

Sweden

In Sweden, the regulatory framework for employee participation regarding introduction of new technology is part of broader regulations on trade union participation and co-decision, primarily contained in the Co-decision at Work Act of 1976.[12] One of the main provisions of the act requires that before an employer decides on any important restructuring, 'he shall on his own initiative negotiate with any employees' organization to which he is bound by collective agreement'. This is not an isolated provision, but forms one part of a network of negotiation duties.

The framework provided by the Co-decision Act in 1978 led to a general collective agreement on "joint regulation" for the public sector. Among other things, this agreement states that "rationalization and planning of work" is a matter for negotiation between employers and employee organizations, just as it is explicitly stated that trade unions make the final decisions about the way in which information on rationalization plans is given.

In 1982 negotiations on a similar agreement covering the private sector were concluded with the signing of the "Agreement on Efficiency and Participation". This document stipulates three basic areas in which local bargaining parties should concentrate. In the section 'technical development', it is stipulated that the unions should be involved at the earliest possible stage of the planning of a technical development which involves important changes for employees. 'The employer shall explain the considerations leading to the (planned introduction of) new technology and the technical, economic, environmental and employment consequences from an overall point of view, as well as any proposal which might exist to set up project groups'.

The concrete form of employee involvement has to be agreed at local level. Nevertheless, the document indicates that 'it may be agreed locally that matters of a limited duration (for example investment in building and machines, restructuring, changes in work organization) should be dealt with and implemented in a project involving local employees' organizations.'

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[12] On the Swedish co-determination act, see e.g. European Industrial Relations Review, vol. 31, 1976 and vol. 189, 1989.

The document also stipulates that employees should be given special training for new work tasks as early as possible and without loss of pay.

Norway

The Norwegian collective agreement of 1975 on the introduction of computer based systems concluded between the national employers organisation NAF and the confederation of trade unions, LO, is an early example of regulation concerning information technology. The agreement was initially signed for 3 years, but has been renewed several times since.

It states as a principle that in the design, introduction and use of computer systems, equal importance should be given to the social effects as to the technical and economic effects. The agreement then goes on to lay down procedures to be followed in the introduction of computerized systems, primarily in so far as the local union is concerned. It provides for the provision of information to the trade unions by management concerning proposed changes as early as possible, before decisions are made. The workforce is given the right to elect specialised representatives to deal with computer-related skills. The unions are also given the right to negotiate local agreements and to participate in project groups when systems are planned.[13]

When the agreement was renewed in 1981 for a third period, the terms of reference were broadened to cover the introduction of new technology in general. There was also a change in the terminology to emphasise negotiation at a local level as a means of resolving conflict, just as unions were given the right to use external experts paid for by the company to advise them.

Belgium

In 1983 unions and private sector employers' organizations in a hard fought compromise reached a central agreement, 'collectieve arbeidsovereenkomst nr. 39', which grants employee representatives the right to information and consultation on the 'social consequences' of technical change.[14] The agreement is only applicable where the intended investment in new technology is likely to have 'significant collective effects' which concern 50 percent or at least 10 workers of a particular 'occupational category'.

In the agreement it is stated that the employer must provide information at least 3 months before the introduction of the new technology. The information should describe the forthcoming technical change, contain a description of the economic, financial or technical factors that motivate its introduction, and predict the nature of its social consequences. The information has to be provided to the works council or the union representatives. After information has been provided, the employer must consult the employee representative on the

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13 The European Foundation, Negotiating technical change, Dublin 1982, p. 67.

14 The following account is based on European Industrial Relations Review vol. 121, 1984, A. Clauwaert et al. Overleg in de onderneming by invoering van nieuwe technologieen: de rol van CAO 39, Stichting Technologie Vlaanderen, Brussel, 1987 and M. Albertijn et al., Informatie en overleg bij technologie introducties, Stichting Technologie Vlaanderen, Brussel 1987.

social consequences: the foreseeable changes in workforce size and structure, working conditions, employee health and safety and the possible need for new skills. The financial, economical and technical aspects are not matter for consultation.

If the employer does not comply with these provisions, he/she will be required to pay every ex-worker, whose dismissal is directly attributable to the introduction of new technology, a compensation equal to 3 months' wages. No sanctions are provided when the introduction of new technologies does not lead to lay-offs.

A number of empirical investigations indicates that the agreement is respected only rarely.[15] One empirical survey in 1986 concluded that in only one third of the cases where the agreement is applicable, had information been provided 3 months before implementation. Furthermore, in only 27 percent of these cases had the agreement constituted the basis for the procedure. However, the rare application does not mean that no information has been provided. Mainly, other agreements or informal channels have been used.

Germany

In West Germany, a number of legal provisions and collective agreements regulate employee participation in the field of technical change. In general, the co-decision laws - outlined in section 2.3 of the paper - attribute to works councils the right to information and consultation with respect to the technical equipment of the workplace.

Furthermore, on the basis of the co-decision regulation, a series of company level technology agreements have been reached. These agreements are very specific and involve concrete technologies. For instance at Volkswagen, a company agreement was installed in 1986, regulating the establishment and operation of "VW circles". They provide for the setting up of voluntary groups of employees at all levels and in all areas of the company's operations to discuss ways of improving the quality of work and the working environment, job satisfaction and the use of employees' talents and expertise.[16] The text of agreement states explicitly that the employees of any plant should be able to participate in the planning of work and technology.

In 1987, a new technology agreement was concluded at Volkswagen, covering not only major investments in new technology but also the impact of incremental changes in existing techniques.[17] The agreement excludes every possibility of dismissal due to technical change, provides works councils with the right to full information and consultation, and allows the works council's involvement in the planning and training necessary for employees.

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15 A. Clauwaert et al. Overleg in de onderneming by invoering van nieuwe technologieen: de rol van CAO 39, Stichting Technologie Vlaanderen, Brussel, 1987.

16 European Industrial Relations Review, vol. 163, 1987.

17 European Industrial Relations Review, vol. 162, 1987.

2.3.2 Timing and duration of employee participation

As appears from the preceding texts the regulation on employee participation with respect to new technology rarely stipulates the precise timing and duration of involvement. The exception is Belgium, where a collective agreement states that information must be provided at least 3 months before the introduction of new technology. Furthermore, the Swedish requirement that employers on their own initiative must make contact with the local employee organization regarding any major restructuring of the workplace, may mean a relatively early involvement of employees.

In general, the regulation on employee participation in the field of technology as exemplified by the cases in the preceding sections, takes the form of loose and often non-binding framework agreements and recommendations. The notable exception from this pattern is the Belgian law which, to a considerable degree, however, appears to be ignored by employers and employees at local level.

These points illustrate that the question of new technologies hardly lends itself readily to any detailed regulation on employee participation at national level, as conditions and circumstances vary considerably from local setting to local setting.

2.4 Financial participation[18]

The question of financial participation involves all political aspects related to the question of employee participation in general: firstly, some economists, as well as certain political circles, view financial participation as a way of overcoming economic crisis situations such as "stagflation".[19] This argument has, however, been contested by other economists, who emphasize the inherent instability of the "share economy" (i.e. an economy where payment of wages is replaced by profit-sharing or employee share-ownership).[20] Secondly, a common management position views certain forms of financial employee participation - such as profit sharing - as a means to increasing company efficiency and flexibility, but rejects other forms as politically unacceptable.

Finally, trade unions and the labour movement in general view other forms of financial participation, primarily employee investment funds, as a means to extend worker control over their workplace as well as to obtain a reduction in the concentration of power and wealth. Other forms of financial participation are often rejected as attempts at breaking up worker solidarity and reducing equality amongst the employees.

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18 Annex I contains a comparative table summarising the main results from the PEPPER report as published in "Social Europe", Supplement 3/91, Commission of the European Communities.

19 M.L. Weitzman, The Share Economy: Conquering Stagflation, Harvard University Press, Cambridge Massachusetts, 1984.

20 E.g. G. Kanawaty et al., "Adjustment at the microlevel", International Labour Organization, vol. 128/3, 1989.

2.4.1 Regulatory frameworks and nature of employee involvement

The term "financial participation" is a diffuse one. Indeed, with respect to a number of what is normally termed "financial participative schemes", it is questionable whether there is actually an element of employee participation going beyond the possibility of an increase in the employees' psychological involvement in his or her workplace.

This is certainly the case for schemes such as performance bonuses and payment by results. Profit-sharing schemes are relatively common in Western Europe - for instance France and the United Kingdom provide legislation which ensures obligatory profit sharing for companies above a certain size and encourages profit sharing through tax concessions, respectively - but schemes like this only entail employee participation in a very limited sense of the term. The same applies to profit-related employee bonuses transferred to social savings accounts, as is common in Germany and to some extent also in France and the United Kingdom.

Financial participation through employee share ownership may take several forms. The most straightforward is the individual procurement of shares. Sometimes, shares are bought collectively through saving funds to which both the employer and the employee contribute. In the United Kingdom the scheme of the "Employee Share Ownership Plan" (ESOP) has attracted a great deal of attention since it appeared in 1978. An ESOP is a share participation scheme linked to an employee benefit trust. The trust acquires shares in the company and distributes them among the employees through a share scheme. The initial equity stake in the company is usually financed by a loan, which is paid back through contributions from the company. A key difference between ESOPs and other schemes is that they allow a more significant employee share participation. As such, unions have become very involved with the implementation.[21]

Again the question remains to what extent this system of employee share ownership actually contributes to workers' participation. The proportion of shares reserved for employees normally remains very small. For instance, in the UK it is estimated that the total equity in a company held by employees reaches 10% in only 6% of the large firms and 1% of small firms.[22] Moreover, employee shares are usually non-voting shares.

Employee investment funds

Employee investment funds are normally financed from company profits beyond a certain level. Employee investment funds are not controlled by the employer, but are established on a regional or national level and are controlled by trade unions.

The only country where employee investment funds are fully established is Sweden. Here, the question of employee investment funds was first raised by the Swedish trade union confederation, LO, at its congress in 1971. The principal motivation for initiating investigations on the subject was the perceived need to redistribute "excess profits" of efficient companies, seen to arise from LO's

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[21] European Industrial Relations Review, vol. 181, 1989.

[22] European Industrial Relations Review, vol. 181, 1989.

"solidarity" wage policy, which levelled out pay between high and low wage areas of the economy.

Between 1971 and 1983, LO and the closely affiliated Swedish social democratic party, SAP, debated a series of measures, primarily aimed at profit redistribution. However, the employee investment fund scheme adopted in 1983 was designed to achieve five stated objectives:[23]

- a strengthening of the State pension system,
- a reduction in the concentration of power and wealth,
- an increase in the capital available for investment in industry,
- a strengthening of the 'solidarity' wage policy through the moderation of wage demands,
- an increase of worker control.

To this end five funds were set up on a regional basis. The funds were to be managed by boards comprising nine government appointees, of whom at least five were representative of the interests of employees. The income of the funds was to be derived from two sources: an increase in the employers' contributions to the state pensions system and from a new "profit sharing" tax on large and profitable companies. However, this funding was restricted to 7 years: the period 1984-1990. Furthermore, individual funds were not allowed to acquire more than 8% of the voting shares in a listed company, and all in all therefore the five funds could not own more that 40% of any listed company.

The employee investment funds scheme has been severely opposed, especially by employers but also by local unions. The employers' organizations considered the funds as a means to convert the market economy into a socialist planned economy. They went so far as to organize large demonstrations.

Five years after installation of the funds, an evaluation revealed that the funds had done little to prevent further concentration of ownership, just as the effects of the funds on investment in industry and on wage demands are difficult to discern.[24] On the issue of worker control, opponents of the funds argue that since they are controlled by central union officials and not by workers they have lead to a certain collectivisation of ownership rather than wider share ownership. Defenders of the funds argue that although shareholding of a fund in any single company rarely exceeds more that 1%, it gives employees the possibility to attend company general meetings and to collect information. The LO has, however, conceded that "it is hardly at general meetings that influence in the company is primarily exercised":

In other Western European states, as in Denmark and the Netherlands, employee investment funds have been discussed as well. In the Netherlands, the coalition government in 1976 attempted to create a national fund equivalent to the Swedish employee investment funds. The fund would be financed from company profits beyond a certain level and would aim at providing individual workers with financial benefits and at improving existing pension arrangements. However, in light of the severe opposition to the proposal, it was withdrawn.

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[23] European Industrial Relations Review, vol. 179, 1988.

[24] European Industrial Relations Review, vol. 179, 1988, p.15.

PART THREE: THE EUROPEAN COMMUNITY AND EMPLOYEE PARTICIPATION

3.1 General European Community frameworks for employee participation[25]

The various studies carried out and proposals submitted by the Commission of the European Communities on the subject of employee participation are evidence of a continuing interest in the question of employee participation, just as the fate of many of these proposals reveal the delicacy of the subject area. Thus, for over two decades, the question of employee participation has been one of the most controversial issues in European Community social policy. Discussions have been protracted and opposition to a number of Commission proposals in this area has been fierce.

As a consequence, most Community initiatives on employee participation at present remain at the preparatory stage. However, some E.C. legislation does exist and will be described briefly in the following paragraphs. After this, the paper outlines a number of proposals for more comprehensive frameworks on employee participation, ranging from the original 1970 proposal on a European company statute to the Commission's 1991 proposal on a European works council in community scale undertakings.

3.1.1 Existing E.C. regulation for general employee participation

The Community has adopted three directives which, in relation to the protection of employees in the event of changes in the structure of undertakings, entail some degree of employee participation. Furthermore, the Community has adopted regulation on the European Economic Interest Grouping which also ensures a certain element of employee involvement.

The Council directive of 17 February 1975 on the approximation of the laws of the Member States relating to collective dismissal , states that consultation of employees before collective dismissals is obligatory and must be conducted before redundancies are made.[26] "Collective redundancy" is in turn defined as dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of such dismissals exceeds a given proportion of the work force determined by the size of the undertaking.

Furthermore, the directive states that consultation of employees must involve supplying workers with all relevant information and must be aimed at reaching an agreement. The directive also contains an obligation for employers to notify in writing public authorities prior to collective dismissals. A copy of this notification must be forwarded to the workers' representatives. The public authority then has 30 days to seek solutions, after which the redundancies take effect.

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25 Annex II contains a table published in European Industrial Relations Review, August 1991, on E.C. proposals and measures on employee participation.

26 Directive 75/129/EEC, OJ No. L 48 of 22.2.1975.

In November 1991 the Commission adopted a proposal for a directive[27] amending Directive 75/129/EEC. The main purpose is to ensure that information and consultation procedures also apply to employing undertakings issuing collective redundancies as a result of proposals of decisions taken by the controlling undertaking or by the central administration of a multi-establishment undertaking.

The Council Directive of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses,[28] particularly in connection with mergers and takeovers stipulates, among other things, the automatic transfer of rights and obligations arising from employees' terms of employment to the new employer. Furthermore, the directive provides for the protection of employee representatives in the event of transfer of the undertaking, just as it is stated that the transferrer and the transferee must inform the employees' representatives of the reasons for the transfer, its legal, social and economic implications, as well as any measures envisaged in relation to the employees.

The Council Directive of 9 October 1978 concerning mergers of public limited liability companies within any single Member State[29] (internal mergers) contains similar provisions for the consultation and information of employees as in the previously mentioned directive.

The Council Regulation on the European Economic Interest Grouping (EEIG) seeks to facilitate cooperation between undertakings of different member states. An EEIG aims at improving its members' economic performances, but not at generating profit for itself.[30] Thus, an EEIG is not a European Company, but rather an institution established in order to improve cooperation between companies of different Member States. The initial proposal on a legal framework for EEIGs dates back to 1974.[31] It was amended in April 1978, and the regulation was adopted on 25 July 1985.[32]

Following comments made at the time by the European Parliament, provisions to provide more effective protection of employees' interests were inserted (Article 1a).[33] Workers must be informed before a group is created, and if their

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27 COM(91) 292.

28 Directive No. 77/187/EEC, OJ No. L 61 of 5.3.1977 (entered into force in March 1979).

29 Directive no. 78/855/EEC, OJ No. L 295 of 20.10.1978 (entered into force October 1981).

30 Article 3(1) of EEC Regulation No. 2137/85 adopted by the Council on 25 July 1985.

31 EC Bulletin, supplement No. 1/74.

32 OJ No. L 199 of 31.7.1985.

33 A2-211/88 of 6 October 1988 on the role of the social partners in the Community, see also Written Question by Mr Baudis No. 2561/87 - OJ No. C 303/88, p. 45.

interests are damaged by the creation of such a group, the persons wishing to set up an EEIG must agree with the employees on measures to be taken. The provisions of the Member State in question on the protection of employees shall apply if no such agreement is reached.

In the opinion of the European Trade Union Confederation, ETUC, the EEIG is designed to enable undertakings to combine at the European level without forming a European company and being without subject to its more stringent requirements on, among other things, employee participation. It is therefore a flexible but also very lax instrument which is not seen to meet the ETUC requirements.[34]

3.1.2 The proposal for a directive on the structure of public limited liability companies (Draft Fifth Directive)

The proposals on a directive on the structure of public limited liability companies is based on article 54, 3 (g) of the EEC Treaty, which sets up the aim of harmonizing the conditions for establishing companies in the Member States in order to facilitate competition on equal footing.

The first proposal, put forward in 1972,[35] suggested a company structure similar to the German two-tier model, i.e. with both a supervisory board and a management board. With respect to employee participation, the document simply stated that "not less than one-third of the members of the supervisory board shall be appointed by the workers or their representatives".

Following considerable opposition to the original proposal, particularly from France and the United Kingdom, but also from the centre-right majority of the European Parliament,[36] the second proposal, advanced by the Commission in 1983,[37] has been substantially amended. Notably, companies are now given the possibility to choose between a unitary and a two-tier structure. Regarding employee participation, this proposal allows the Member States the choice of four different models.

The first model is board-level representation on supervisory boards, where employee representatives are appointed by the employees and constitute between one-third and one-half of board members. In the second model, employee board-level representation takes place through co-opting procedures. No rules as to the employee share of total board membership are specified. In the third model employee participation takes the form of bodies equivalent to works councils, i.e. bodies external to company boards. These bodies have the right to regular information and consultation "on the administration, situation, progress and prospects of the company". Finally, the fourth model allows "participation through collectively agreed procedures analogous to one of the three preceding models".

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34 European Trade Union Institute, Info 26, "The social dimension of the internal market", p. 35.

35 OJ No. C 131 of 13.12.1972.

36 See Jacques Vandamme, "Informing and Consulting Employees in Multinational Undertakings", PUF 1984.

37 OJ No. C 240 of 9.9.1983.

As it appears, the amended proposal represents a significant modification of the regulative framework on employee participation contained in the original text. Accordingly, the ETUC expressed disappointment with the amendments, just as it was regretted that none of the four participation models allowed for equivalent worker participation. The "Union des Industries de la Communauté Européenne", UNICE, remained opposed to the directive.

On 10 July 1991 the European Parliament reported[38] on the second amended proposal for a Fifth Council Directive[39] designed to limit the issue of preference shares, not carrying voting rights, to 50% of the subscribed capital. The Commission proposal did not aim to change the proposed models as regards employee participation. However, Parliament added an amendment stating that the company should inform the employee's representation of a takeover bid for the company. The representative of the Commission did not find that this belonged to the proposal and said also that the issue of worker participation still remained a stumbling block with the Fifth Directive.

3.1.3 The "Vredeling" proposal on procedures for informing and consulting employees of undertakings with complex structure

The proposal of the "Vredeling" directive ("Vredeling" after the former Dutch Commissioner) aims at providing informing and consulting procedures consistent with the complex structure of certain categories of companies, namely - according to the 1983 proposal - on the one hand subsidiaries in the Community, when a total of at least 1000 workers is employed in the Community by parent undertaking and its subsidiaries taken as a whole, and on the other hand undertakings having in the Community one or more establishments with a total of at least 1000 employees. The first proposal was put forward in 1980.[40] An amended version was presented by the Commission in 1983.[41]

The legal basis for the proposed directive is article 100 of the EEC Treaty on the approximation of such national laws and regulations, which directly affects the establishment and functioning of the common market. However, in the preamble to the proposal, the Commission also emphasizes the social motivations underlying it.

According to the Vredeling directive, employee representatives have the right to a broad range of information. Thus, it is stated that at least once a year, at a fixed date, the management of the parent company shall give the workers a clear picture of the company's activities as well as those of its subsidiaries. It shall forward specific company information in relation to

- the structure of the company,
- the economic and financial situation,
- the probable development of the business and of production and sales,

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38 OJ C 240/91, p. 104.

39 COM(90) 629.

40 OJ No. C 297 of 15.11.1980.

41 OJ No. C 217 of 12.8.1983.

- the employment situation and probable trends, and
- investment prospects.

If the information required here is not provided within 30 days after the fixed date, employees of subsidiaries are entitled to approach the management of the parent company.

Furthermore, where the management of a parent undertaking proposes to take a decision which will have a substantial effect on the interests of its employees, it is required to forward precise information in good time. Specifically, this means information on

- the grounds for the proposed decision,
- the legal, economic, and social consequences of the decision for employees, and
- the measures planned in respect of employees.

The management of subsidiaries affected by such decisions shall communicate this information to employees' representatives, ask for their opinion, and hold consultations with them with a view to attempting to reach an agreement. Where these requirements are not met, Member States shall ensure that employees have the right to appeal to a tribunal or other competent national authority for measures to be taken to compel the management of the subsidiary to fulfil its obligations.

In general, however, article 7 of the proposal states that the management of an undertaking is not obliged to communicate secret information, defined as information which, if disclosed, could substantially damage the undertaking's interests or lead to the failure of its plans.

The political fate of the "Vredeling" proposal

Since its advancement, the Vredeling proposal has encountered stiff opposition. Some Member States, notably the United Kingdom and Denmark, opposed the directive, since the practice of these countries leaves rules concerning methods of informing and consulting of employees entirely to management and unions and to collective bargaining. The Confederation of British Industry, CBI, saw the proposal as essentially forcing companies to disclose information and forecasts in a way which would frequently prejudice commercial confidentiality and impede the decision making process.

Similarly, the UNICE rejected the proposal as inflexible and as "at worst inimical and at best irrelevant to the major problems facing the Community, primarily as company decision making would be slowed down, and as confidential information would not be adequately protected."[42]

The ETUC gave a more favourable reception to the Community initiative, regarding it as a feasible compromise between worker and employee interests in the EC.[43] It bases its position on the principle that an EC Directive must not introduce any deterioration into the legislative situation in the Member States in which

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42 UNICE position paper on the "Vredeling"-directive, 28.9.1983.

43 "The amended Vredeling-proposal", Survey drawn up by J.M. Didier and associates, European News Agency, 1983, p. 6.

there is a high level of worker's rights and that it should bring improvements for countries where the level is lower. However, the ETUC identifies three points which need to be improved: management must not be given the exclusive authority to refuse information on the grounds of confidentiality, employees' representatives should be able to approach the parent company directly, and information obligations must include investment and production plans as well as introduction of new technology.

In the end, the Vredeling proposal did not survive the controversies surrounding it from the very outset. In July 1986, the Council formally realized that it could not reach an agreement on the directive. Consequently, it decided to postpone further initiatives and action in the area until at least 1989.[44]

3.1.4 The proposal on the European Works Council in Community-scale undertakings

In January 1991 the Commission forwarded a proposal for a Council Directive on the establishment and functioning of a European Works Council in Community-scale undertakings.[45]

The proposal may be seen as a partial revival of the Vredeling proposal, although the aim is considerably more modest: whereas the Vredeling proposal aimed at providing consultation and information procedures in companies with more than 1000 employees, the proposal on European Works Councils (EWCs) is restricted to enterprises with at least 1000 employees within the Community having establishments or undertakings with at least 100 employees in at least two Member States. Thus, the stated objective of the proposal is "to overcome the territorial limitations of national laws on information and consultation procedures".

To this end, a general legal framework for negotiations is suggested: at the request of central management or employees, a negotiating body shall be created, including at least one employee representative from each Member State in which the Community-scale undertaking employs at least 100 workers. This negotiating body shall aim at reaching an agreement on, among other things, the nature of the EWC, the number of members, its functions and powers, and the procedures for informing and consulting the EWC.

If an agreement cannot be reached, the proposal stipulates a number of minimum requirements applying to the central management of the Community-scale undertaking. Thus, it is stated that the EWC, which is to have between 3 and 30 members and to include at least one member from each Member State in which the Community-scale undertaking employs at least 100 persons, shall have the right to meet with central management at least once a year and to be informed and consulted by the central management on any management proposals likely to have consequences for the employees.

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44 OJ No. C 203 of 21.7.1986.

45 COM(90) 581 final.

On the 10 July 1991[46] the European Parliament approved the proposal with considerable amendment. Thus voted Parliament to amend the legislation by applying the rules to companies employing at least 500 employees instead of 1,000. Parliament also proposed to change the legal basis. The Commission had used article 100 (unanimity vote), Parliament proposed article 118A as legal basis, that is majority vote in the Council and two readings in the Parliament. In September 1991 the Commission presented an amended proposal.[47] Although the Commission took account of some of Parliament's amendments, it did not change neither the legal basis nor the number of employees.

3.1.5 Employee participation in the European Company Statute proposal

In recent years, especially in the light of the process towards the single European market, high priority has been given to the creation of a European company statute, which would provide a legal basis for business companies independent of national systems.[48] The question of employee participation in the European company has, however, been one of the main obstacles to reaching an agreement: Member States with a tradition for regulation on participation will not accept a statute which does not contain equivalent regulation, as this, in reality, would undermine national regulation. Other Member States are critical of employee participation measures in general.

The Commission's initial proposal on a European Company Statute dates back to 30 June 1970.[49] It was amended for the first time on 13 May 1975.[50] The Statute for a European public limited liability company in the amended 1975 version proposed a choice of three models of employee participation depending on the structure of the company in question:

- a European Works Council, if the company has at least two establishments in different Member States;
- a Group Works Council if the company comprises several undertakings;
- employee representation on the Supervisory Board.

This proposal was deadlocked in the Council. However, in June 1987 the European Council renewed its call for the European institutions to make rapid progress with regard to reforming company law to pave the way for the establishment of a European Company Statute.

The Commission, in a memorandum on the European Company Statute, continued to regard employee participation as a key component.[51] It concluded that the system of employee participation should be based on the principles guiding the most advanced employee participation systems in force in Community countries,

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46 OJ C 240/91, p. 118

47 COM(91) 345 final.

48 EC Bulletin, supplement No. 3/88 p. 8.

49 EC Bulletin, supplement No. 8/1970.

50 EC Bulletin, supplement No. 4/1975.

51 COM(88) 320 final.

while being sufficiently flexible to enable agreement to be reached between the management and labour. The memorandum suggested a choice between three models of participation.

In the first model, employees elect not less than one third and not more than half of the members of the supervisory board.

In the second model, employees participate through a body representing the employees, quite separate from the company organs. This body must, at least every third month, be informed by the supervisory or the management board on the company, its subsidiaries and the expected development, and has the right to be consulted and to request specific information.

Following the third model, employees participate through collectively negotiated systems, to be agreed upon within the company. This agreement must ensure that employees or their representatives have the right to information on the company's situation and prospects every third month and to information and consultation on important decisions.

In a resolution of 2 December 1988, the ETUC, with a few reservations, welcomed the Commission's initiative to revive the European company.[52] UNICE, meanwhile, in its opinion of 7 November 1988, pointed to the example of the United States to endorse its argument that a statute for a European company was not essential for the completion of the internal market. UNICE seems to support a variety of different methods of trans-frontier cooperation between undertakings with a view to enhancing their mutual economic interests.[53]

On 16 March 1989 the European Parliament adopted a Resolution on the Commission's memorandum.[54] It called for several equally valid models for participation to be included in the Statute, with the social dimension being regarded as an essential and indispensable component of the internal market.

After releasing its memorandum in July 1988, the Commission submitted formal proposals on the European Company Statute one year later. The Statute in itself takes the form of a draft Council Regulation,[55] whereas employee participation is to be dealt with separately in a Council draft Directive, thus giving Member States more legislative leeway.

Article 3 of the proposed directive on the position of employees in the European Company lays down rules for the choice of various models of participation which the Commission had proposed in its memorandum. Article 4 covers employee participation, either via board-level representation on the supervisory board (two-tier company structure), or on an administrative board in which management and regulatory functions are clearly determined (one tier company structure). Article 5 covers participation via a separate body equivalent to works councils.

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52 European Institute of Unions, Info 26: the social dimension of the internal market, Part 2, p. 55.

53 A2-405/88.

54 OJ No. C 96 of 17.4.1989.

55 COM(89) 268 final.

Finally, Article 6 allows for other models to be established in European companies by means of a negotiated collective agreement.

The proposal was submitted to the Council, Parliament and the Economic and Social Committee in August 1989. In the European Parliament's first reading on 24 January 1991 and in its amendments put forward here, the central point for majority of the parliamentarians was that the three different participative models should involve equivalent degrees of employee participation.[56] In May 1991 the Commission presented an amended proposal for a directive[57] in which it followed Parliament's wishes as regards equivalence between the various models.

3.1.6 E.C. initiatives with respect to employee participation in profits and enterprise results

In July 1991 the Commission adopted a Council Recommendation concerning employee participation in profits and enterprise results.[58] In this draft Recommendation the actions at Community level mainly consist of

- encouraging the use of financial participation schemes and the exchange between users of experiences with these schemes;
- the supply of relevant information about financial participation schemes;
- encouraging the creation of some types of financial participation schemes to be used community-wide under comparable conditions;
- monitoring further developments in this field.

This draft is under discussion in the Committee on Social Affairs, Employment and Working Environment of the European Parliament.

3.2 The EC and employee participation on health and safety at work

The deadlocked 1983 Vredeling proposal contained a paragraph, which stipulated the employees' right to consultation on proposed measures relating to workers' health and industrial safety.[59]

However, in March 1988 the Commission, on the basis of article 118a of the EEC Treaty as amended by the Single European Act, put forward a proposal for a framework directive on health and safety at work.[60] The European Parliament put forward a number of proposals for amendments in its readings in 1988 and 1989, in general aiming at improving provisions for employee participation,

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56 OJ C 48/91, p. 72.

57 COM(91) 174 - SYN 219.

58 COM(91) 259

59 Article 4, 2 (e) in the 1983 proposal.

60 COM(88) 73 final, OJ No. C 141 of 30.5.1988.

consultation and "balanced participation". In June 1989, the Council adopted the final directive.[61]

With respect to employee participation, the framework directive stipulates a number of minimum requirements on information and consultation of employees, on risks to health and safety at work as well as measures taken against these risks. Thus, employers are required to appoint employee health and safety representatives who in turn must have the necessary training to assist in preventing or reducing threats to health and safety. The appointed employee health and safety representatives are entitled to the time off necessary to carry out their duties without any loss of pay, just as they are, among other things, given the right to be present when the competent national authorities carry out inspections of the workplace.

The directive also states that employees in general are to be informed with respect to 'the safety and health risks and protective and preventive measures and activities in respect of both the undertaking in general and each type of workstation and/or job'. The employer's duty to inform and consult employees included, inter alia,

- any action, which may have significant consequences for health and safety at work,
- the appointment of employee health and safety representatives, and
- the employer's evaluation of risks to health and safety at work.

3.3 EC initiatives with respect to employee participation on new technologies

The Community has not attempted to create any comprehensive legislative framework when it comes to employee participation on introduction of new technologies. However, the 1983 Vredeling proposal did contain a paragraph which required employers in companies with more than 1000 employees to inform and consult employees' representatives on proposed decisions concerning "major modifications resulting from the introduction of new technologies".[62]

In recent years, the focus of Community activities in this field has been on the dialogue between the management and labour organized in ETUC, UNICE and CEEP, the European Centre for Public Enterprises, known as the "Val Duchesse-meetings". In 1985 the parties, despite generally divergent positions, were able to agree on a non-binding declaration of intent regarding the introduction of new technologies.

In the declaration it is stated, inter alia, that "the participants stress the need to motivate staff at all levels of responsibility in firms and to develop their aptitude to change, inter alia, by means of good information and consultation practices ... Both sides take the view that, when technological changes which imply major consequences for the workforce are introduced in the firm, workers and/or their representatives should be informed and consulted in accordance with the laws, agreements and practices in force in the Community countries."

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61 Directive no. 89/391/EEC, OJ No. L 183 of 29.6.1989.

62 The 1983 Vredeling proposal, article 4, 2 (c).

FINANCIAL PARTICIPATION SCHEMES IN THE EUROPEAN COMMUNITY IN THE LATE 1980s
Summary of principal fundings of the PEPPER REPORT[63]

Abbreviations:
PS: profit-sharing; SPS: share-based profit-sharing; BSP: bond-based profit-sharing; CPS: cash-based profit-sharing; DPS: deferred profit-sharing/investment funds; ESO: employee share-ownership; SO: stock options; DSO: discretionary share options; ESOP: employee share ownership plans; EBO: employee buy-outs.

Country	General attitude	Legislation		Diffusion of PEPPER schemes		
		Specific laws & year of introd.	Tax benefits	Prevalent types	No. of schemes/ firms involved	Employees involved	Employee benefits or profit share/employee
BELGIUM	Mainly unfavourable, but today discussed	Various, but only on ESO (since 1982), including SO (1984)	Rather limited, especially for SO	ESO	Around 20 quoted companies	On average 5% (varying from 1-28%)	Shares reserved for employees: 4% on average of total shares issued
				CPS	Multinationals Insurance Banks Distribution		Around 5% of distributable profits; 8-15% of performance-related pay
DENMARK	Mainly favourable & discussed	On SPS and ESO (since 1958)	Some for SPS (shares or bonds) & ESO	CPS	Min. 50 schemes		
				SPS	20	"	2% of share capital
				BPS	27	"	DKR 3,400 per employee
				ESO	32	"	Less than 2% of total share capital
				Total	200 or more		
GERMANY	Mainly favourable except for CPS; intensively discussed	Some: on DPS (since 1961) & ESO (primarily since 1994)	Minor until 1984, only for DPS & ESO	ESO & DPS	1,600 firms (0.1% of total)	1.3 mln. 80% usually participate	Employee capital: DM 15 bln (only 5% of firms' annual balance)
				PS in general	Max. 5,000 firms, mainly small-scale	5.4% of individuals	6.8% of wages

[63] Source: Social Europe, Supplement 3/91, Commission of the European Communities.

(cont.)

Country	General attitude	Legislation: Specific laws & year of introd.	Legislation: Tax benefits	Diffusion of PEPPER schemes: Prevalent types	Diffusion of PEPPER schemes: No. of schemes/ firms involved	Diffusion of PEPPER schemes: Employees involved	Diffusion of PEPPER schemes: Employee benefits or profit share/employee
FRANCE	Very favourable & intensively discussed	Various: CPS (1959) DPS (1967) SO (1970) ESO (since 1973) Employee invest. funds (1973) EBO (1984) Unique legisl. on all forms in 1986, amended in 1990.	Substantial for both firms & employees	DPS	12,000 firms & 10,200 agreements	4.6 mln. (3 mln. benefitting)	Profit shares on average 3.4% of the wage bill
				CPS	7,000 agreements	1.4 mln.	Profit shares on average 4.1% of the wage bill
				ESO*	350 firms (2/3 quoted)	600,000*	Free distrib. of shares: 3% of the wage bill
				SO	600 quoted companies		
				EBO	10-20 per year in 1980-90		
GREECE	Growing acceptance	Provisions in several laws: on CPS (since 1984) & ESO (primarily since 1987)	Significant for CPS	CPS	Limited; in banking, insurance, clothing, food		Lump sum of GD 30,000 - 50,000
IRELAND	Favourable & discussed	SPS (1982) SO (1986)	Modest	SO	139 schemes	Executives	Probably high
				SPS	104 " All in the private sector	35,000	
ITALY	Not clearly defined, but some forms discussed	Non-existent, except general provisions (1942 Civil Code)	No	CPS	25% of all large firms; 60 private firms in 1988	400,000; applied to 80% of all employees	3% of average earnings (but can be as high as 10% or more)
				ESO	30 quoted companies		Less than 5% of total share capital
LUXEMBOURG	Not clearly defined	Non-existent	No	CPS ESO	22% of firms Mainly in banking		Usually not more than 0.5 - 2 months' salary

*Refers only to free distribution of enterprise shares to employees.

(cont.)

Country	General attitude	Legislation: Specific laws & year of introd.	Legislation: Tax benefits	Diffusion of PEPPER schemes: Prevalent types	Diffusion of PEPPER schemes: No. of schemes/ firms involved	Diffusion of PEPPER schemes: Employees involved	Diffusion of PEPPER schemes: Employee benefits or profit share/employee
NETHERLANDS	Favourable & intensively discussed	Some incentives offered only to CPS	Minor, conditional on freezing of CPS	CPS	6-30% of firms	350,000 in 1975	4.5 - 6.5% of average earnings
				SPS, BPS & SO	Very limited(3% of all schemes)		
PORTUGAL	Not clearly defined & mainly not discussed	Only general provisions on PS & ESO (favourable)	Primarily for PS	Mainly CPS	Limited,but most diffused form. Large firms in finance	Sometimes restricted to executives	
SPAIN	Not clearly defined, but discussed	Only general provisions in Statute of Workers; & EBO (1986)	Minor, except for EBO	CPS	44% of medium & large firms but only in 6% directly linked to profits	2% of salaried employees (often restricted to executives)	Profit-linked payments: 5% of labour costs; in some cases as high as 10-25% of total pay
UK	Very favourable & discussed	SPS (1978) SO (1980) DSO (1984) CPS (1987) ESOPs (1989) ESO (1978 -)	Substantial for both firms & employees	DSO	4,326 schemes		Substantial
				CPS	1,175 "	293,000	7% of employee pay
				SPS	890 "	757,000	2-4% of total wages
				SO	891 "	623,000	
				ESOPs	20 "		
				Total:	7,282 schemes 30% of firms	2 mln employees benefitting	

ANNEX II

EC proposals and measures on employee participation[64]

Measure	Companies affected	Form of representation	Type of employee involvement	Subjects covered	Status
Draft Fifth Directive (1972)	Public limited liability companies with over 500 employees.	Employee representatives on an obligatory supervisory board.	Employee representatives acting as full board members.	All issues dealt with by supervisory board.	Obligatory.
Draft Fifth Directive (1983)	Public limited liability companies with over 1,000 employees.	Choice between: 1) employee representatives on a supervisory board; 2) employee representatives as supervisory non-executive members of a single board; 3) an employee only company-level representative body; 4) a collectively agreed procedure analagous to one of the above.	1) and 2) One-third to one-half employee representatives acting as full board members. 3) Information and consultation rights analagous to those of board-level representatives; 4) Information and consultation rights analagous to one of the above.	In all cases, regular information and consultation on all aspects of the company's situation, progress, prospects etc, and such information as requested.	Obligatory.
Draft "Vredeling" Directive (1980)	Multinational and national firms with subsidiaries employing 100 or more workers.	Existing employee representatives by law or practice (except those on company boards).	Information and consultation.	Regular information on wide range of economic, financial, business and employment issues. Consultation on decisions likely to affect employees' interests.	Obligatory.
Draft "Vredeling" Directive (1983)	Firms with at least 1,000 employees in subsidiaries or undertakings in the EC.	Existing employee representatives by law or practice (except those on company boards).	Information and consultation.	Less frequent information on narrower range of issues than 1980 version. Consultation on decisions likely to affect employees' interests.	Obligatory.
Draft European Company Statute (1975)	"European Companies" set up under EC law.	1) Employee representatives on an obligatory supervisory board; 2) A European Works Council made up of employee representatives.	1) Employee representatives acting as full board members; 2) Co-determination, consultation and information.	1) All issues dealt with by supervisory board (all issues relevant to the management and progress of the company); 2) Co-determination on some employment-related issues. Consultation on important management board decisions. Information on employment, production and investment issues.	Optional. Only applies to organisations which decide to form a European Company.

[64] Source: European Industrial Relations Review, No. 207, April 1991.

(cont.)

Measure	Companies affected	Form of representation	Type of employee involvement	Subjects covered	Status
Draft European Company Statute (1989)	"European Companies" set up under EC law.	Choice between: 1) employee representatives on a supervisory board; 2) employee representatives as supervisory non-executive members of a single board; 3) an employee only company-level representative body; 4) a collectively agreed procedure.	1) and 2) employee representatives acting as full board members; 3) Information and consultation rights analagous to those of board-level representatives; 4) Information and consultation rights analagous to one of the above.	1) and 2) Supervision over management board/ executives. Three-monthly information on management and progress of company, plus other important information as matters arise and as requested; 3) Information as above, and consultation on important decisions; 4) Information and consultation as in 3.	Optional. Only applies to organisations which decide to form a European Company.
"Collective Redundancies" Directive	All undertakings (except public bodies).	Existing employee representatives by law or practice.	Information and consultation.	Information on planned collective redundancies. Consultation on means of avoiding or mitigating redundancies.	Obligatory.
"Transfer of undertakings" Directive	All undertakings.	Existing employee representatives by law or practice (except those on company boards).	Information and consultation	Information on details of a transfer of undertakings. Consultation on measures envisaged relating to the employees.	Obligatory.
Health and safety "framework" Directive	All undertakings (except some public services).	Existing employee representatives by law or practice with specific responsibility for health and safety matters.	Information, consultation and participation.	Information on risks and measures. Consultation on all H & S questions. Participation in discussions on H & S in accordance with national law or practice.	Obligatory.
Draft Directive on European Works Councils (1990)	All undertakings or groups with at least 1,000 employees in the EC, and at least two establishments in different Member States with at least 100 employees each, or at least two group undertakings in different Member States, each employing at least 100.	1) A European Works Council made up of members elected/ appointed by existing employee representatives (or in their absence by employees) *or* 2) Some other arrangement with employee representatives meeting minimum requirements.	Information and consultation.	1) As established by collective agreement; 2) Annual information meeting with management on progress and prospects of business. Consultation on proposals likely to have serious consequences for employees' interests.	Procedures initiated at request of any employees or their representatives, or by management.