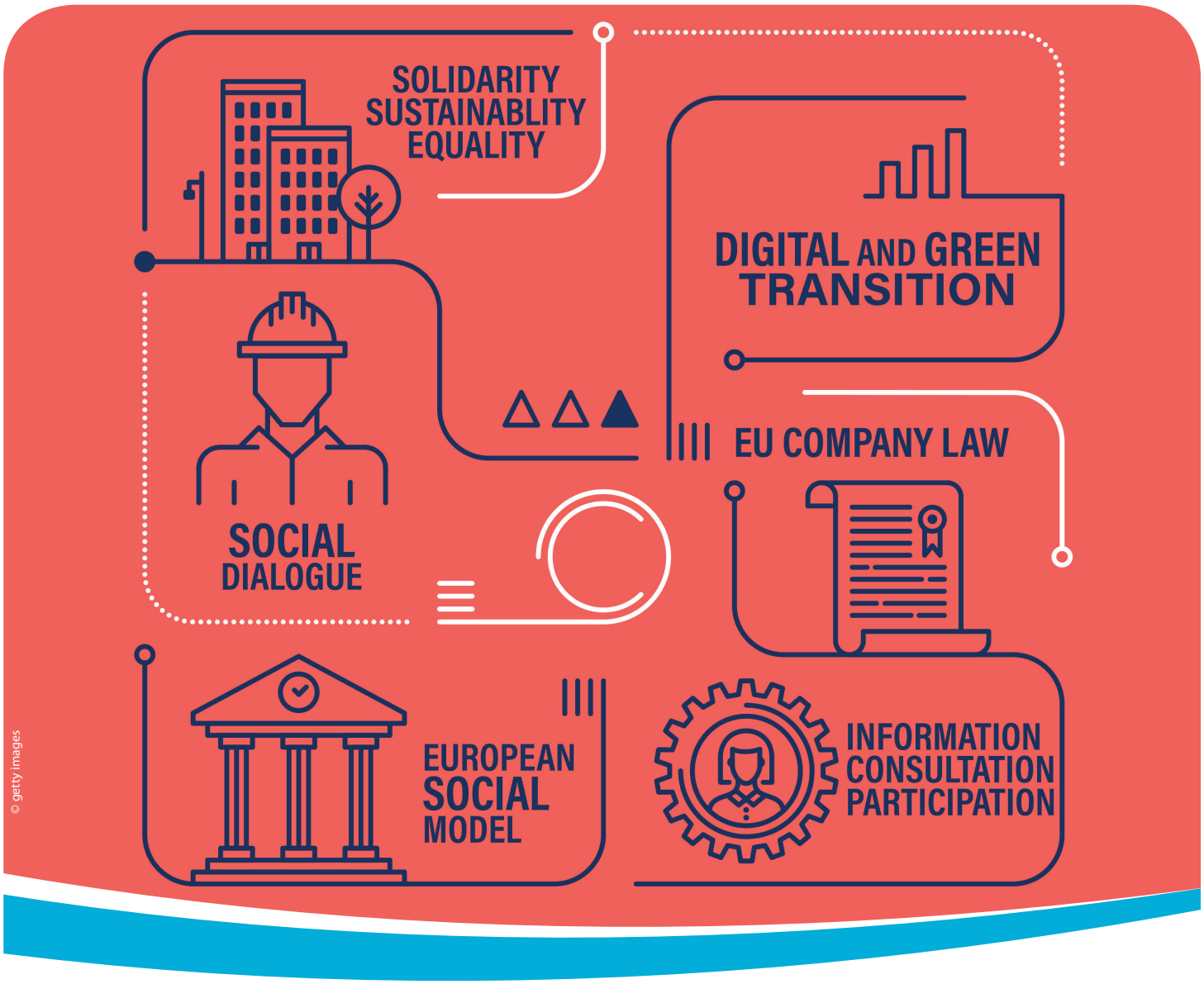


An EU legal framework on safeguarding and strengthening workers' information, consultation and participation

STUDY

European Economic
and Social Committee

An EU legal framework on safeguarding and strengthening workers' information, consultation and participation

Study

General information

STUDY FOR	*The European Economic and Social Committee (EESC)*
REQUESTING SERVICE	*Workers' Group Secretariat*
STUDY MANAGING SERVICE	*Foresight, Studies and Policy Assessment Unit*
DATE	*31 August 2020*
MAIN CONTRACTOR	*wmp consult | Wilke Maack GmbH*
AUTHORS	*Eckhard Voss (wmp consult)* *Valeria Pulignano (KU Leuven)*
CONTACTS	*Secretariat of the Workers' Group* *gr2@eesc.europea.eu*

IDENTIFIERS

		ISBN	doi
STUDY			
print	*QE-02-20-818-EN-C*	*978-92-830-5038-4*	*10.2864/999090*
PDF	*QE-02-20-818-EN-N*	*978-92-830-5037-7*	*10.2864/338155*

For Fernando

The authors would like to dedicate this study to Fernando Vascques, who died so suddenly and much too early in July 2020.

As a legal office at the European Commission until 2014 and since then, Fernando was a passionate fighter for social Europe with strong participation rights for workers at the European level. Wherever possible, he supported the social partners in promoting the European social dialogue.

We appreciated it very much that Fernando also participated in the meetings of the expert group that monitored our study and provided important and inspiring comments to our work. One of his suggestions was to call 2021 the year of "Workers' Participation in Europe".

We will sorely miss him!

ABSTRACT

The study provides an overview of the current state of workers' information, consultation and (board-level) participation in the European Union which are a key element of the Social Model as enshrined in the EU Treaties and a comprehensive body of secondary law. Besides analysing the current state of play regarding legislation and practice of workers information, consultation and participation, the report includes case studies on those countries that hold the Council Presidencies between 2020 and 2022 (Croatia, Czech Republic, France, Germany, Portugal, Slovenia). Both from the top-down as well as bottom-up perspective, the current state of workers' voice and involvement in corporate decision-making is far from fit-for-purpose as regards core functions and tasks and recent EU company law reforms are likely to worsen the situation even further. Therefore, the legal framework is insufficient in relation to mastering the challenges that are related to the digital and green transition processes and the change towards more sustainable and resilient economies, labour markets and societies. Based on research evidence as well as concrete cases that illustrate the added value of democracy at work for workers and the business, the study presents concrete proposals and recommendations for a strengthened EU legal framework.

Contents

EXECUTIVE SUMMARY

Context and objectives of the study

The COVID-19 pandemic that has hit the world at the beginning of 2020 so suddenly changing our daily social life, our work and the entire economy from one day to another in an unprecedented way. The COVID pandemic illustrates that the future of working and doing business in Europe is deeply linked to global developments and risks.

It is also very evident that those most hit by global economic, health and climate change related crises are the vulnerable and disadvantaged groups of our societies - those living in poverty and without any social protection, political and climate refugees, those in precarious employment conditions (in particular women).

Increased uncertainties about the future of our societies have fuelled a rise in nationalism and populism, which increasingly threatens to overturn democratic values and undermine social and political stability. Therefore, there is an urgent need to develop more sustainable and resilient economies, labour markets and democracies.

However, the transition towards greener and more sustainable economic paradigms, the restoration of trust in democratic values and institutions will not be possible without strong measures that reverse trends of increasing social inequality of income and opportunities and the erosion of social cohesion. There will be no 'Green Deal' without a 'Social Deal' and transitions need to be just. Not only as regards the future of work in a global scale, there is a need for a more human-centred approach that has been demanded for example by the ILO's Centenary Declaration for the Future of Work that was adopted in 2019. A key component of such an approach is social dialogue, including collective bargaining and tripartite cooperation. These are essential for democracy and good governance at national as well as corporate level.

Though enshrined in the European Treaties and EU secondary law, the current state of information, consultation and social dialogue outcomes at various level are far from satisfactory when it comes to making an impact and influencing public policies or corporate practices and decisions. The general trend – as illustrated by secondary law and EU jurisdiction – has been to put into question key rights in the field of freedom of coalition, industrial action and the autonomy of social partners.

The current EU legislative framework in the field of company law and workers' rights lacks concrete references and sanction mechanisms in case of abusive and fraudulent practices, e.g. in the field of cross-border service provision or posting. Also, the 2019 company law package to favour stronger cross-border mobility of companies in the EU is very silent as regards a sustainable guaranteeing of workers' information, consultation and board-level participation rights, which are tied to the registered seat of the company. And though the European Pillar of Social Rights that was launched in 2017 addresses social challenges and needs, it does not delivery significant initiatives aiming at strengthening workers' information, consultation and participation rights.

Against this background, the study for the EESC Workers Group aims at analysing the current state of play regarding the legislation for workers, and provide recommendations on how to create a common

EU framework to ensure workers' participation and democracy at work, in line with the aforementioned needs for a rebalancing social, labour and economic policies.

The study consists of two principle research tasks: First, taking stock of the existing legislative framework of workers' voice that currently exists at EU level and systematically screen and evaluate existing evidence and knowledge about strengths and weaknesses as well as 'blind spots' of regulation. This is down both from the EU level perspective as well as from the national perspective the six current and upcoming Council Presidencies in 2020 to 2022: Croatia, Germany, Portugal, Slovenia, France and the Czech Republic.

Building on this, the study secondly elaborates recommendations for ongoing and upcoming political debates about the better balancing of economic and social policies and orientations in the common European market and in the context of managing the digital transformation and implement climate policy goals.

The report is based on three key sources of information: Apart from desk research, including an analysis of relevant studies, opinions and other documents of the EESC, an important source of information were interviews and/or exchange with national members of the EESC Workers' Group from the six countries mentioned above between April and June 2020. A third important source of information has been meetings with members of the "European Expert Group of Workers Participation" that was organised by the Hans-Boeckler Foundation.

As regards the **current legal framework of workers' information, consultation and participation rights** (*chapter 2*) are reflected in various European legal sources dating from different historical periods. European secondary law during the last thirty years has established a diverse patchwork of nearly forty Directives stipulates a regulatory framework.

Workers' information, consultation and participation rights are reflected in various European legal sources dating from different historical periods. Based on the Charta of Fundamental Rights of Workers and the TFEU, European secondary law during the last 30 years has established a diverse patchwork of nearly 40 directives stipulates a regulatory framework for information and consultation of workers. This framework encompasses directives providing for workers' information and consultation rights as well as minimum floors of rights in the field of employment law, transnational specific circumstances related to cross-border restructuring and health and safety issues.

As regards basic information and consultation rights, crucial pieces of EU legislation are the directives establishing certain minimum rights of workers for information and consultation, e.g. the Directive establishing a general framework for informing and consulting employees (2002/14/EC), the Directive on collective redundancies (98/59/EC) or the Directive regarding transfer of undertakings (2001/23/EC).

Though they must be transposed and interpreted by the national legislator in conformity with the respective EU Directives, ECJ case law as well as implementation studies by the EU Commission show information and consultation in practice is treated as a principle but not as a direct and immediate right. This might be a reason for the fact that currently only about one out of two workers in the European are covered and represented by workplace level interest representation bodies. There is also significant

variance, ranging from high coverage in the Nordic countries to very low in Central and Eastern European countries.

The imbalance of workers' information and consultation is a well-known fact and problem that has been repeatedly highlighted by European trade unions, the EU Parliament as well as the EU Commission. Assessments run by the European Commission itself concluded to the deficiencies in how companies meet their obligation to inform and consult worker representatives before a decision is made, and to the inappropriate response provided by existing EU instruments.

Apart from providing for a minimum floor of protection standards and rights at national level, European regulation has also defined certain minimum standards and institutions at transnational level. Such provisions were made by the Directive on European Works Councils on information and consultation in transnational companies and the SE Directive supplementing the Statute for a European Company Regulation on workers participation at the board level.

Also as regards the current EWC and SE directives studies and implementation analyses have shown that the framework is not functioning in accordance with the spirit of the EU legislator: Of the around 1,000 EWCs that exist in the EU, the vast majority are more or less 'symbolic institutions' that do not function well in terms of quality information and consultation, not having any impact on corporate decisions on transnational restructuring and change. Case studies and larger surveys amongst EWCs have also shown that also the recast of the EWC Directive in 2009 though providing for improvements has had quite little effect on the practice and functioning of EWCs in general.

In contrast to the EWC Directive, the SE Directive does not establish a uniform right of workers board level representation in the EU but is based on the "*before and after*" principle. This increasingly has become a problem, as the legal form of the SE has been used by companies to circumvent or reduce workers board level participation. In Germany for example, it is estimated that at least two million workers currently are not covered by statutory rights of parity workers participation due to avoiding participation by making use of the legal form of the SE and the possibility to "freeze" participation rights.

Also, soft-law initiatives such as the "Quality Framework for the Anticipation of Change and Restructuring" in 2013 and more recently the European Pillar of Social Rights in 2017 have not brought any significant progress as regards more effective information and consultation of workers in transnational restructuring. And on workers' participation in company boards nothing has happened at all.

More, recently the two Directives that were passed in the context of the EU Company Law Package in 2019, felt short of any expectations to avoid corporate legal engineering and artificial constructions such as letterbox companies with the sole purpose of avoiding workers participation. While there is a provision to protect workers' board-level representation rights in cases of cross-border conversions, mergers and divisions, such protection is temporary limited to four years. Furthermore, workers participation at board-level will only be preserved if one third of the workforce had participation rights before the transnational reorganisation and there is no provision that rules out corporate practices using the '*before and after*' principle to avoid stronger participation rights.

As regards **key current and future challenges** the EU as well as individual Members States are facing, the study report with reference to a large variety of good practices shows (*chapter 3*) that strong workers involvement and participation in corporate boards and decision making contributes positively to successful management of change and corporate strategies and practices that are sustainable and just.

With view on key challenges such as protecting and strengthening the social model of inclusive, plural and democratic societies, corporate due diligence for workers' rights and just transitions as regards climate policy and managing the digital transition process, the shows that workers' information, consultation as well as participation at company, local and national as well as transnational level has a positive impact. Both practice examples as well as research evidence illustrate that workers voice and workers participation not only benefits workers and their families but creates win-win situations that are good for the business as well as for the whole society.

Here, the study is in line with opinions and statements of the EESC as regards the positive contribution of democracy at work for resilient democratic and inclusive societies. Both are mutually reinforcing, and sound information, consultation and participation rights have a positive effect on social, economic and gender equality. This effect is not only visible in national contexts but also in relation to corporate due diligence in global supply chains and corporate responsibility. Workers and trade unions at national and transnational level have been strong promoters for transforming the overwhelmingly voluntary international frameworks into legally binding instruments of corporate human rights obligations and due diligence. Here, trade unions and the EESC alike are active promoters of a strong European initiatives to implement corporate human rights due diligence.

As illustrated by several practice examples from different EU Member States as well as company level cases, trade unions as well as strong information, consultation and participation of workers in corporate decision making contributes to developing suitable and efficient practices in the context of coping with climate policy challenges and managing the digital transition process in a way that is leaving nobody behind and is socially just in terms of specific groups of workers, business and regions. Also, here, there is a strong coincidence of positions and demands of European trade unions and EESC opinions calling for a more resilient and sustainable economic model and the concept of socially just transition pathways.

The **national analysis of functioning and practices of information, consultation and workers' participation rights** in the six focus countries of the study (*chapter 4 and annex*) strongly confirms the shortcomings of the current EU regulatory framework. Despite the significant differences that exist between the national cases in terms of industrial relations models, traditions, structure as well as social partner organisations and their practices of social dialogue and collective bargaining, trade unions in all countries have raised strong concerns about the current situation at national level as well as the role of the EU regulatory framework.

As illustrated by the national cases of ***Croatia***, ***Portugal*** and the ***Czech Republic***, there are significant problems as regards the implementation and respect of very basic workers rights in the field of information and consultation. In fact, against the background of adversary economic developments, lack of efficient sanctions, weak enforcement of legal obligations and reduced resources of labour inspectorate, the situation in recent years has worsened.

Also trade unions in ***Slovenia*** have highlighted a number of challenges that the current legal framework of workers' information, consultation and participation in facing and that needs to be addressed by policy reform and better implementation.

In relation to the quite significant recent labour law reforms in ***France***, trade unions have criticised that in terms of available resources as well as new practical arrangements, the reforms have weakened workers voice and influence on corporate practices and policies. The reforms not only have weakened the capacity of workers representation bodies (e.g. in the field of health and safety) and trade unions but also have introduced new possibilities for employers to implement strategic decisions with adequate consultation of workers.

It also must be noted that trade union representatives in all six countries regard the current EU level framework as generally weak and not fit for purpose in order to guarantee effective information, consultation and participation of workers at the board level.

This relates both to the EWC Directive that despite the recast is not functioning well and to the SE Directive and the provision of workers representation at board level. As regards the latter, in particular trade unions in ***Germany*** – based on rich research evidence – have highlighted the urgent need to for a general framework of board-level employee representation in order to avoid practices using the provision of the current SE framework for circumventing or avoiding board-level workers representation.

With view on current and future challenges in relation to just and sustainable transition policies and corporate practices in the light of climate policy goals and digitalisation, the report finds that the current framework at EU and national cannot be regarded as fit for purpose. Interviewees at national level therefore have stressed the need for improving the current EU level framework of workers' information, consultation and participation at board level. Furthermore, and addressing current and future EU presidencies trade unions demand their governments to be more ambitious and address such issues by own initiatives (e.g. human rights due diligence, workers board level participation).

Building on the key findings of the analysis, the study reports identifies several needs and requirements: First of all, it is quite evident that there is a need to strengthen the EU legal framework of information, consultation and workers' participation. The current framework is only partly effective in order to implement its own objectives. As regards workers board level participation, practice has shown that it is even used for practices that are just the opposite of the original intention of the legislator.

The current framework also needs to be improved in order to make it fit for purpose in the age of digitalisation and the greening of our economies. Here, the canon of information, consultation and participation rights need to be extended in order to be efficient.

Above that and against the plenty of research evidence that strong workers' information, consultation and participation not only increases job and employment security in crisis situations but also contributes to corporate strategies that are more resilient, better prepared to anticipate and manage change and longer term investments in sustainable growth paths, democracy at work and stronger workers participation not only should be protected and implemented better but should be promoted more stronger.

Such a stronger EU framework should include the following in particular:

- A "mainstreaming of workers participation" as a cross-cutting structural element in all European legislation and initiatives that have an impact on working and living conditions;
- a regulatory framework that guarantees early information and consultation of workers;
- an EWC Directive that better matches current realities and future needs of transnational restructuring and provides the EWCs with necessary resources and competences;
- a level playing field of workers' board level participation and an approach that actively develops and promotes a mandatory minimum floor of participation rights and dynamic European minimum standards of representation rather than engaging in strategies to avoid such rights (as in legislative initiatives of past);
- a binding EU legal framework on due diligence and responsible business conduct with a strong workers involvement component.

STUDY

1. INTRODUCTION

1.1 Context of the study

The future of working and doing business in Europe is deeply linked to global developments and risks: extended and deepened globalisation of trade, supply chains and corporate practices; the global nature and impact of digitalisation, automation and robotisation; global climate change and related risks that no country can escape because there will be no life, no jobs and no enterprise on a ruined planet.

On top of this, additional global risks and challenges have emerged. The COVID-19 pandemic that has hit the world at the beginning of 2020 so suddenly changing our daily social life, our work and the entire economy from one day to another in an unprecedented way. The impact of the COVID-19 crisis will remain the number one priority for policymakers and social partners in Europe and other continents in the foreseeable future with significant effects on the global and national economies and societies of a scale and direction that can hardly be anticipated right now.

In June 2020, European business and workers faced the massive social and economic consequences brought by the pandemic. Despite unprecedented economic rescue measures aiming at cushioning the effects of the lockdown on jobs and companies, the economic forecast depicted the most worrying picture. According to the European Commission economic forecast of spring 2020, the EU's GDP would shrink by 7.4% in 2020 and the unemployment rate would increase from 6.7% to 9%.[1] This means that in absolute terms, 5.2 million workers would lose their jobs in 2020, bringing the number of unemployed to 19.6 million, an increase of 36%.

What is very evident is that there are parallels between global crises such as COVID-19, the 2008 global financial and economic crisis and environmental disasters such as droughts, floods or plagues of locusts: Most hit are the vulnerable and disadvantaged groups of our societies - those living in poverty and without any social protection, political and climate refugees, those in precarious employment conditions (in particular women).

Despite all uncertainties about the future, there is hope that COVID-19 may accelerate a process of critical questioning our patterns of production and consumption as well as social and welfare policies. This need has become already evident from the 2008 crisis that resulted from financial deregulation in order to stimulate economic growth that lacked any sustainability, focussing too narrowly on GDP growth with devastating effects on sustainability, financial stability, resilience, social equality and inclusion.[2]

The 2008 crisis as well as the current pandemic reveal several vulnerabilities and risks, in the field of emergency and health infrastructures and policies, supply chain management, critical goods and

[1] European Commission: Spring 2020 Economic Forecast: A deep and uneven recession, an uncertain recovery. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_799.

[2] EESC NAT/765 (The sustainable economy we need). See also: OECD 2018: For Good Measure: Advancing Research on Well-Being Metrics Beyond GDP, OECD Publishing, Paris.

services. Therefore, measures to reduce economic and social vulnerability and to increase resilience in the world of work and business developed and implemented at European and national level are key.[3]

Such change also is necessary in to maintain key European values and social peace: Recent years have also shown that increased uncertainties, economic disparities, growing inequalities on the labour market as well as migration and globalisation has led to a loss of citizens' faith in national and European policies. This has fuelled a rise in nationalism and populism, which now threatens to overturn democratic values and undermine social and political stability.

More sustainable and resilient economies, labour markets and democracies as both means and objectives of change and reform projects and "deals" have emerged as key orientations at UN, OECD and European level as well as in many member states in recent years. A further key term that has emerged in this context, in particular in relation to environmental and technological change projects is "just transition" meaning not only that nobody should be left behind but also that trends of increasing social inequality of income and opportunities, the erosion of social cohesion and trust in political institutions and democracy need to be reversed.

This study aims at shedding a light on the important role of social dialogue, information, consultation and participation of workers and their representative organisations in the context of just transitions and addressing the main current and future challenges.

The key argument is that a strong involvement of workers in business decisions not only is good for the business case but also is contributing positively to a successful management of change, the implementation of digital, environmental/climate neutral transition projects. Strong democracy at work as well as active involvement of workers and trade unions in business (through a variety of "functional equivalents" such as strong workplace and company related information, consultation and negotiation; workers participation in boardrooms; collective agreements at company, sector and cross-industry level and/or binding tripartite social dialogue outcomes) also contributes to sustainable and ethical business conduct, reduction of risks and efficient due diligence practices as well as sustainable and resilient business models and what has been labelled recently as "economic wellbeing".[4]

The International Labour Organisation's Centenary Declaration for the Future of Work[5] highlights the need for a human-centred approach to the future of work and emphasized that social dialogue, including collective bargaining and tripartite cooperation, contributes to successful policy and decision-making in its member states. A Resolution adopted by the International Labour Conference in June 2018[6] stressed that social dialogue and tripartism are essential for democracy and good governance and that social dialogue plays an important role in shaping the future of work, considering particular trends of globalization, technology, demography and climate change.

---

3 EESC ECO/492 (Towards a more resilient and sustainable European economy).

4 Council Conclusions on The Economy of Wellbeing, 17 October 2019.

5 ILO Centenary Declaration for the Future of Work, adopted by the ILC at its 108th session, Geneva, 21 June 2019.

6 ILO, Resolution concerning the second recurrent discussion on social dialogue and tripartism, adopted by the ILC at its 107th session, June 2018.

Though the EU and some Member States played a key role in negotiations for the ILO Centenary Declaration and regards social dialogue as a key feature of the European Social Model[7], the current state of information, consultation and social dialogue outcomes at various level are far from satisfactory when it comes to making an impact and influencing public policies or corporate practices and decisions.

Enshrined in the European Union Treaties, European primary law promotes social dialogue (Art. 151 TFEU), recognises the role of social partners (Art. 152 TFEU) and guarantees the right of workers to information and consultation (Art. 27 of the Charter of Fundamental Rights of the European Union). However, the current body of secondary law that establishes and guarantees by EU Directives certain minimum rights as well as new transnational rights and frameworks of information, consultation and (board level) participation rights has evolved since the 1970s, whereby most of the major legal regulations having been introduced in the 1990s and early 2000s. In terms of secondary EU law, and apart from consolidation of existing legal frameworks, there has been little activities during the last two decades.

At the same time, the last two decades have been characterised legal developments and EU jurisdiction such as the controversial Viking and Laval cases in 2007 that put into question key rights in the field of freedom of coalition, industrial action and the autonomy of social partners. Also, in other decisions the European Court of Justice (ECJ) indicated that rights such as the freedom of establishment or the freedom to provide services are valued higher than workers' protection rights. And what perhaps is even more worrying is that ECJ rulings and legal regulation have not been able to sanction fraudulent practices and social dumping (e.g. in the field of posting of workers) or business practices of regime shopping or regulatory arbitrage in order to avoid or reduce workers' information, consultation and board-level participation rights as in the case of many companies that have converted their legal form on the basis of the *Societas Europaea* (SE) Statute.

Furthermore, and as highlighted in a recent study[8] the current EU legislative framework in the field of company law and workers' rights lacks concrete references and sanction mechanisms in case of abusive and fraudulent practices, e.g. in the field of cross-border service provision or posting.

And very recently, the law initiatives (including the 2019 European Company Law Package) to favour stronger cross-border mobility of companies in the EU are very silent as regards a sustainable guaranteeing of workers' information, consultation and board-level participation rights, which are tied to the registered seat of the company.

In contrast to measure that foster transnational mobility of companies and service provision as well as further liberalisation of the common EU market, initiatives at EU level to correct the imbalances between economic and social policies so far have focussed very much on social policy and labour market initiatives that were also a reaction to growing inequality, high unemployment and the rise of anti-European populism in many countries.

---

7 See European Commission 2002: The European Social Dialogue: A Force for Innovation and Change (COM (2002) 341), where it is stated that "social dialogue is rooted in the history of the European continent, and this distinguishes the Union from most other regions of the world."

8 See for example Cremers, J. 2019: EU Company Law, artificial corporate entities and social policy, Brussels, ETUC.

The flagship initiative of the EU Commission in this context was and is the European Pillar of Social Rights that was launched in 2017 under the previous EU Commission. Under the umbrella of the Pillar of Social Rights so far, some legislative initiatives and policy packages in the field of labour law, social protection, training and skills and other areas have been carried out; further will come under the current EU Commission. However, the Pillar is remarkably silent when it comes to any new measures aiming at strengthening workers' information, consultation and participation rights. Furthermore, as previous assessments of the EESC Workers Group and the EESC have shown, initiatives to strengthen social dialogue at EU as well as national level overall are addressed in a very vague and weak way.[9]

One of the political objectives of the previous EU Commission was to correct the marked imbalance between economic and social policies that has emerged in recent decades, triggered namely by global and European financial crises after 2008 and common market liberalization measure that were lacking regulation on social provisions. Apart from the launch of the European Pillar of Social Rights launched 2017, the Commission also carried out a number of further initiatives related to information, consultation as well as social dialogue. However, such initiatives mainly had a proclamatory or informal character (such as the launch of the "New Start for Social Dialogue" in 2015 on the occasion of celebrating the launch of EU level social dialogue at Val Duchesse thirty years ago in 1985) or consisted of impact assessments or evaluations (e.g. General Framework Directive 2002/14/EC[10], Recast EWC Directive 2009/38/EC[11], EU Quality Framework of Anticipation of Change and Restructuring[12]) without any concrete consequences in terms of adjusting the existing frameworks and regulation to new needs and the big challenges of our time. Just to highlight the most prominent and pressing questions:

- How to slow down climate change and manage a just and fair transition towards a carbon-neutral and more sustainable economy?
- How to manage digitalisation of the economy and our society in a way that does not result in new divides (both within our societies and between countries and regions), labour market and social polarisation and disintegration?
- How to make progress on gender equality and a better gender balance at all levels of management and leadership positions in public and private companies as well as boardrooms?[13]
- How to develop a model of corporate governance that not only facilitates financial and short-term shareholder interests but fosters longer-term investment strategies and stakeholder interests that would benefit both the competitiveness of European companies as well as broader societal interests?[14]

---

9 EESC Opinion: https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-pillar-social-rights; own initiative opinion: https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/better-implementation-social-pillar-promoting-essential-services-own-initiative-opinion; Study on behalf of the EESC Workers Group: https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/implementing-european-pillar-social-rights-what-needed-guarantee-positive-social-impact

10 European Commission: 'Fitness check' on EU law in the area of Information and Consultation of Workers. Commission Staff Working Document. Brussels, 26.7.2013. SWD (2013) 293 final.

11 EU Commission: Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), Brussels, 14.5.2018 COM (2018) 292 final.

12 https://ec.europa.eu/social/main.jsp?catId=738&langId=de&pubId=8153&furtherPubs=yes

13 EESC SOC/475 (Gender balance on company boards).

14 EESC NAT/765 (The sustainable economy we need).

- How to redefine corporate social responsibility in the age of extended and deepened globalisation and how to make corporate due diligence as regards local impacts and supply chains more efficient?
- And, finally but most important, how to make our European Social Model that is based on common values such as social inclusion and economic cohesion, solidarity, diversity and equal opportunities more resilient against nationalist and racist populism and their vanguards in social movements, parliaments and governments?

Workers voice at various level of company decision making from the workplace-level to the board room level of highest decision making needs to be a substantial element of the search for answers to these questions. This not only results from the fact that democracy at the workplace is a core element of the of the European Social Model and provided by EU primary and secondary law. It also results from lessons learned in the past. During the 2008/2009 global and financial crisis and the Eurozone debt crisis the countries with a strong and robust system of workers voice, social dialogue and with the capacity to base structural adjustments on negotiated and consensual rather than decreed and government-only led solutions proved to be more resilient in terms of economic and labour market stability and recovery.

Currently and with COVID-19 we are facing an economic and social crisis that will have a much stronger negative impact on companies and labour markets in Europe with many uncertainties regarding the point in time of recovery. This will not only require an unprecedented financial rescue package. The current crisis has also uncovered many structural deficiencies and problems in our economy and society. Those hit most by the crisis across all national differences are people facing poverty, poor, workers involuntary trapped in precarious and hyper-flexible terms of employment, those without proper social security protection, migrants and refugees.

As highlighted at the end of June in a joint letter of the ETUC and the European sectoral trade union federations (ETUFs),

"*We believe it is no longer time for exchanging good practices, but for the European Commission to deliver concrete and rapid actions to guarantee the effective enforcement of EU workers' rights to be informed, consulted and to participate in decision-making before any decision is adopted. (…) Much more urgently needed though is for the European Commission to publicly reaffirm that the socio-economic impact of the COVID-19 crisis on jobs, working conditions, companies and public services sparks the obligation for management to launch national and transnational information and consultation processes with worker representatives at the earliest convenience. Time is running short and we insist on the urgency of the situation: the COVID-19 related massive restructuring plans have already started. Timely and quality social dialogue in the workplace remains the only way out of the COVID-19 crisis in a socially responsible manner*."[15]

The huge task of economic recovery therefore needs to be managed in a way that combines it with two other tasks that are also of paramount importance: First, to addresses the structural problems that have emerged during the last decade and that have contributed very much to social disintegration and political erosion and secondly challenges and tasks related to contain climate change and foster decarbonisation

[15] ETUC, industriAll, UNI Europe, EFFAT, EPSU, ETF, EFBWW: Joint Letter to Nicolas Schmitt, Commissioner for Jobs and Social Rights, 26 June 2020.

as well as manage the digital transition process. Both will not work without a strengthened and improved framework of information, consultation and participation of workers.

Recovery and transitions must be just and fair. If so, the result could be a better Europe based on a social model that is attractive for other world regions. If not, existing structural deficiencies will be reinforced and intensified.

A strong and robust European framework of information, consultation and workers participation needs to be an important element for developing just and fair paths of reconstruction and the future of work and doing business in Europe. This is also because workers' information, consultation and participation have proofed to be beneficial not only for those who are directly concerned but for the civil society and the economy as such:

As regards the society, trade unions the institutional levers for fair balance of interests and to establish practical solidarity with democratic participation and on an equal footing. This is their contribution to strengthening social welfare, security and democracy. That is the advantage of lived social partnership.

With view on the economy, trade unions, through involvement at all levels, including through participation and co-determination in company boardrooms, are involved in the creation of high-performance, competitive and more resilient companies, based on participation and the balance of interests. It is now a question of using trade union tools of collective agreement, the exercise of co-determination also in supervisory boards and in some EU-member states by participation in the chambers of labour or in tripartite social and economic committees) in order to set the course for sustainable companies with prospects for good work and good income in livable and healthy environments.

Thus, whether it comes to the digital transformation process, the "Green Deal" or the COVID-19 recovery labelled as "Next Generation EU", these will only be successful if it is combined and in fact based upon a "Social Deal".

From a socio-political point of view, it is a matter of regarding workers as subjects of shaping the future – and not only as objects who need to be adapted to predetermined new conditions.

1.2 Objective of this study

Against this background, this study is aiming at analysing the current state of play regarding the legislation for workers, and provide recommendations on how to create a common EU framework to ensure workers' participation and democracy at work, in line with the aforementioned needs for a rebalancing social, labour and economic policies.

The study for the EESC Workers' Group contains two principle research tasks:

- *First*, taking stock of the existing legislative framework of workers' voice that currently exists at EU level and systematically screen and evaluate existing evidence and knowledge about strengths and weaknesses as well as 'blind spots' of regulation.
- *Secondly*, and based on policy analyses, elaborating recommendations for ongoing and upcoming political debates about the better balancing of economic and social policies and

orientations in the common European market and in the context of managing the digital transformation and implement climate policy goals.

In doing this, the study addresses both already existing regulation and identify weaknesses as well as highlight needs for action and new or extended regulation in fields where workers' voice and stakeholder involvement so far is not regulated at all at EU level, e.g. in the field of due diligence, corporate climate policy or the impact of digitalisation on terms and conditions of employment and work at company level.

Topics that will be addressed by the study from the perspective of strengthening information, consultation and participation of workers are the following:

- Anticipation of change and managing restructuring and recovery
- Economic competitiveness, due diligence and risk assessment
- Globalisation, global values and global trade regulation
- Climate change, sustainability and just transitions
- Shaping a fair digital transition process in the economy and society
- Social inclusive, plural and democratic societies, including democracy at work
- A different and better approach and system of corporate governance that contributes to decent work and income in sustainable locations with liveable and healthy environments.

The gender and more generally diversity equality perspective is integrated as a cross-cutting issue on all the topics addressed by the research.

Workers Voice for creating sustainable companies is a contribution to implement practically "Just Transition" and to complement the EU Commission's 'green deal' by making it clear that the 'green deal' can only be beneficial in an understanding, in order to achieve a social agreement aimed at creating benefits for workers who are also citizens in their workplace. (referring to the fundamental right to information and consultation enshrined in the EU Treaties or the EU Charter of Fundamental Rights.)

Overall, the study aims at providing policy recommendations in the field of company and labour law as well across other relevant fields of action, also in anticipation of relevant initiatives that are likely to be developed under the current and upcoming Council Presidencies in 2020 - 2022 (Croatia, Germany, Portugal, Slovenia, France and the Czech Republic).

Apart from managing the recovery from the COVID-19 crisis, the big theme of these presidencies will be the "Green Deal". As mentioned above, this generational project will not be possible without creating sustainable companies and just transitions. And both will require a social agreement aimed at creating benefits for workers who are also citizens in their workplace.

As regards the countries mentioned, the study applies a two-fold approach of top-down and bottom-up analysis: From the top-level perspective, the study consists of a gathering and summary of existing evidence and information on the current legal framework of workers' information, consultation and (board-level) participation at EU level (chapter 2) and a portraying of key current and future challenges (chapter 3). From the bottom-up perspective, the study includes an analysis of key economic and social challenges, the state of information, consultation and workers participation and key recommendations

emerging from the perspective of labour and workers voice from the angle of the six countries mentioned above (chapter 4 and in more detail country profiles in the annex). The concluding chapter 5 summarises key emerging policy recommendations and possible avenues for further action as arising from the different parts of the analysis.

In terms of methodology, the study is based on three key sources of information: First, an extensive desk research and analysis of a vast amount of literature and documents on the topics, including relevant studies, opinions and other publications of the EESC. A second important source of information were interviews and/or exchange with national members of the EESC Workers' Group from Croatia, Germany, Portugal, Slovenia, France and the Czech Republic between April and June 2020. In some cases, these interviews were complemented by interviews and/or exchange with members of the ETUC Workers' Participation and Company Policy Committee.

A third source of information that also proved to be very important for sharpening the analysis and contributing to this study has been meetings with members of the European Expert Group of Workers Participation that is organised by the Hans-Boeckler Foundation. During the elaboration of this study two meetings of the Group took place (February and April 2020) providing suggestions and input to the research. Experts of the Group also provided valuable input and suggestions on draft versions of this report.

2. TAKING STOCK OF THE CURRENT FRAMEWORK OF WORKERS' INFORMATION, CONSULTATION AND PARTICIPATION

2.1 The European regulatory framework

Europe and the European Union have a long history of political commitment to workers' rights in company decision making that concerns their jobs and working conditions. This history starts with the European Social Charter in 1961, the Social Action Programme in 1974 and the Community Charter of the Fundamental Social Rights of Workers in 1989. These were important political initiatives towards enabling workers' voice at the European level. The European primary law promotes social dialogue (Art. 151 TFEU) and recognises the role of social partners (Art. 152 TFEU). Art. 27 of the Charter of Fundamental Rights of the European Union (EU Charter) guarantees the right of workers to information and consultation. Thus, there can be no doubt therefore that involvement of employees and the collective right for information, consultation and participation of workers is a substantive part of the legal framework of European democracy.

Also, the European Pillar of Social Rights (EPRS) that was proclaimed at the Social Summit in Gothenburg in 2017, includes a reference to workers' information and consultation rights. Article 8 states: "*Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies*".

Workers' information, consultation and participation rights are reflected in various European legal sources dating from different historical periods. Based on these fundamental rights, European secondary law during the last 30 years has established a diverse patchwork of nearly 40 Directives stipulates a regulatory framework for information and consultation of workers (see table 1 below).

Table 1. Legal provision for the information and consultation of workers in Europe

Charter of the fundamental Rights of Workers 1989	Treaty on the Functioning of the EU 2009	**Employment law**	Framework of Information and consultation	DIR 2002/12/EC
			Employment contract	DIR 91/533/EEC
			Temporary agency work	DIR 2008/104/EC
			Fixed-term work	DIR 1999/70/EC
			Part-time work	DIR 97/81/EC
			Transfer of undertakings	DIR 2001/23/EC
			Collective redundancies	DIR 98/50/EC
		Transnational specific circumstances	European Works Councils	DIR 2009/38/EC
			Societas Europea (SE)	DIR 2001/86/EC
			European Cooperative Society	DIR 2003/72/EC
			Takeover bids	DIR 2004/25/EC
			Cross-border mergers	DIR 2005/56/EC
			Documentation of merger and divisions	DIR 2009/109/EC
			Certain aspects of company law (incl. cross-border mergers, restructuring and insolvency)	DIR 2017/1132/EC
			Preventive restructuring frameworks	DIR 2019/1023 EC
			Cross-border mergers, conversions and divisions	DIR 2019/2121
		Health and safety	Framework for Health and Safety	DIR 89/391/EEC
			Minimum standards	DIR 89/654/EEC
			Work equipment	DIR 89/655/EEC
			Personal protective equipment	DIR 89/656/EEC
			Manual handling	DIR 90/269/EEC
			Display screen equipment	DIR 90/270/EEC
			Carcinogens	DIR 90/394/EEC
			Biological Agents	DIR 90/679/EEC
			Mobile construction sites	DIR 92/57/EEC
			Safety and health signs	DIR 92/58/EEC
			Pregnant and breast-feeding workers	DIR 92/85/EEC
			Drilling	DIR 92/91/EEC
			Mining	DIR 91/104/EEC
			Fishing vessels	DIR 92/104/EC
			Chemical agents	DIR 98/42/EC
			Vibrations	DIR 2002/44/EC
			Noise	DIR 2003/10/EC
			Electromagnetic fields	DIR 2004/40/EC
			Artificial optical radiation	DIR 2006/25/EC
			Work-related stress	European Framework Agreement
			Harassment	European Framework Agreement

Source: Authors.

Informing and consulting employees is not only provided for at national level – including in the area of SMEs – on the basis of EU law, but also at transnational level, where the possibility of workers participation in company boards is standard in European companies (SE) and European cooperative societies (SCE), is also used. Numerous other EU directives, including in the area of health and safety

and European company law, provide for information and consultation. One of the most recent pieces of legislation at EU level has been the Directive on "Preventive restructuring frameworks" that came into force in June 2019.[16] The Directive stipulates that Member States shall ensure that existing rights of workers under national and Union law are not affected by the process of preventive restructuring (e.g. the right to collective bargaining and the right to information and consultation).

EU law also grants rights of involvement when it comes to very specific issues and situations, such as employment contracts, the use of temporary, fixed term and part-time work, and dealing with changes of ownership and collective redundancies. If a company changes ownership, merges with or is taken over by another company, then the employee representatives have the right to know about the plans and their potential consequences.

Furthermore, employee representatives must be informed and consulted about all measures taken by companies to protect workers from dangerous or risky working conditions. This applies to measures such as work equipment and protective clothing, and covers workplace risks associated with lifting heavy loads, noisy environments, mechanical vibrations, chemicals, carcinogens, biological agents and electromagnetic fields. There are specific approaches to the specific risks faced by construction workers, pregnant or breastfeeding workers, and workers in the mining, drilling and fishing sectors. These rights are essential tools to ensure the close involvement of the workforce at the local level.

However, the rights of employees working in a multinational company to be informed and consulted do not end at the national border. With the Directive on European Works Councils (94/45/EC, amended in 2009 by the Recast Directive 2009/38/EC), a common floor of rights for information and consultation was established for workers in transnational companies. Management must inform and consult with representatives from the whole workforce across Europe about any issues or measures that have possible consequences in different countries, or measures that are decided by the central management. For trade unions and employee representatives, European Works Councils (EWCs) also provide a forum in which to discuss their common issues with management, and to communicate and coordinate with one another the strategies they are pursuing at the individual sites of the company. Further information on EWCs is provided below in section.

Finally, Directive 2001/86/EC, supplementing the Statute for a European Company Regulation 2157/2001) and, subsequently the Directive on cross-border mergers that was taken up in the Company Law Package Directive on cross-border conversions, mergers and divisions (2019/35/EC) deals with the representation of workers and/or trade union representatives in company boards.

In contrast to the legal regulations mentioned above, the SE Directive however does not establish a uniform right of workers board level representation in the EU but is based on a negotiation model and the "*before and after*" principle. As the following sections will show, this increasingly has become a problem, as the legal form of the SE has been used by companies to circumvent or reduce workers board level participation.

[16] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L1023.

2.2 Information and consultation of workers

A crucial piece of legislation establishing a general framework for information and consultation for workers is Directive 2002/14/EC that has established certain minimum rights for all EU Member States. Apart from the general framework Directive 2002/14/EC, also the regulation on collective redundancies (Directive 98/59/EC) and on transfer of Undertakings (Directive 2001/23/EC) establish a floor of harmonised information and consultation rights for workers throughout the European Union.

The national provisions adopted with a view to transposing this Article vary greatly as to the level of detail and comprehensiveness illustrating the diversity of industrial relations and social dialogue cultures very much in the Member States.[17] Workplace employee representation and information and consultation rights can be exercised via employee representation bodies or trade unions active at the workplace such as *Betriebsrat*, *RSU* or *comité d'entreprise.*

In several Member States, in particular in those with long-standing systems of information and consultation, the wording of the national laws does not always coincide with that of the Directive. Whilst the transposing legislation must be interpreted in conformity with the Directive, certain issues are worthy of further examination, not least for reasons of legal certainty and security. Furthermore, and as noted by the EU Commission, "*in some Member States the transposing legislation provides only for information and not for consultation on issues regarding the employment situation, it's probable developments and related anticipatory measures. Furthermore, in some Member States there is no explicit mention of the employer's obligation to give reasoned replies to the employees' representatives' opinions or to consult with a view to reaching agreement.*"[18]

Information and consultation: A principle but not a direct right

Art. 27 of the EU Charter guarantees the right of workers to information and consultation, although it is mainly classified as a mere principle, which does not constitute a direct right. The ECJ declared that Art. 27 must be specified by European or national law. In the ruling on AMS in 2014, the ECJ denied any subjective right for Art. 27.[19] In the case of AMS, trade unions disputed the refusal of a private, non-profit-making association in France to allow the establishment of worker representation. The ECJ did not recognise Directive 2002/14/EC as applicable, as directives generally do not apply in private litigation (no horizontal effect). At the same time, there is no legal protection for workers and their representatives in those cases at the European level. Advocate general, Cruz Villalón, considered Art. 27 of the EU Charter to be a principle and not a direct right, however, he recognised art. 3 (1) of Directive 2002/14/EU, providing the content of this principle: "*the personal scope of the right to information and consultation*". Therefore, Cruz Villalón concluded, Art. 27 of the EU Charter is a principle "*which may be relied on before the courts*", even in a dispute between individuals.

Apart from these legal uncertainties, the European Acquis of information and consultation of workers at the company level increasingly contrasts with realities at the shop floor and in companies: According to the 6th European Working Conditions Survey[20]only about one out of two workers in the European Union in 2015 reported that in his/her organisation a trade union, works council or a similar committee representing employees exists. The EU countries with the highest incidence of interest representation are Sweden, Denmark and Finland (more than 70%) and the ones with the lowest being countries in

[17] European Commission 2008: Employee Representatives in an enlarged Europe.

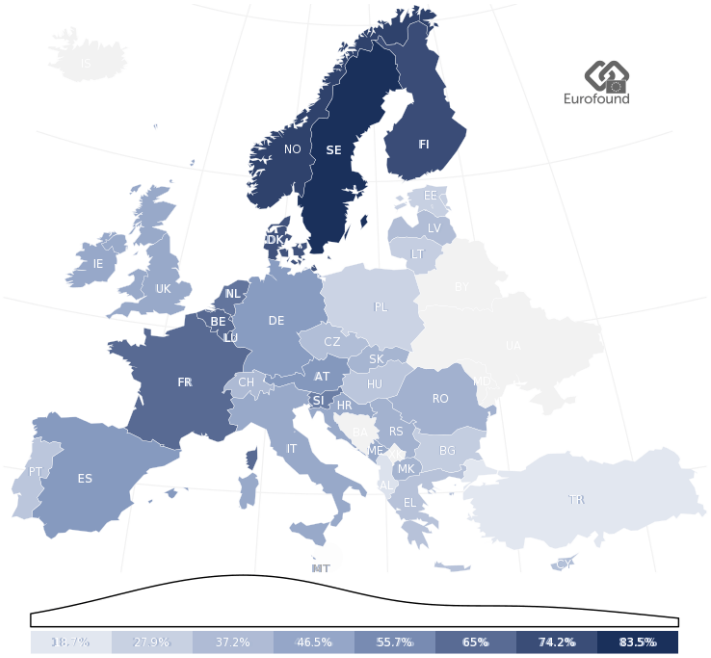
[18] European Commission: Communication on the review of the application of Directive 2002/14/EC in the EU. COM (2008) 146 final, p. 5.

[19] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0176.

[20] https://www.eurofound.europa.eu/surveys/european-working-conditions-surveys-ewcs.

Central and Eastern Europe (e.g. Poland, Lithuania and Estonia below 30%) but also Portugal with slightly above 30% according to the EWCS 2015. The full picture is illustrated in figure 1 below.

Figure 1: Employee representation by trade union, works council or similar in Europe



Source: Eurofound EWCS 2015.

The imbalance of workers' information, consultation and participation is a well-known fact and problem. Existing rights are not being complied with in accordance with the spirit of the European Directives and furthermore, there is a persisting legal hindrance for workers to enforce their rights before the courts. Besides this, European trade unions as well as the European Parliament[21], repeatedly have stressed the lack of proper EU legal instruments to anticipate and manage restructuring, both in the public and the private sectors. Assessments run by the European Commission itself concluded to the deficiencies in how companies meet their obligation to inform and consult worker representatives before a decision is made, and to the inappropriate response provided by existing EU instruments.[22]

2.3 European Works Councils

It is prevalent that companies act more globally. The number of multinational companies with assets and/or plants in several countries in 2015 was around 45 times higher than during the 1990s. At the same time there is an increasing evidence that private business and large corporations play a crucial role as regards the future of work and doing business. Excessive profit maximisation practice at the expense of workers, communities and environmental impacts, tax avoidance strategies and a model of doing business that is solely based on shareholder interests increasingly is put into question, even from global business leaders itself.[23]

---

21 European Parliament 2013: Resolution on information and consultation of workers, anticipation, and management of restructuring (known as the Cercas report).

22 See the study on the application of the EU Quality framework for anticipation of change and restructuring released in 2018.

23 Here, the joint statement on the "Statement on the Purpose of a Corporation", published in August 2019 by 181 CEOs or leading US companies across all sectors, is an illustrative example. See: https://opportunity.businessroundtable.org/ourcommitment/.

European works councils are certainly the most important and well-used, single, legislative framework in the field of transnational workers' representation in the EU. EWCs are also a key element of the European Social Model, as Article 27 of the Charter of Fundamental Rights of the European Union recognises that "*workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time*." EWCs are, therefore, the nucleus of European industrial relations and the single, most important instrument of workers' voice at the European level.

European Works Councils

European Works Councils (EWCs) and SE Works Councils are bodies representing the European employees of a transnational company. Through them, workers are informed and consulted by management on the progress of the business and any significant decision at European level that could affect their employment or working conditions. Member States are to provide for the right to establish European Works Councils in companies or groups of companies with at least 1000 employees in the EU and the other countries of the European Economic Area (Norway, Iceland and Liechtenstein), when there are at least 150 employees in each of two Member States.

A request by 100 employees from two countries or an initiative by the employer triggers the process of creating a new European Works Council. The composition and functioning of each European Works Council is adapted to the company's specific situation by a signed agreement between management and workers' representatives of the different countries involved. Subsidiary requirements are to apply only in the absence of this agreement. The obligations arising from the Directive do not apply to companies which already had an agreed mechanism for the transnational information and consultation of their entire workforce when the Directive took effect in 1996.

The initial EU Directive on this (94/45/EC) goes back to 1994. It was extended to the UK by another Directive and adapted by a third Directive to the accession of Bulgaria and Romania. In order to ensure the effectiveness of employee's transnational information and consultation rights and to increase the number of EWCs, political agreement was reached in 2008[24] to recast the Directive and new rules of Directive 2009/38/EC took effect in 2011. Since the SE Directive (2001/86/EC) became effective in 2001, also in SEs transnational information and consultation bodies exist at the transnational European level.

Currently, around 1,100 EWCs exist in the EU.[25] All EWCs are based on company-specific agreements and a negotiated solution. Therefore, there is a wide variation in EWC practice. The vast majority of EWCs are only "symbolic institutions" and have little practical relevance.[26] At the same time there is a group of EWCs that play a strong role in co-shaping transnational company decisions by paving the way for the negotiation of European Framework Agreements[27] or other outcomes (see textboxes on Unilever and Solvay in chapter 3) below.

Despite the recast of the EWC Directive a decade ago, neither the number of EWCs has increased significantly, nor the quality and effectiveness of information and consultation on transnational company restructuring has improved for the vast majority of EWCs.

---

[24] In its opinion on the recast of the EWC Directive, the EESC in 2008 identified some substantial improvements with a view to ensure more legal certainty and coherence in Community legislation on informing and consulting employees. At the same time the EESC lamented that the recast does not pursue its own objectives consistently enough and that certain things remain unclear, for example the rules on linking representation between the national and European levels, a clear definition of the EWC's competence and the fact that certain limitations in the application and scope of the original directive are retained or even re-introduced. See EESC Opinion on EWCs, SOC/321-EESC-2008-1926.

[25] See database on European Works Councils of the ETUI. http://www.ewcdb.eu/stats-and-graphs.

[26] Voss, E. 2016: Revisiting Restructuring, Anticipation of Change and Workers Participation in a Digitalised World. Report to the ETUC. Brussels: ETUC, European Trade Union Confederation.

[27] See the EU Commissions Database on transnational company agreements, available at: https://ec.europa.eu/social/main.jsp?catId=978&langId=en

Though there have been cases of EWCs playing for example a pro-active role in transnational coordination of emergency and health measures in response to the COVID-19 pandemic, the overall initiative assessment of EWCs during the crisis is quite bleak. As noted by the ETUC and the ETUFs recently,

"*Using the excuse of travel ban and social distancing, as well as that of the time constraint associated with the COVID-19 crisis, some employers are simply calling off meetings and talks on plans about the future of jobs and working conditions with national bodies of worker representation and European-level Works Councils, and making unilateral decisions. Some management representatives are pretending that the socio-economic impact of the global pandemic on the company is not a matter of information and consultation of the European Works Councils either because "consequences of an health crisis" is not listed in the EWC agreement as a topic for consultation, or because it is not deemed of a "transnational nature" due to the varying responses provided by Member States to the crisis.*"[28]

Already in 2018, with a delay of two years, the EU Commission published an assessment of the impact of the Quality framework.[29] One of the results was that the guidelines and principles laid down by the Commission were largely ignored. Also, as regards EWCs and their role in transnational restructuring, the European legislative framework still and increasingly is insufficient: Based on a large independent impact analysis of the Recast EWC Directive, even the EU Commission noted in a recent official report, that,

"The Recast Directive improved the information of workers in terms of quality and scope but as regards consultation, it has been less effective. Despite having the right to express an option, European Works Council members seem to have little influence in the decision-making process in their companies, notable in cases of restructuring"[30]

These and further weaknesses and still persistence problems of the EWC regulation have been highlighted also by a large survey that was conducted in 2018, involving more than 1,6000 employee representatives from all EU Countries representing over 300 EWCs and SE Works Councils.[31]

Survey data also show the quality and effectiveness of EWCs strongly depends on further structures and institutions of workers voice in a transnational company, for example board-level participation. EWC representatives in companies with board-level workers representation that also communicate with the respective board-level representatives according to the survey are more satisfied about the quality and effectiveness of their EWC.

Thus, it is the context and interaction of different levels and institutions which makes an EWC effective and "fit for purpose": Starting from strong trade union presence and membership, equipped with the

[28] ETUC, industriAll, UNI Europe, EFFAT, EPSU, ETF, EFBWW: Joint Letter to Nicolas Schmitt, Commissioner for Jobs and Social Rights, 26 June 2020.

[29] European Commission 2018: Study on monitoring the application of the EU Quality Framework for anticipation of change and restructuring, 16 November 2018.

[30] EU Commission: Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council …, COM (2028)292 final, Brussels 14.5.2018, p. 6.

[31] De Spiegelaere, S. and Jagodzinski, R. 2019: Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives

ability of negotiation good collective agreements which create a level playing field for company level interest representation prolonged by EWCs at cross-border level and board level representation.[32] If rooted in and coordinated in strong national-level workers' information, consultation and participation and sectoral trade union policies, EWCs do not remain simply the prolongation of national representation structures and practices but also evolve as a transnational playing field which might be received as a point of departure for new borders.[33]

The main relation observed is between the presence of workers' board-level representation in combination with a communication between the EWC and the workers participating in the company board. In that situation, the EWC representative is more likely to say the EWC is effective for information, consultation or influencing management decisions. For example, as regards the quality of information and receiving information early, nearly 30% of EWC members in companies with board-level representation and also communicate with the board-level workers representative are quite satisfied compared to only 18% of those who do not have employee participation in the company board.

2.4 Regulation of workers board level participation

Board-level representation in Europe can be defined as the 'phenomenon where employees elect or appoint representatives to the strategic decision-making body of companies', including situations where the workers have voting rights. In two-tier structures, this would refer to the Supervisory Board, in one-tier structures to the Board of Directors or Management Board. Whereas such structures exist in 18 out of the 27 EU Member States, there are a variety of different arrangements in place and, to date, no single European model exists.

Workers board level representation goes beyond information and consultation rights as it gives workers the power to influence the company's decision making and strategic development. The goal of information and consultation is about being consulted, the goal of participation is about being part of the highest-level decision-making body and carrying the responsibility for it, contributing to decision making or to delay, change or even block it. In the case of EWCs, information and consultation are limited to cross border issues in the company, whereas the board work is based on deliberations of complete information on all strategic issues relevant to the company's whole life cycle. Thus board-level representation is not a simple extension of information and consultation but changes the quality of participation, involving new opportunities to influence, but also obligations, responsibilities and duties.

[32] This importance of articulation has also been confirmed by empirical research findings. See for example: Conchon, A. and Waddington, J. 2015: Board Level Employee Representation in Europe, London. Pulignano, V. and Kluge, N. 2007: Employee involvement in restructuring: are we able to determine the price? Transfer: ETUI, 13,2,225-240.

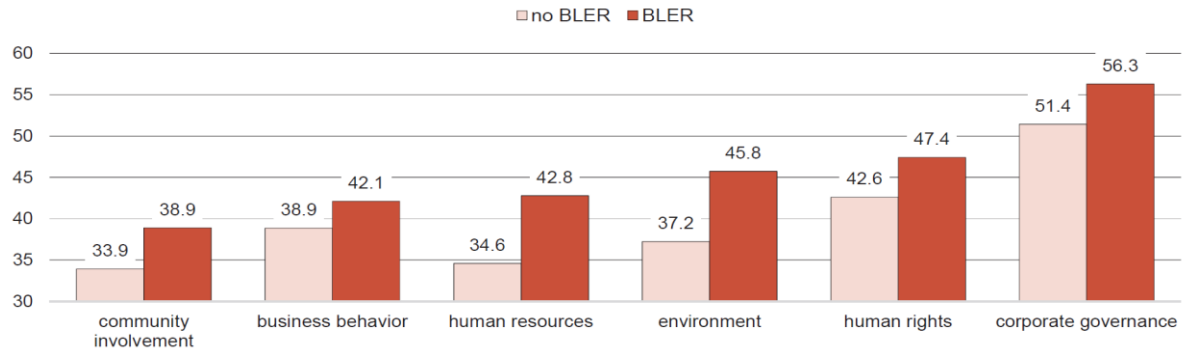
[33] On the impact of efficient EWCs on shaping transnational labour relation and HR practices in transnational companies see also the recent study for Eurofound, that includes also case studies on EWCs headquartered in Italy, Germany, Switzerland and Denmark: Eurofound 2020: Social dialogue and HR practices in European global companies. Authors: Eckhard Voss, Andrea Broughton and Ricardo Rodriguez Contreras, Luxembourg.

Why workers' board-level participation is providing added value for companies and society

The equalising and moderating capacity of democracy at work cannot be ignored in the current world where skyrocketing disparity in pay between CEOs and their employees impacts not only workers, but also society at large. Available research indicates several advantages of introducing greater worker participation.

When workers are represented on a company's board, their **company is generally more sustainable vis-à-vis workers, the environment, and society**.[34] Companies with board-level workers representation score better than companies without it across six different sustainability domains; these include not only human resources but also policies on the environment, human rights, responsible business behaviour, community involvement and corporate governance. This conclusion is based on an analysis of data gathered by the sustainability ratings firm *Vigeo Eiris* on 607 of the largest European companies for the years 2017–2018. Results in detail are presented in the figure below.

Figure 2: Workers board-level participation and sustainable company policy



Source: ETUI 2019: Benchmarking Working Europe 2019, Brussels, ETUI.

There are further research findings that go even further, noting for example that companies with corporate governance under German co-determination law do better in terms of **various economic performance indicators** (even stock exchange value) than those of comparable sector and size but not covered by legal provisions on board-level representation.[35]

With view on **compliance and fraudulent reporting practices**, a research study of the University Duisburg-Essen in Germany published in July 2020, has also shown that companies with strong co-determination are much less likely to engage in tax avoidance and trickery. In addition, they seldom make use of accounting leeway, e.g. to present their economic situation better than it actually is.[36]

EU regulation on workers board-level representation differs from the approach of stipulating a harmonised minimum floor of rights across the EU as regards information and consultation. Instead of establishing a genuine common right, the board-level employee representation, that is referred to as 'participation' in the 2001 Statute for a European Company (known as SE after its Latin name '*Societas Europaea*' grants a legal status to public limited liability companies that for the first time in European company law includes provisions on the board level participation rights as a negotiated solution. When such participation is agreed it is not only employee representatives from the 'home country' of the company headquarters who sit on the board but also employee representatives from the 'participating countries' in the establishment of an SE.

[34] Vitols, S. and Kluge, N. 2011: The Sustainable Company: a new approach to corporate governance, ETUI, Brussels.

[35] Rapp, S. and Wolff, M. 2019: Strong Codetermination – Stable Companies. An empirical analysis in the lights of the recent financial crisis. Mitbestimmungsreport Nr. 51, Hans-Böckler-Stiftung, https://www.mitbestimmung.de/html/starke-mitbesimmung-stabile-unternehmen-11294.html.

[36] Eulerich, M. Fligge, B. 2020: Aggressive Berichterstattung in deutschen Unternehmen. Der Einfluss der Mitbestimmung auf die Ausnutzung von Bilanzierungs- und Steuergestaltungsspielräumen. Mitbestimmungsreport Nr. 62, Hans-Böckler-Stiftung, https://www.mitbestimmung.de/html/mehr-mitbestimmung-weniger-14971.html.

The main purpose of the current regulation on workers board level representation is to guarantee representation rights by adapting the "*before and after principle*" in cases of transforming a company into a transnational SE and in the context of cross-border conversions, mergers and divisions. By this, the regulatory model is to extend existing national rules on workers' board level participation to cases of cross-border restructuring but not to establish an own EU standard.

As highlighted in recent legal analysis[37], the inexistence of an own EU standard of workers' board-level participation, the "before and after principle" and the possibility to "freeze" a certain level of workers participation in situations of transnational restructuring or legal change has quite unexpectedly made the legal form of an SE to a tool to circumvent or limit workers board level representation rather than fostering it.

As long as there are countries in the EU which have lower or no workers' board level participation in place, the problem of regulatory arbitrage occurs. In other words: It might be interesting for business in cross-border restructuring cases to include member states with low participation level in the process to minimize or end up workers' board level participation. This has the consequence that there is no real legal certainty for the employee in cross border restructuring processes with all the connected effects to this situation. [38]

Interestingly in other fields of law the EU legislator follows a much more ambitious approach in the form of establishing original and new EU minimum standards. This is the case in most of the labour law Directives. The idea behind these efforts is always to prevent adverse effects on the Internal Market through a harmonised framework. Examples for this can be found e.g. in the Directives on mass redundancies (98/59/EC), on the European Works Council (2009/38/EC) or in the Framework Directive on Information and Consultation (2002/14/EC).

On the contrary in the context of workers' board level participation there is no such legislation in favour of a harmonised framework. Consequently, there is a lack of legal certainty within the Internal Market for cross-border operating companies also regarding their corporate structure: Companies operating under corporate governance regimes that provide for board-level participation of workers will face legal uncertainty about their corporate governance when moving to national environments not familiar with board-level workers representation. And here, the company mobility package of 2019 has not only failed to increase legal certainty, but contrary has increased ambiguity (for further details, see section 2.7 below).

2.5 Securing workers' voice in transnational restructuring

Triggered by economic and labour market imbalances within the EU, an acceleration of globalisation of supply chains and service provisions as well as the dominance of shareholder value orientation in doing business, there has been a lively debate already since the beginning of this Century about the need of a framework of social responsible restructuring and anticipating corporate change that complements existing information, consultation and participation rights of workers and matches key elements of the European Social Model.

[37] Heuschmidt, J. 2019: Company mobility within the EU and workers' board level participation (unpublished paper, November).

[38] See also Cremers, J. (2019) EU Company law, artificial corporate entities and social policy, Brussels.

Strong advocators of an improved framework and binding regulation as regards corporate restructuring have been the European trades unions as well as EWCs in transnational companies.[39] But also the EESC actively contributed to the debate: For example in the aftermath of the economic and financial crisis of 2008 and the Euro crisis 2010, the EESC in an own-initiative opinion has highlighted that employee involvement and participation should be regarded as a key feature of sound business management and of a socially balanced and responsible approach of overcoming economic crisis and insecurity. Therefore, it was recommended that "*possibilities for employee involvement in the strategic orientation of businesses should become a universal element of European company law, which the European Commission plans to develop in the near future. In addition, the provisions on obligatory employee involvement should be consolidated and applied generally in EU law, on the basis of standards already achieved, and in particular definitions of information, consultation and participation should be standardised.*" [40]

Despite these demands for more binding rules, the EU Commission in December 2013 came out with the initiative of a purely voluntary '*Quality Framework for the Anticipation of Change and Restructuring'*. Instead of strengthening workers' rights, the Quality Framework gathers general principles of good practices and addresses a large number of stakeholders involved in restructuring, calling on them to learn and become inspired from these good practices.

At the same time, social and economic changes in Europe after the crisis have increased not only the intensity of restructuring but also the pressure on workers' rights, collective labour relations and workers participation. We also learned that the ongoing crisis, fiscal austerity and 'structural reform' programmes have not only resulted in an acceleration of corporate restructuring and crisis-related necessary adjustments but also a vicious circle of worsening of working conditions and undermining of workers participation rights and collective bargaining.

In 2018, with a delay of two years, the EU Commission published an assessment of the impact of the Quality framework.[41] One of the results was that the guidelines and principles laid down by the Commission were largely ignored.

2.6 The missing stone in the social pillar

Despite its reference to workers' information and consultation (see section 2.1 above), the European Social Pillar has not resulted in any specific actions to strengthen information, consultation and democracy at work.

When the European Parliament, the Council and the Commission proclaimed the European Pillar of Social Rights (EPSR) at the Social Summit in Gothenburg in November 2017, this seemed to herald a

[39] Key positions and requests on the need for a substantial strengthening of workers' rights have been highlighted in the resolution of the ETUC executive in March 2012 ("*Anticipating change and restructuring: ETUC calls for EU action*") that stresses five elements in particular as key to EU action on the anticipation and management of change: Preparing and enabling workers: key role of education and training; maintaining and creating jobs: key role of industrial policy; giving workers a voice and place in strategic decisions: key role for information, consultation and participation; ensuring a European legal framework: key role of collective bargaining; providing a safety net: key role for active labour market policies, social protection and support measures.

[40] EESC 2013: Employee involvement and participation. Own-initiative opinion. SOC/470, para 1,6.

[41] European Commission 2018: Study on monitoring the application of the EU Quality Framework for anticipation of change and restructuring, 16 November 2018.

way out of the impasse which had stalled European social policy for the past decade. In the context of the EPSR, many new initiatives have been announced promising to strengthen workers' rights. Two prominent examples are the proposed Directive on transparent and predictable working conditions and the proposal for a Council Recommendation on access to social protection for workers and the self-employed.[42]

Principle 8 of the EPSR defines two rights which are fundamental to workers voice. It states that a) the social partners have a right to be consulted on the design and implementation of economic, employment and social policies; and that b) workers and their representatives have a right to be informed and consulted in good time concerning matters relevant to their interests (notably company restructuring, mergers and collective redundancies). In addition, the EPSR encourages social partners' negotiations and calls for support to increase their capacity.

Positive effects of workers voice

Workers' voice at company level has positive effects as highlighted by recent scientific research. Economists from Germany and the U.S. have evaluated results of various economic studies on the topic. According to scientific evidence, works councils contribute positively to company's productivity, above average wage levels and increasing economic results. Furthermore, employee interest representation and workers voice have positive effects on green investments and incremental innovations, further training and apprenticeships. At the same time companies with workers voice reduce staff turnover and the scarcity of qualified workers. By contrast, workers voice triggers a better work-life balance and better working time models. Further effects a reduction of gender pay gaps and income inequality between highly qualified employees and lower qualification staff groups.

Source: Jirjahn, U. and Smith, S.C. 2019: Non-union Employee Representation: Theory and the German Experience with Mandated Works Councils, IZA Discussion Paper Nr. 11066, October 2017

However, unlike other principles in the EPSR, Principle 8, for the most part, merely repeats the status quo of the EU acquis, failing to chart any new, more progressive, course. Despite repeated requests over the years to improve the legal framework on the involvement of workers, the EPSR has failed to trigger any such action. When it comes to strengthening workers' voice in their relationship with employers, the status quo is maintained.

The only two activities the Commission launched to implement Principle 8 were, firstly, the stocktaking exercise on the application of the EU Quality Framework for anticipation of change and restructuring and the publication of the REFIT-based Evaluation of the Recast European Works Council Directive (on both see the sections above). However, even though both evaluations identify ample scope for improvement in policy and practice, their conclusions fail to propose adequate remedies.

[42] The EESC has published a number of opinions on the EPSR. See in particular the following: Social pillar: https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-pillar-social-rights. Social pillar & essential services implementation: https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/better-implementation-social-pillar-promoting-essential-services-own-initiative-opinion. Funding the EPSR: https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/funding-european-pillar-social-rights-own-initiative-opinion. EPRS initial evaluation: https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-pillar-social-rights-evaluation-initial-implementation-and-recommendations-future-own-initiative-opinion. Implementing the pillar (workers' group study): https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/implementing-european-pillar-social-rights-what-needed-guarantee-positive-social-impact. Integrating the pillar (Workers' group study): https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/integrating-european-pillar-social-rights-roadmap-deepening-europes-economic-and-monetary-union-study.

2.7 EU company law and the 2019 company law package: Implications for workers' information, consultation and participation rights

The EU has been a strong driver of globalisation, both regarding the development of an open trading system as well as the completion of the internal market. In this context, the EU is promoting a rapid process of economic liberalisation and the cross-border economic activities of companies. Legal provisions were passed to enable companies to restructure their production across borders. European company types were introduced in order to facilitate cross-border business, EU company law directives were adopted and the European Court of Justice (ECJ) has ruled on several cases, where structural differences between the national concepts of company law have caused legal conflicts. Still, a harmonised EU company law code does not exist. Corporate law codes of member states have very diverse regulations on liability, creditor protection, shareholder rights and employee representation.

Over the past two decades the EU has focused its legislative activity on European company law more intensely on the notion of shareholder value. For example, the main aim of the 2003 Action Plan '*Modernising company law and enhancing corporate governance in the EU*' was to reinforce shareholders' rights. The Takeover Directive of 2004 regulated takeovers in Europe and laid down minimum standards for protecting minority shareholders (2004/25/EC Takeover Bids). In the aftermath of the financial crisis the European Commission concentrated on shareholder participation in financial and non-financial companies in its Green Books of 2010 and 2011.

In its 2012 Action Plan the Commission expressed its intention to boost shareholder involvement in corporate governance. In 2014, the Commission put forward a proposal for amending the Directive on shareholders' rights.[43] The primacy of shareholders' rights is also evident in other European initiatives, such as the new proposal for the company law package.

The Company Law Package consists of two Directives[44] that both amend Directive 2017/1132 relating to certain aspects of company law. The Package was proposed by the EU Commission in April 2018 and after modifications during the legislative process and entered into legislative force in June and November 2019. In this report we will deal only with the Directive 2019/2121 on cross-border conversions, mergers and divisions.

Whereas the EESC in an opinion[45] welcomed the Commission's approach of fostering cross-border company mobility, it also demanded that "*the objective of a Single Market without internal borders for companies must be reconciled with other objectives of European integration such as social protection*". The EESC also welcomes the intention of the Commission to protect existing workers participation rights which should also be seen in the context of recent ECJ law cases (see textbox below).

According to the EESC, it is necessary that in companies resulting from cross-border conversions "*at least the same level of all elements of employee participation as laid down in the law of the departure Member State must continue to apply, along the lines of the procedure and the standard rules provided*

[43] Shareholder Rights Directive 2007/36/EC.

[44] Directive 2019/2121 of 27 November 2019 amending Directive 2017/1132 as regards cross-border conversions, mergers and divisions; Directive (EU) 2019/1151 of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law.

[45] EESC Opinion on Company Law, INT/841.

for in Directive 2001/86/EC." The EESC also emphasised the significant role of European Works Councils and requested an "*enhanced involvement*" in cross-border company transformation.

ECJ case law and workers participation rights[46]

The main driver of this development is case law of the European Court of Justice (ECJ) in the context of the freedom of establishment according to Art. 49 TFEU. The most recent and ground-breaking decision was *Polbud*[47] in 2017, in which the ECJ allowed companies cross-border conversions. This development has two consequences. On the one hand it opens new possibilities for companies' cross-border restructuring with negative effects on workers' board level participation rights. On the other hand, it reduces the possibilities of the EU legislator to regulate on these matters. Conversely, a development in the jurisprudence of the ECJ can be observed in which the Court takes the rights of workers into consideration. This was the case in the decision *Polbud* but also in the decision *Erzberger*.[48]

The assessment of the impacts of the company law package as regards workers participation rights so far has been quite different:[49] One the one hand, it provides at least for a duration of four years a protection for board-level representation rights in cases of cross-border conversions and divisions, which were not regulated before.[50] However, in order to establish board-level participation rights in a company resulting from a cross-border merger, it is necessary that at least one third of the workforce enjoyed participation rights before the merger.

On the other hand, the Company Law Package does not solve the problems connected with the '*before-after principle*' that creates possibilities for companies to restructure before reaching a certain threshold which would trigger workers' board-level representation rights.[51]

Also, the Company Law Package does not include any concrete rules that prevent the creation of artificial corporate entities such as letterbox companies with the sole purpose of circumventing board-level representation rights. Furthermore, as regards to the only temporary protection of workers participation rights the fact that no non-regression clause is included in the Directive, there is the risk that after the protection period, employee board level representation may be abolished.[52]

---

46 For more detail see: Heuschmid, J. 2019: Company mobility within the EU and workers' board level participation (unpublished paper, November).

47 ECJ 25.10.2017 – C-106/16 – *Polbud*.

48 ECJ 18.07.2017 – C-566/15 – *Erzberger*.

49 See for example Kowalsky, W. 2019: 'More democracy at work' or 'more power for big corporations' – which is the new paradigm? In: The future of Europe, Ed. P. Scherrer/J. Bir/W. Kowalsky/M. Méaulle Brussels 2019, p. 43.

50 The Directive brings further opportunities. It includes additional workers' information and consultation rights in cross-border restructuring processes. And with regard to workers' board-level representation, the Directive harmonises the procedures for the different cross-border restructuring processes and has introduced the obligation for the company to start negotiations with workers' representatives even in case that a company only reaches 4/5 of the threshold that triggers workers' board-level representation rights in the country of origin.

51 This possibility has been used quite significant in the case of SE formations as documented very well in the case of Germany: The IMU Institute of the Hans-Böckler Foundation has identified more than 190 companies that circumvented board-level representation rights by transforming into a SE before the threshold was met. The number of these companies is much higher than those who having transformed into an SE with board-level representation rights, See https://www.boeckler.de/pdf/pm_imu_2020_04_29.pdf.

52 See also Kowalsky, W. 2020: From undefined 'Social Europe' to 'more democracy at work' – new trends, new paradigms? In: Kubera, J. and Morozowski, T. (eds.): A `Social Turn' in the European Union? New trends and ideas about social convergence in Europe, London.

Though the Directive 2019/2121 follows the same approach as in the case of the SE which is to avoid establishing EU wide minimum standards of board-level participation rights, it includes a provision that at least does not rule out such a legislative change:[53] In the review clause of the Directive it is stipulated that the Commission no later than four years after the transposition of the Directive, carry out an evaluation, including an evaluation of the implementation of employee information, consultation and participation in the context of the cross-border operations, "*including assessment of the rules on the proportion of employee representatives in the administrative organ of the company resulting from the cross-border operation, and of the effectiveness of the safeguards regarding negotiations of employee participation rights taking into consideration the dynamic nature of companies growing cross-border*." According to the review clause, the respective evaluation report that will be presented to the European Parliament, the Council and the European Economic and Social Committee shall "*in particular considering the possible need of introducing a harmonized framework on board level employee representation in Union law, accompanied, where appropriate, by a legislative proposal*."

[53] See ibid. (W. Kowalsky).

3. CURRENT AND FUTURE CHALLENGES

3.1 Introduction

The purpose of this section is to provide an overview of key current and future challenges that the EU and its Member States are facing and how workers voice is contributing to manage these challenges and develop win-win solutions both from the perspective of work and employment as well as the business and sustainable corporate strategies. Furthermore, mandatory workers involvement and participation contributes to social cohesion and democracy. This is also enshrined in Art 27 of the Charta of Fundamental Rights of the European Union that defines workers as citizens at their workplaces.

This contribution and the firm correlation between strong workers' information, consultation and participation has also been acknowledged as an essential prerequisite for recovery and reconstruction out of the current COVID-19 crises by the EESC in a resolution that was adopted by a vast majority of votes.[54]

The current deep economic and social crisis that emerged so suddenly by the COVID-19 pandemic not only has added new challenges to those that already exist in the context of social peace and inclusion, globalisation and the purpose as well as responsibility of multinational companies, the need to fight climate change and make progress greening our economy and society and managing the digital transformation process in a way that leave nobody behind.

As highlighted recently in an opinion of the EESC, "*European integration is at a crossroads*"[55]. This is because long-lasting economic crisis after 2008 and the deep social impacts it has left in several Member States has reversed previous trends of economic and social convergence among Member States and has become a threat to the political sustainability of the European project and all the benefits it has brought to European citizens. On top of this, the tasks to manage digitalisation and greening of our economies adds new risks that require an approach that is sustainable in economic, social and environmental terms.

The COVID-19 crisis has a huge impact on health and safety, work organisation, companies' economic and financial conditions and other issues such as an abrupt increase of social, economic and gender related inequality in our societies and between societies. Whether it is due to complying with social distancing measures, or because the supply of parts from a directly impacted site is interrupted, or the reduction of demands on the market, companies may be obliged to temporarily shut down or to radically change the way they work. Apart from these immediate effects, the current economic, social and employment crisis will accelerate corporate restructuring, digitalisation trends as well as certain trends such as the polarization within our labour markets between precarious jobs and employment relationships and those who (still) are better off.[56]

In the different sections of this chapter of the report and as illustrated by practical examples it will be shown that workers' information, consultation as well as employee participation at local, national and transnational level contributes positively to coping with COVID-19 and other crisis situations. Both

[54] EESC 2020: EESC proposals for post-COVID-19 crisis reconstruction and recovery: "The EU must be guided by the principle of being considered a community of common destiny." adopted by the European Economic and Social Committee on 11 June 2020.

[55] EESC 2019: Towards a more resilient and sustainable European economy (own-initiative opinion), ECO 492.

[56] EESC 2013: Employee involvement and participation. Own-initiative opinion. SOC/470.

practice examples as well as research evidence shows that workers voice and workers participation not only benefits workers and their families but creates win-win situations that are good for the business as well as for the whole society.

In order to illustrate this, the sections below include practice example of good practice as regards social dialogue and collective bargaining outcomes at different level (company, sector, cross-industry) that may also be regarded as a business case for strong workers' information, consultation and participation.

3.2 Social inclusive, plural and democratic societies

Perhaps the largest challenge of our time is to maintain the social model of inclusive, plural and democratic societies that is particularly strong in Europe and the basis of the European social model.

During the last years, considerable political forces in Europe, mainly but not exclusively right-wing movements and parties, some of them already in government, are undermining certain principles of liberal democracy and call into question certain achievements, including for example gender equality. Populist ways of thinking are increasingly being echoed by established actors in national and supranational institutions.

Such movements and tendencies are openly against the European Union and exploit a general rise in uncertainties related to global conflicts, refugee crises, accelerated climate change and the need rethink our traditional economic growth model as well as uncertainties about the future of work resulting from digital change, automation and artificial intelligence.

While authoritarian elements, including from third countries, support this trend towards "*illiberal democracy*", leading towards less freedom of the media and more corruption in Europe, we are currently also witnessing the emergence of an "*uncivil society*" as a result of political and social polarisation.

Against these worrying trends, there is a strong need to defend the idea of Europe as a model of diverse, social inclusive and plural societies that is incompatible with "*illiberal democracy*" bust fosters an approach that has been described in a recent opinion of the EESC as "*participatory democracy*". Participatory democracy is defined by the EESC as,

"*complementing representative democracy, needs intermediary bodies (trade unions, NGOs, professional networks, issue-specific associations, etc.) to involve citizens and promote popular and civic ownership of European issues and the construction of a fairer Europe, with more solidarity and inclusiveness.*"[57]

According to the EESC our democracy not only has to be defended against extremist, authoritarian and right-wing assaults, but also has to be strengthened and made more resilient. Regarding the how, the EESC and many others have highlighted that a key condition for resilient democracies are national and European policies that bring *real* improvements in in people's lives.

[57] EESC 2018: Resilient democracy through a strong and diverse civil society (own-initiative opinion), SOC/605.

National and European policy - makers must tackle burning social questions and ensure social sustainability with inclusive education systems, inclusive growth, competitive and innovative industries, well-functioning labour markets, fair and just taxation and effective public services and social security systems. Furthermore, the EESC highlights that "*strong social partners and civil society in all its diversity are needed to defend the core European values.*"[58]

There is a broad consensus amongst European institutions and within the European Parliament that a resilient democracy needs a resilient civil society and a sound and sustainable social environment. At the same time civil and political rights are indivisible from civil and economic rights, including democracy at work and sound information, consultation and participation rights of workers.

Various research results show that countries with strong workers' involvement have advanced further in implementing European objectives, including high employment, productivity, sustainability, research and development. Stronger workers' involvement and participation is essential to develop a more sustainable corporate governance model, according to which companies are managed in a balanced way reflecting the interests of workers, society and stakeholders, and not in the sole interest of its shareholders and managers, and public services are better organised and of higher quality.

Considering the interdependency of a resilient plural and inclusive society and democracy, democracy at work should be regarded as a key driver – political democracy and democracy at work are mutually reinforcing and a lack of democracy at work has a negative impact on the resilience of plural and democratic societies.

Strong democracy at work by sound information, consultation and participation rights also reduces social and economic inequality in our societies[59] and has a positive effect on gender equality. Given the strong trend of an increase in income inequality in nearly all countries around the globe[60], there is a strong need to strengthen democracy at work and workers voice.

3.3 Globalisation and the need for corporate due diligence

More and more corporations operate across borders. Complex corporate structures and supply and subcontracting chains enable parent companies to avoid responsibility for human rights and violations of social and environmental standards.

The main international tools, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises include the responsibility for companies to carry

---

58 Ibid., para 1.24. The EESC in another recent opinion has also highlighted the important role of the social economy for social cohesion, inclusion, democracy as well as social and economic innovation. See EESC 2019: Social economy enterprises' contribution to a more cohesive and democratic Europe. Opinion. INT/875.

59 Various research has shown that workers' participation at company level lead to generally higher income equality (e.g. Hörisch F. (2012) The macro-economic effect of codetermination on income equality, Mannheimer Zentrum für Europäische Sozialforschung). Other research indicates that through more workers' involvement in corporate strategic decisions, uncontrolled corporate behaviour that results in increased inequalities can be contained and enriched by considerations of social sustainability. See Vitols, S. and Kluge, N. (2011): The Sustainable Company: a new approach to corporate governance, ETUI, Brussels. See also EESC (2013): Employee involvement and participation. Own-initiative opinion. SOC/470.

60 See Alvaredo F., Chancel L., Piketty T., Saez E. and Zucman G. (2018): World inequality report 2018: executive summary, Paris, World Inequality Lab

out due diligence within their value chain when doing business abroad. However, there are no specific requirements that these responsibilities should be implemented by companies.
And while the UNGP standard of due diligence is increasingly being introduced into legal standards or proposed in Member states, recent research has also shown that still only a minority of companies operate on a social responsible way applying due diligence requirements to identify, prevent, mitigate and account for adverse corporate impacts (abuses of human rights, including the rights of the child and fundamental freedoms, serious bodily injury or health risks, environmental damage, including with respect to climate).

A recent study for the EU Commission that is based on a survey of larger companies, found that only one in three businesses in the EU are currently undertaking due diligence which takes into account all human rights and environmental impacts. The survey respondents indicated that EU-level regulation on a general due diligence requirement for human rights and environmental impacts may provide benefits for business.[61]

Similar results have emerged from other survey and study, e.g. the "Corporate Human Rights Benchmark" that was created by professional investors together with human-rights NGOs.[62]

Also, national studies on corporate human rights activities confirm the overall poor picture of corporate responsibility and due diligence despite all international initiatives and human rights scandals in recent years. For example, a study of public human rights disclosures of the twenty largest German companies revealed that only 18 out of the 20 companies (90%) failed at all to demonstrate how and whether they manage their human rights risks sufficiently.[63]

Thus, the reliance on a voluntary framework to promote business respect for human rights has furthermore proven insufficient and ineffective for workers, society and businesses. National action plans on business and human rights for responsible business conduct which implement OECD guidelines on multinationals and OECD guidance for business conducts reveal the limits of the voluntary approach.

According to various stakeholders including the European Parliament[64], the current voluntary framework of corporate human rights due diligence is far from effective. It raises public expectation without providing the enabling framework for proper enforcement. Furthermore, it provides no stable grounds for investors to evaluate and to compare companies' sustainability and due diligence processes. There is a clear need to remedy the absence of legally binding obligations upon businesses to comply with human rights and to overcome the lack of effective oversight and means to properly enforce measures to be implemented by companies in this area.

---

61 European Commission 2020: Study on due diligence requirements through the supply chain.

62 https://www.corporatebenchmark.org/

63 School of Management and Law / Business and Human Rights Resource Centre (2019): Respect of Human Rights. A Snapshot of the largest German companies.

64 The European Parliament has adopted several resolutions on the topic and has been a strong supporter of active participation in the negotiations on a binding legal instrument. See: EP resolution of 4 October 2018 (2018/2763(RSP).

The EESC in an opinion issued in November 2019[65] welcomes the position of the EU for a binding UN treaty on business and human rights that would encompass all business and should have a stronger alignment with the UNGPs.

The EESC also encourages the EU and its Member States "*to take measures to support businesses with the implementation of their human rights obligations, which could be based on their existing voluntary CSR engagements, particularly with regard to international activities.*"[66]

The EESC also calls upon those Member States that have not done that yet,[67] to draw up national action plans to implement human rights due diligence and suggests that there shall also be a European action plan. Furthermore, the EESC recommends that the European Commission should carry out a feasibility study of a "Public EU Rating Agency" for human rights in the business context.

Besides the fact that the respect and enforcement of workers' rights of course need to be included in a binding framework of human rights due diligence, workers and their organisations need to be a major stakeholder that needs to be involved in any framework of corporate due diligence. As also highlighted in the UNGP, workers representatives and trade unions need to be actively involved at all stages in the whole due diligence process.[68] A European framework of binding corporate due diligence should also include the active involvement of European Works Councils as well as workers representatives in company boards.

3.4 Climate change and just transitions

The COP21 Paris Agreement[69] was a historic milestone. A total of 197 signatories, including the EU, committed themselves to transforming their development trajectories to limit global warming to 1.5-2°C above pre-industrial levels by 2100.

In response to the Paris Agreement, the European Commission in December 2019 launched the European Green New Deal, a set of policy initiatives with the overarching aim of making Europe climate neutral by 2050. The Green New Deal also includes the plan to increase greenhouse gas emission reduction targets for 2030 to at least 50% compared with 1990 level.

Described by the president of the EU Commission as Europe's "Man on the Moon Moment" and the ambition to make Europe the first climate-neutral continent, the Commission decided to go ahead with an opt-out for Poland. In January 2020, the EU Parliament voted to support the Green Deal, urging the Commission for higher ambition, e.g. on the target for greenhouse gas emission reduction.

---

65 EESC (2019): Binding UN treaty on business and human rights (own-initiative opinion). REX/518.

66 Ibid.

67 Following the precedent of France's 2017 law on corporate duty of vigilance, discussions have taken place in Denmark, Finland, Germany, Luxembourg, the Netherlands, Switzerland and the UK. In June 2018, the European Parliament supported a legal EU due-diligence framework and in 2019 it agreed to undertake an own-initiative report. The 2020 Croatian and German EU presidencies were expected to address the issue.

68 The ETUC in a position paper on the issue not only demands a EU Directive on mandator due diligence but also made concrete suggestions on how to involve workers and trade unions in the due diligence process, starting with the design of a due diligence plan, the risk assessment, implementation of measures, monitoring, alert mechanisms and conflict resolution. See ETUC 2019: ETUC Position for a European directive on mandatory Human Rights due diligence and responsible business conduct. Adopted at the Executive Committee Meeting of 17-18 December 2019.

69 Conference of the Parties (COP), the supreme body of the United Nations Framework Convention on Climate Change.

In order to implement the Green Deal the Roadmap of the Commission[70] includes key actions on climate, energy, mobility, industrial strategy for a clean and circular economy, agricultural policy, biodiversity and digitalisation, mainstreaming sustainability through a "*European Green Deal Investment Plan"*[71] and a renewed sustainable finance mechanism that aims to mobilise EUR 1 trillion of private and public sustainable investments up to 2030. Furthermore, taking into account the huge social and employment impacts, the Commission has developed a "*Just Transition Framework*" as an integral part of the strategy which should provide guidance to Member States as well as mobilise funds by a "*Just Transition Mechanism*" (JTM), including a "*Just Transition Fund*"[72] (JTF) that comes on top of the Commission's proposal for the 2021-2027 *Multiannual Financial Framework* (MFF)[73] with the ambition to reach EUR 100 billion of investment to be mobilised over 2021-27. It should contribute to mitigating the massive socio-economic, labour and environmental impacts that will result from the transition towards Union climate neutrality at the regional level.

The concept of just transition reflects the strong need to put on equal footing the two pillars of climate change and social adjustments. Thus, any green deal also needs a social deal, and both must be conceived as one. This has also been highlighted in an EESC opinion that states,

"*If compared with environmental or economic dimensions, both social issues and regional cohesion have so far been seen more as separate policy areas rather than as a truly integral part of sustainability policy. What defines the social dimension in a comprehensive sustainability policy is not only that it further develops traditional social policies (such as better welfare payments), but that it does more for justice and participation in the economy – to the benefit of people and regions.*" [74]

The EESC in this and other opinions[75] has also stressed that transformation to sustainability cannot and must not be imposed from above and will only be successful if it is based on broad support and active participation by all, including workers and their representation.

The concept of a just transition according to the EESC needs to *"include ensuring that the effects of climate policies are shared out equally and managing labour market transitions in a forward-looking way with the full participation of the social partners.*"[76]

As in the case of the European Green Deal, the just transition cannot be regarded as a top-down process but has to be adjusted according to specific national, local and sectoral needs. Greening of economies requires a coherent country-specific mix of macroeconomic, industrial, sectoral and labour policies. The

---

70 https://ec.europa.eu/info/sites/info/files/european-green-deal-communication-annex-roadmap_en.pdf.

71 Also referred to as the "Sustainable Europe Investment Plan" (SEIP). See: https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24.

72 COM (2020) 22 final.

73 The MFF was published in January 2020. It sets an overall target of 25% for climate mainstreaming across all EU programmes. In the context of financing the necessary green transition, the EESC in an own-initiative opinion adopted in October 2018 that argued for a "finance-climate pact". In this context the EESC demanded that 40% of the EU budget for the period 2021-2017 should be devoted to the fight against climate change and its environmental, economic and social consequences. See: EESC 2018: European Finance-Climate Pact (own-initiative opinion). NAT/735.

74 EESC 2019: Leaving no one behind when implementing the 2030 Sustainable Development Agenda. (Own-initiative Opinion) SC/053.

75 For example, EESC 2019: The sustainable economy we need. (Own-initiative opinion). NAT/765.

76 EESC 2019: Towards a more resilient and sustainable European economy. ECO/492.

aim is to generate decent jobs along the entire supply chain, creating employment opportunities on a wide scale.

Trade unions and workers representatives need to be fully integrated in designing and implementing just transition plans and strategies.

The following examples illustrate a broad variety of social partners' joint activities that aim at fostering a strategy of just transition in the context of decarbonisation and other climate policy objectives.

Spanish coal unions win landmark Just Transition deal

In November 2018, after more than six years of struggle, Spanish mining unions have won a landmark deal for a Just Transition from coal mining, with sustainable development for mining regions. The €250 million *Plan del Carbón* deal will see the closure of all Spanish coal mines which are no longer economically viable. The agreement was reached between the new Socialist government and the unions *Federación de Industria de Comisiones Obreras* (FI-CCOO), *Federacíon de Industria, Construcción y Agro de la Unión General de Trabajadores* (FICA-UGT) and *Federación de Industria de la Unión Sindical Obrera* (FI-USO), all IndustriALL affiliates. The government will fund a transition that is expected to take place between 2019 and 2023.

The Just Transition deal replaces subsidies to the coal industry with a sustainable development plan. Financially viable mines can remain open, but ten pits and open cast mines are expected to close by the end of the year, with the loss of 1,677 jobs. The deal covers eight companies with 12 production units in four regions of Spain. The biggest employer is state owned mining company HUNOSA, with 1,056 employees.

The highly detailed agreement has been praised by unions as a model and provides a package of benefits to miners and their communities. About 60 per cent of miners – those age 48 and older, or with 25 years' service – will be able to take early retirement. Younger miners will receive a redundancy payment of €10,000, as well as 35 days' pay for every year of service. Miners with asbestosis will receive an additional payment of €26,000. In addition, money has been set aside to restore and environmentally regenerate former mining sites. Priority for employment in these jobs will go to former miners. Money will be set upside to upgrade facilities in the mining communities, including waste management, recycling facilities and water treatment plants, utilities infrastructure and distribution for gas and lighting, forest recovery, atmospheric cleansing and reducing noise pollution. An action plan will be created for each mining community, including plans for developing renewable energy and improving energy efficiency, and investing in and developing new industries.

Further details: FRAMEWORK AGREEMENT FOR A FAIR TRANSITION OF COAL MINING AND SUSTAINABLE DEVELOPMENT OF THE MINING COMMUNITIES FOR THE PERIOD 2019-2027. Available at: http://www.industriall-union.org/sites/default/files/uploads/documents/2018/SPAIN/spanish_plan_for_coal_eng_oct_2018.pdf

"Jobs for the Climate":
In Portugal, the "Jobs for the Climate" ("*Empregos para o Clima*"[77]) campaign has existed since 2015 and already has the support of several environmental and labour organisations, including the trade union confederation GTP-IN. This publication is the simplified summary of a compilation of technical texts and political reflections (accessible online in jobs- clima.pt) that explain the basic motivating and defining ideas of this campaign and describe the details of what we defend in the Portuguese context: how many jobs, in what sectors, how to finance them and what are their impacts. This is a work in progress. The expansion of the movement will continue to bring new studies and updated data that will be included in future editions of this publication.

[77] http://www.empregos-clima.pt/

"Agreement of Social Partners on Just Transition and Climate Change"

In Greece, social partners (Greek General Confederation of Labour (GSEE), Greek Confederation of Trade and Entrepreneurship (ΕΣΕΕ), Hellenic Federation of Enterprises (SEV), Hellenic Confederation of Professionals, Craftsmen & Merchants (GSEVEE), Greek Tourism Confederation (SETE) signed an agreement on a just transition and climate change. This agreement first asks for one seat for employers and one seat for trade unions within the National Council for Adaptation to Climate Change. Secondly, signatory parties will work together to develop policies and actions to address the impacts of climate change in the country, in particular those relating to the transition of enterprises and workers to a low-carbon economy, a process that is necessary, given the commitment of the country to the UN Sustainable Development Goals (Agenda 2030). The parties accept the need for a just transition for workers into a low-carbon economy, with support for redeployment, retraining and re-skilling when needed.

"Low Carbon Task Force"

The Yorkshire & the Humber Region has the highest concentration of the UK's high-carbon intensive industries and coal and gas fired-power plants 28,000 people work in these major plants, and three or four times as many in their supply chains. For many years, the local TUC has been engaged in the low-carbon transition process, committed "to working with all partners to find sustainable solutions that can ensure the continued operation of these essential industries and protect the jobs they provide". In March 2018, it set up a Low Carbon Task Force to bring together all the key partners in the region to help develop a low-carbon transition plan: unions, enterprises, business organisations, LEP (Local Enterprise Partnerships) and environmental NGOs. The main objectives of the task force are to organise from the workplace upwards, to work locally and regionally, strengthen consultations between all stakeholders, favour energy savings, carbon emission cuts and investment in low-carbon technologies as well as to promote a just transition for workers.

"Climate Alliance"

In Spain, *La Alianza por el Clima* has been formed by more than 400 organisations that represent the environmental movement (Greenpeace, WWF and many more), trade unions (CCOO, UGT), development / cooperation organisations, farmers and consumers organisations.[78] The Alliance promotes the transition towards a renewable, efficient, sustainable and fair energy model that guarantees universal access to energy, through the development of collective proposals and the organisation of activities aiming to raise awareness on the need to implement measures to tackle climate changes among the citizens and the different political groups. In parallel Spanish unions have prepared concrete materials to raise their members' awareness as well as to strengthen their capacity to deal with the climate-related challenges in the world of work.

In previous sections of this report, research evidence on the positive effect on strong workers' information, consultation and participation rights on the capability of companies to take the right decisions in managing a just transition in the context of adopting a new model of climate neutral production and addressing the social impact by measures of just transition.

A striking example of the important role of workers board level participation in a company that is heavily affected by managing several crises and making the business model fit for a carbon-neutral future is presented in the textbox below.

Thyssenkrupp Steel Europe: Future Agreement Steel 20-30

[78] See the information provided on the UGT website: https://www.ugt.es/alianza-por-el-clima-exige-participacion-ciudadana-en-el-diseno-y-seguimiento-de-las-politicas-de.

In March 2020, the IG Metall trade union concluded a company collective agreement for all employees of *thyssenkrupp Steel Europe AG* in Germany that provides a framework of strategic reorientation of the company in order to stabilise the company as well providing security for employees. The collective agreement includes a job guarantee for workers, ruling out economic redundancies until 2026 and the commitment to a significant investment package in future technologies (e.g. competence centre e-mobility at the steel site in Bochum). The collective agreement with the management also includes social measures in relation to those parts of the companies that will face a reduction of jobs due to planned restructuring. Trade unions and works councils will be actively involved in the reorganisation and the process is supported by a social plan that also has been agreed already.

These examples illustrate that strong workers voice which means early involvement and anticipation of challenges and needs for change, negotiated joint solutions and involvement in company decision making by employee participation at the board-level provides concrete added value for both workers, their families and local communities as well as public interest and the resilience of the business.

However, the examples documented above have evolved purely based on organisational influence and persistency of will rather than institutional or regulatory frameworks. Therefore, and if the concept of just transition and thinking the green deal and social deals as one, there is a need for a facilitating and stronger framework of workers' information, consultation and participation at EU level.

3.5 Shaping a fair digital transition process in the economy and society

Also as regards the second major transition, the European Union currently facing, there is a strong need for a model that combines necessary change and adjustments with concepts of fair and just transition.
Digitalisation and automation have both positive and negative effects for the economy and society. On the one hand, they present great potential to increase productivity and to decentralise innovation activities to more peripheral locations. In the world of work, digitalisation and automation has the potential to delegate more dangerous, hazard and physically strenuous work to machines and robots. As illustrated currently during the forced lock-down of millions of employees in home-office and telework, digitalisation may also increase work autonomy and work-life balance if regulated well.

On the other hand, digitalisation and automation has the potential to displace workers especially in routine non-cognitive tasks. While technological revolutions in the past have never resulted in permanently massive unemployment, as the old displaced jobs have been replaced by new ones, the transition is unlikely to be seamless or painless without adjustment efforts. Digitalisation and the internet-economy has also resulted in the emergence of new types of employment and an increase in what has been labelled "platform work", "on demand economy"[79] or "gig work" carried out by formally self-employed workers that in reality are very dependent from platform providers, without coverage by any social and job security, often working under very precarious conditions.[80]

[79] The EESC has commissioned a study on the impact of digitalisation and the on-demand economy on labour markets and industrial relations that was published in 2017. See: https://www.eesc.europa.eu/resources/docs/qe-02-17-763-en-n.pdf.

[80] In February 2020, the EU Commission has published a Communication on various initiatives planned in order to shape Europe's digital future. The document also includes the plan of an "*enhanced framework to improve working conditions for platform workers (2021) and that in the digital age, ensuring a level playing field for businesses, big and small, is more important than ever. This suggests that rules applying offline – from competition and single market rules, consumer protection, to intellectual property, taxation and workers' rights – should also apply online*." EU Commission: Shaping Europe's digital Future. Available at: https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf.

Digitalisation and its impact on employment and work

In recent years, the term 'digitalisation' has become a buzzword, used to refer to all sorts of diverse, but complementary, technological developments. Building on changes that can already be traced back to the 1970s with the introduction of electronics and information and communication technologies (ICT), resulting in increased automation of tasks and complex processes, and significant tertiarisation of the economy, digitalisation is linked to new disruptive technologies and essentially based on the internet. It is confronting contemporary societies with major social, economic and environmental challenges. The digital revolution is challenging public authorities, regulators and labour market actors with new challenges related to the future of work.

Digitalisation today increasingly is also shaped by the use of machine learning and Artificial Intelligence (AI) that is applied in a large variety of fields, increasingly substituting human decisions by algorithms. AI is resulting in new emerging regulatory, operational and ethical questions and needs to shape its use.[81]

Against the strong impact of digitalisation on the future of work, including on the question of what at all is work, a work relations and working time, workers and trade unions need to be prominently involved in all debates, policy reform initiatives as well as company level decision making processes related to digitalisation plans and change projects.

According to opinions of the EESC[82], digitalisation and its effects on work should be a priority at EU level and should become a central component of social dialogue. The EESC recommends monitoring of developments, trends, threats and opportunities linked to digitalisation, as well as their impact on professional relationships, working conditions and the social dialogue. It also recommends improving the efficiency and relevance of social dialogue given the changes in the world of work. Topics which should be addressed in social dialogue include employment, lifelong learning, and particularly vocational training, job transitions, working conditions and pay, social protection and the sustainability of social protection funding. It could be added that more recently, also issues such as big data, artificial intelligence and the protection of employee data are becoming increasingly relevant topics.

At cross-industry European level, the employers and trade unions have issued, separately and jointly, several statements on issues related to digitalisation. Representing European employers, BusinessEurope emphasises in its '*Recommendations for a successful digital transformation in Europe*' the need to adapt labour markets and work organisation in order to leverage the maximum potential of digitalisation.[83] The European Trade Union Confederation (ETUC) first underlined in 2015 that digitalisation was not simply a question of technology and markets, but that it was also important to ensure a fair transition from traditional jobs to digital jobs in both the industrial and service sectors. This will require the active participation of the workers and the trade unions on issues linked to job quality.[84] In 2017, the ETUC proposed launching negotiations on digitalisation with the European employers'

[81] In February 2020, the EU Commission has published a White Paper on Artificial Intelligence that elaborates a European approach of promoting AI while guaranteeing respect of fundamental rights (COM(2020) 65 final). At the time of writing of this report, the EESC was about to elaborate an own-initiative opinion on the issue. Already in 2018, the EESC has published an opinion on AI: Artificial intelligence: anticipating its impact on jobs to ensure a fair transition (own-initiative opinion). INT/845.

[82] EESC 2015: Effects of digitalisation on service industries and employment (own-initiative opinion). CCMI/136.

[83] BusinessEurope 2015: Recommendations for a successful digital transformation in Europe, Brussels.

[84] ETUC 2015 and 2016: ETUC resolution on digitalisation: "towards fair digital work". Adopted by the Executive Committee on 8-9 June 2016.

organisations, stressing the need for trade union action. It also called for an exchange of information and experience on known approaches and announced its intention to create a new forum for dialogue with digital platforms.[85]

At the March 2016 tripartite social summit, the European social partners adopted a joint declaration on digitalisation, stating that 'public authorities and social partners at various levels need to assess how best to adapt skills policies, labour market regulations and institutions, as well as work organisation and information, consultation and participation procedures, in order to derive maximum benefits for all from the digital transformation'. In the context of their joint work programme 2019-2021, cross-industry social partners agreed to address the issue of digitalisation as the top priority and conduct negotiations of an Autonomous Framework Agreement on the issue, including major aspects such as the acquisition of digital skills, work organisation and working conditions. This Framework Agreement was finally published in June 2020.[86]

Likewise, at the level of transnational social dialogue, digitalisation and its impact of work has also been addressed by European Works Councils, often on the initiatives of the employee side. One comprehensive example of addressing challenges related to the future of work at transnational level in an innovative way is the "*Future of Work Agreement*" that was negotiated between the Unilever EWC and the European Foodworkers' Union EFFAT on the one hand global Unilever management.

The Future of Work Agreement at Unilever

As a response to the significant restructuring and reorganisation of Unilever since 2018, the Unilever EWC and the global Unilever management in March 2019 agreed upon a landmark agreement for Europe, the "Future of Work Agreement". This is regarded by the EWC as an agreement that contains the Unilever management commitment not only to take care of shareholder interests in increasing profit margins but also to care about Unilever employees and their interest in employment security and employability. The Future of Work Agreement states that productivity dividends must also be used to invest in employees that Unilever must remain an employer of choice and that while jobs cannot always be protected during a period of rapid change, people can and should be protected. Specifically, this agreement focuses on:

- Re- and upskilling in order to maximise the employability of employees;
- the development of joint programmes for life-long learning and development
- the exploration of new models of employment that meet the needs for both flexibility and security;
- the development of models for managing life cycles into and out of work and retirement;
- work in partnership with other companies and key stakeholder groups in order to deliver the activities listed above; and
- outlining a new process for consulting and co-creating a change agenda that anticipates digital disruptions and enables speed of response, while also minimising potential adverse social impacts.

On the issue of consultation and co-creation of a change agenda, the agreement states that the existing EWC arrangements and procedural agreements for formal consultation will continue The agreement aims to create new mechanisms for co-creation in which joint teams comprised of representatives from management and employee representatives can work together to identify new solutions to new issues in advance of any disruptive impacts. In this way, joint working teams can be formed to examine issues such as training and upskilling, and sustainable employment and the future of work, in order to address the issues listed above. Initiatives taken under this

[85] ETUC 2017: ETUC Resolution on tackling new digital challenges to the world of labour, in particular crowdwork. ETUC Resolution adopted at the Executive Committee Meeting of 25-26 October 2017.

[86] ETUC, BusinessEurope, SMEunited, CEEP: European Social Partners Agreement on Digitalisation, Brussels, 22 June 2020.

agreement will form a standing agenda item at the annual EWC plenary meeting and the EWC select committee will also receive regular updates on pilots and progress under this agreement. A total of €6 million has been ring-fenced by Unilever to support projects implemented under this framework.

Source: Broughton, A. / Voss, E. (forthcoming): Social Dialogue and Human Resources Management in Multinational Companies, Eurofound, Luxembourg.

A further example is the Solvay *Global Agreement on Digital Transformation*.

Solvay Global Framework Agreement on Digital Transformation

Solvay is a Brussels headquartered multinational company that makes soda ash as a raw material for glass, peroxide (to whiten and/or disinfect things), fragrances and flavours, advanced materials for the automotive and aerospace industries. It employs some 24,500 people in 61 countries. The head office is in Brussels.

The European Works Council (EWC) has taken the initiative to conclude a global agreement with management on how to deal with digitalisation. This was achieved in 2019, in about 10 months' time and in April 2020, the European Works Council of Solvay and the Solvay Group signed the '*Global Framework Agreement on Digital Transformation*'.

The agreement includes provisions on employee involvement in significant projects, training and competence development, collection and protection of personal data, procedures if people become redundant and monitoring the implementation of the agreement.

For all significant projects, a 'technology assessment' must be carried out in the preparatory phase, indicating what the consequences may be for, among other things, health and safety, the amount of work, job content and work organisation, quality of work, employment, collection of personal data, people with disabilities, etc.

IndustriALL Global Union supports the agreement and is involved in monitoring and in possible local disagreements (escalation procedure).

Source: https://www.planetlabor.com/en/industrial-relations-en/transnational-industrial-relations-en/solvay-global-framework-agreement-on-digital-transformation-signed/

National social partners in recent years attempted to address the issues of digitalisation. Trade unions studies, results of debates and discussions which have been disseminated through several working groups or conferences, as well as larger surveys outcomes, however, have shown that there are significant differences between countries when it comes to conclude agreements on various aspects of digitalisation.[87] Generally, there are marked North-South and West-East divides when referring to the way in which workers' voice has been able to reach out and shape the new technology. In turn, this reflects the strengths and weaknesses of the different social dialogue and workers participation systems at both company and sector level within each industrial relations systems of the countries involved.

Without claiming completeness, the following examples illustrate that workers and their unions have been able to shape the effects of digitalisation, in the light of the strength of their national systems of collective bargaining and participation:

[87] Voss, E. and Riede, H. 2017: Digitalisation and workers participation: What trade unions, company level workers and online platform workers in Europe think. Report to the ETUC, Brussels. See also Kirov, V.; Naedenoen, F.; Franssen, M.; Beuker, L. 2019: Digitalisation and restructuring: Which social dialogue? Transnational analysis. Published by Lentic in the context of the DIRESOC Project.

Trade unions shaping digitalisation and the future of work

Employers and workers in **Austria** have reached a ground-breaking collective agreement for bicycle couriers and food suppliers. According to the trade union *vida* and the Austrian Federal Chamber of Commerce, they will receive a basic monthly salary of €1,506 for a maximum 40-hour week from 1 January 2020, plus the customary 13th and 14th months. Riders will be compensated for the use of private bicycles and mobile phones. This is thought to be the first collective agreement for bicycle couriers and food suppliers worldwide.

In the **Belgian** 2017-2018 Cross-Industry Agreement, the social partners decided to examine what measures should be taken to ensure that digitalisation and the collaborative economy lead to further growth, employment and entrepreneurship, and sustainable social security.

In **France**, five trade union and employer representatives were involved in drafting the Mettling report, highlighting demands of the social partners, as well as recommendations covering aspects such as job quality, training, reclassification and the right to disconnect. Already in 2016, an agreement between the social partners in a telecommunications group included the setting up of a committee with the social partners to try and anticipate the new skills which workers will need due to digital developments.

Experiences **in some Member States** show how trade union measures have evolved and new rights have been acquired thanks to collective bargaining on digitalisation. The right to disconnect recently established by law in France and Italy, or in company agreements in Germany, France (*Keolis*, *CréditAgricole*), or Spain (subsidiary of French *AXA*) are examples on this.

In **Italy**, digitalisation has led to the emergence of new collective bargaining topics: work-life balance, excessive stress and work intensification due to technological devices, training opportunities and participation in decision-making. In 2016, when the metalworkers' collective agreement was renewed, a right to training was introduced.

Also, in **Italy**, the employer organisation Confindustria), the Italian General Confederation of Labour (CGIL), the Italian Confederation of Workers' Trade Unions (CISL), and the Italian Labour Union (UIL) signed the cross-industry agreement reached on 28 February 2018. The agreement covers the structure of the bargaining system and aims to accompany the transformation and digitalisation of manufacturing and services, with an emphasis on effectiveness and participation. It aims at the modernisation of the industrial relations and collective bargaining system and intends to help devise measures that foster economic growth, reduce income inequalities, support wage increases, increase competitiveness through productivity gains, enhance workers' employability and create skilled jobs.

In **Germany**, company-level agreements have been concluded between unions and employers in the large automotive companies as well as other sectors (e.g. railways aviation, chemicals) not only protecting workers against redundancies resulting from robotization and automation, but also providing frameworks for adjustments in work organisation, digital skills and competence development, workers involvement in innovation projects or pilot measures in the field of new technologies.

As regards the **platform economy**, a number of national unions have managed to obtain proper working arrangements for digital platform workers, with collective representation and collective bargaining, as the way to. In Belgium, Smart, the "Shared Society for Artists", also covers on-demand delivery and transport workers from the platform economy. It arranges working contracts for Deliveroo riders and represents their interests. It has signed an agreement with Deliveroo and negotiated with the platform to obtain better wages for the riders. In Vienna, for example, the Foodora delivery riders, with the support of the vida trade union, have set up a works council. improve workers' conditions and rights of representation. In Germany, for example, Delivery Hero, an on-line meal delivery service which owns Foodora among others, signed an agreement with the national trade union NGG which is affiliated to the European Federation of Food, Agriculture and Tourism trade unions (EFFAT) in April 2018, whereby the works council and employees are represented on its supervisory board. In Denmark, the trade union 3F in 2018 announced the conclusion of the world's first collective agreement in the platform economy with Hilfr.dk, a platform offering cleaning services for private houses. In Spain and Portugal,

trade unions have been very active in campaigning for decent working conditions of platform workers such as in the field of food delivery by bicycles or in the personal transport business. Apart from global platforms such as Deliveroo or Uber as well as national digital platforms such as Glovo in Spain, trade unions have highlighted the precarious working conditions of workers who formally are self-employed but in fact are deeply dependent on the platforms. Spanish courts so far have ruled cases differently as regards the question whether or not such drivers are "fake" self-employed worker. This indicates the need to regulate these employment relationships in the political sphere rather than at courts.

On the other hand, however, decisions taken by artificial intelligence (AI) systems seem to still require a stronger framework which regulates by enforcing AI governance systems. This is important and needs to be corrected soon since AI can have real and serious consequences not only on the competences and jobs of the workers but also the human rights of individuals, namely discrimination and inequality.[88]

[88] EESC 2018: Artificial intelligence: anticipating its impact on jobs to ensure a fair transition (own-initiative opinion). INT/845. See also as a more recent briefing on the topic: Ponce Del Castillo, A. 2020: Labour in the age of AI: why regulation is needed to protect workers, ETUI Foresight Brief No. 08, February 2020.

4. CHALLENGES FROM THE PERSPECTIVE OF CURRENT AND FUTURE COUNCIL PRESIDENCIES

The following sections are shedding light on key challenges in the field of workers voice, information and consultation as well as the diversity of structures, traditions and challenges of workers participation in six target countries.[89] This chapter is summarising in the more detailed country-reports that have been elaborated in the context of the study and that are documented in the annex to this report.

Each section is structured as follows:

- Key features of industrial relations and social dialogue
- Assessment of current and future challenges of workers' information, consultation and participation, including trade unions' recommendations and demands
- Policy reform debates and demands as regards the EU Presidency of the respective country

4.1 Key features of industrial relations and social dialogue

The six countries addressed in this study reflect the broad variety of industrial relations and social dialogue in Europe. The overall picture is that diversity and pluralism of different systems, landscapes of trade union and employer organisations as well as framework conditions of social dialogue has prevailed over the last decades. However, when it comes to drivers of change, the role of public policies and labour law reforms there are also commonalities and common trends.

4.1.1 Social partners: Pluralism and diversity prevails, membership decline a common feature

Irrespective of national specificities, i.e. trade unions' and employers' organisational pluralism, diversity of political or normative orientation and legal framework conditions, the loss of membership as the backbone of organisational strength certainly is the most striking common feature of all six countries.

Though no official figures exist, it is estimated that around 25% in **Croatia** are member of a trade union organisation. Trade unions in Croatia are very fragmented with more than 300 trade unions operating nationally and nearly 300 operating at the level of only one single county. However, there are only three national trade union organisations that are regarded as representative, after a reform of the rules on representativeness in 2013 (SSSH, NHS and MHS). Contrasting to the fragmentation of trade union organisations, there is only one association of employers, the *Croatian Employers' Association* (HUP), which brings together branch and interest employers' organisations. HUP as an employers' confederation unites 30 branch associations. Membership is not compulsory. HUP's density is estimated at approximately 46% of employees in companies. The numbers of its members and membership density have been stable over the past 10 years.

In contrast to the relatedly high membership rate of employees in Croatia, the trade union membership rate in **Germany** is significantly lower, estimated at around 17% in 2018. Due to various factors, for example the structural change of employment and the shift from manufacturing to private services, trade unions have been facing a long term trend of declining membership and a constant increase in the

[89] The sequence of countries is reflecting the sequence of EU presidencies: Croatia and Germany (2020), Portugal and Slovenia (2021), France and the Czech Republic (2022).

average age of union members, though more recently there have been indications of membership stabilisation or even increase. Though trade union competition has increased in recent decades, the vast majority of union members are concentrated in the eight affiliated member unions of the *German Trade Union Confederation* DGB. The structure of employer organisations in Germany is characterised by several national organisations that are divided into regional structures. Not only unions but also employer organisations have been affected by a decline in membership. In order to weather the membership decline, most employer organisations today offer membership without the binding obligation for members to apply the respective collective agreements.

The labour movement in **Portugal** still is fractured by long-lasting ideological and political divisions that have emerged since the 'Revolution of the Carnations' in 1974 and still characterises the current landscape although mutual recognition and occasional joint action improved as time passed. The two dominant organisations are the CGTP-IN and the UGT, both represented in the national tripartite Economic and Social Council. Trade union membership has experienced a strong decrease over the last decades and is estimated by around 10 – 20%. However, there are also trends that indicate at least a partial revival of trade union strength: As reported by the CGTP-IN representative in the context of an interview for this study, the trade union in recent year has recruited quite a large number of new members.
There are four employers' organisations that are regarded as representative (CIP, CCP, CAP and CTP). Employer density is estimated at only 19% of companies and in terms of active employees, 39%.

The proportion of employees in trade unions in **Slovenia** is estimated currently at around 20%. However, during the last decade there has been a significant decline in membership of around 10 percentage points. The union structure is fragmented, with seven separate union confederations, although one of them, the *Association of Free Trade Unions of Slovenia* (ZSSS*)*, is clearly the largest one. Membership in employers' organisations suffered its biggest decrease when the obligatory membership in the Chamber of Commerce and Industry was abolished in 2006. The *Association of Employers of Slovenia* (ZDS) was the first voluntary economic association in Slovenia representing and protecting the interests of employers. They claim that in the private sector, half of all employees are employed by more than 1,000 members.

Similar to Portugal, the system of industrial relations in **France** features a high degree of fragmentation and competition in particular as regards the trade union movement along ideological as well as other demarcations. There are five representative trade union confederations (CFDT, CGT, FO, CGT-FO and the CGC). On the other hand, there are three major employer confederations at national level, the general employer organisation MEDEF, the SME organisation CPME and the U2P that organises the craft sector as well as occupational groups such as health professionals or lawyers.

With only around 8%, the French trade union movement (traditionally) is one of the weakest in Europe in terms of membership. However, low membership is compensated in France by a strong ability to mobilise workers and public policies that have contributed to a very important role of collective bargaining (resulting in a coverage rate of nearly 100%).

Industrial relations in the **Czech Republic** as it has emerged after the 'Velvet Revolution' in 1989 are dominated by relatively few organisations that are regarded as nationally representative and that are sitting in the national tripartite council. For the employee side there are the Czech-Moravian

Confederation of Trade Unions, ČMKOS and the Association of Autonomous Trade Unions, ASO ČR. Two employer organisations are qualified accordingly as representative: The Confederation of Industry of the Czech Republic, *SP ČR* and the Confederation of Employer and Entrepreneur Associations of the Czech Republic, *KZPS ČR*.

As in other countries, Czech trade unions have experienced a loss of members in recent years and the organisation rate is estimated at only around 7%. However, increasing labour shortages, low pay and workers' dissatisfaction have been addressed quite successfully in particular by the ČMKOS union in public campaigns and the recruitment of new members.

4.1.2 Social dialogue and workers voice at national level: Tripartite Institutions

In five out of the six countries – Croatia, Portugal, Slovenia, France and Czechia - that have been analysed in the context of this study, tripartite social dialogue institutions exist at national level. Germany is the only country where such a tradition of tripartite consultation and concertation does not exist, most likely resulting from the strong notion of the autonomy of social partners as a key feature of the Germany social model.

However, despite this similarity of five countries, the actual influence and role of tripartite institutions of social dialogue vary significantly as the following overview illustrates:

In **Croatia**, the key tripartite body at the national level is the Economic and Social Council (ESC) that was established in 2000. The main role of the ESC is cooperation between the Government, trade unions and employer organisations is consultation about economic and social issues and problems, but it also serves as a consultative and advisory body of the Government, which "*gives opinions, proposes and evaluates*" certain issues within its scope of work, i.e. socio-economic issues, including salary policies, employment, pension and health insurance, education, labour market harmonisation and health and safety at work, social security.

In contrast to the tripartite council in Croatia and tripartite institutions in Slovenia and the Czech Republic (see below) that mainly have a communication and consultation role, tripartism in **Portugal** goes beyond that and also includes policy concertation at national level: The Economic and Social Council (*Conselho Económico e Social*) and the Standing Committee for Social Concertation (*Comissão Permanente de Concertação Social*, CPCS).

Tripartite concertation: The Standing Committee for Social Concertation in Portugal

The Standing Committee for Social Concertation (*Comissão Permanente de Concertação Social* – CPCS). It was created in 1984 and produced several agreements on income policies, setting reference values for the wage increases in collective bargaining. In 1990 and 1996, broad pacts covering a wide range of areas were signed, for example on health and safety at the workplace or vocational education and training). These agreements were only signed by one trade union confederation, UGT; CGTP-IN did not sign any of them.

In 1991, the first specific agreements were signed at the CPCS, one on health and safety at the workplace and the other on vocational education and training. After the last broad agreement signed in 1996 (which was also the last agreement with guidelines for wage bargaining), this new type of specific agreement became the dominant means of social concertation until 2008. CGTP-IN signed several agreements of this type. The areas covered by these specific agreements were health and safety (1991, 2000, 2006), occupational training (1991, 2000, 2007), public pension schemes (2001, 2006), and the minimum wage mid-term agreement (2006). The tripartite agreements of 2008 and 2012 encompassed again a large number of issues including the revision of labour legislation, both against the opposition of CGTP. Analysis of social dialogue under the shadow of Troika and of tripartite agreement 2012 suggest that mostly the government combined unilateral decision with subordinating social dialogue to MoU demands and that no significant trade-off was really achieved.[90]

Since the last quarter of 2014, tripartite concertation regained importance with the signing of a tripartite agreement on an increase in the minimum wage. In the new political cycle, initiated at the end of 2015, with the government of the Socialist Party supported by left-wing parties, three tripartite agreements were signed for 2016, 2017 and 2018 covering various issues (minimum wage update 2016, extension of collective agreements 2017, combatting precarious work 2018[91]). At the same time, the tripartite agreement of 2018 introduced new challenges regarding collective agreements and workplace decision-making on working time flexibility.

The tripartite agreements of 2017 and 2018 were not signed by CGTP-IN. Among the reasons for not signing was CGTP's demand for an in-depth revision of the legal framework of collective bargaining in order to fully re-establish the principle of *favor laboratoris* and to allow collective agreements to expire only following a joint decision of the signatory parties.

In **Slovenia**, tripartite social dialogue at national level takes place in the Economic and Social Council (ESS), with representatives of employers' organisations, trade unions and of the government. However, despite an important role in the context of examining draft legislation covering the entire spectrum of economic and social relations and for negotiations on social and wage policy agreements, the Council does not have the power to adopt any legally binding acts - it has primarily an advisory role.

Social partners in **France** are quite heavily involved in the management of certain social security provisions, such as public health insurance, unemployment benefits and social welfare boards (*paritarisme*). The social partners play also a central role in the supplementary private health insurance system and pension plans. Furthermore, they are involved in the system of vocational training. The national system of policy concertation is complemented by a tripartite social dialogue at the regional or local level.

Furthermore, according to the Law 2007-130 of 31 January 2007 on the modernisation of social dialogue it is obligatory for the government to consult national-level representatives of trade unions and employers' organisations beforehand when proposing reforms in the field of industrial relations,

[90] Campos Lima, M.P.; Abrantes, M. 2016: Country report Portugal, DIADSE – dialogue for advancing social Europe, Amsterdam, University of Amsterdam. https://www.cesis.org/admin/modulo_projects/upload/files/DIADSE_Portugal%20Report.pdf.

[91] See Eurofound 2019: Portugal: Developments in Working Life 2018, Dublin. https://www.eurofound.europa.eu/sites/default/files/wpef19047.pdf.

employment and vocational training. The government should provide these organisations with a policy document presenting the 'diagnoses, objectives and principal options' of the proposed reform. The social partners will then be able to indicate whether they intend to embark on negotiations and how much time they need to reach an agreement.

This procedure will not apply in 'emergency situations': in such cases, the government would have to justify its decision, which can be legally challenged.

When drawing up a draft law following the consultation procedure and a collective agreement on the respective issue, the government is however not obliged to adopt the content of a collective agreement as it is. However, depending on the topic, it must submit the bill to the the National Collective Bargaining Commission (CNNC) for reforms concerning industrial relations; the the National Employment Committee (CNE) for reforms in relation to employment or the National Council for Lifelong Vocational Training (CNFPTLV) for reforms with regard to vocational training in order to allow the social partners in these bodies to assess the legal proposals and give their opinion.

Finally, tripartite consultation and social dialogue in the Czech Republic is similar to the experience of the two other countries that joined the EU after 2004: The four representative social partner organisations are member of the national Council for Economic and Social Agreement (*Rada hospodářské a sociální dohody*, RHSD) that was established in 1990. However, in the light of the severe economic crisis in Czechia at the beginning of the 1990s, the activities of the Council were almost interrupted between 1994 and 1997 because of the deterioration of the relationship between social partners and the government. At the end of 1997 the RHSD entered a phase of renewal that also included the adoption of statutes and rules of procedure and entered a phase of renewal

The RHSD is a purely consultative and voluntary body of social dialogue between social partners and the government on issues of "common interest", including on economic issues. If all parties agree, the Council according to its statues may also negotiate aiming "*at reaching an agreement in essential issues or economic and social development*". [92] Thus, tripartite dialogue and consultation covers a wide array of topics, ranging from economic policy, labour relations, collective bargaining and employment, social issues, public service wages and salaries, public administration, safety at work, employment of foreign workers, development of human resources and education, and Czechia's position within the EU. Besides the national council, there are also 13 regional tripartite bodies which deal with similar areas to those dealt by the national body.

4.2 Information, consultation and workers' (board-level) participation

4.2.1 Variety of different systems and characteristics of workplace representation

Our sample of countries reflects the broad variety comprises quite different systems or patterns of workers voice at company level: While only in Germany there is a clear separation and duality between works councils and trade union structures at company level, all other countries are characterized by mixed systems:

[92] See English version of the Council's Statutes: https://www.tripartita.cz/wp-content/uploads/2017/02/statutes_rhsd.pdf.

Workplace representation in **Croatia** is provided both through trade unions and works councils, although if no works council has been set up, the trade unions (either external union officials or trade union representatives who are also employees of the company) can take on almost all its duties and responsibilities. This happens reasonably frequently because of the low threshold for setting up a trade union organisation at the company level. A works council can be established either at the level of an individual organisational unit (a workplace) or by bringing together several organisational units.

In **Germany** it is works councils that are elected every four years by the whole workforce that provide representation for employees at the workplace. Although not formally union bodies, union members normally play a key role within them. However, in contrast to Croatia and countries with a similar system (see Portugal and the Czech Republic below), trade union structures at company level are not able to substitute works councils. As works councils have quite significant veto-powers and co-determination rights at the workplace, the enterprise, group or holding level, the establishment of works councils often is a contested field of conflict with prominent examples of large companies having tried to avoid the establishment of a works council.

In **Portugal**, the rights of works councils and trade union organisation at the company level are guaranteed by the Constitution and regulated by the Labour Code. Transposing the EU Directive 2002/14/EC on information and consultation, the Portuguese Law 7/2009 of 12 February 2009 regulates the establishment of work councils ("workers commission", CT) in Portugal, representing the whole workforce. The legal framework provides for three different forms of workers voice at company level – all of them be established in all companies and there is no threshold:

- Workers' Commission (*Comissão de Trabalhadores*, CT), elected by all workers in the company.
- Trade union delegate (*Delegado Sindical*), delegate elected by the members of the respective trade union employed in the company.
- Union Committee (*Comissão Sindical*, CS) or Inter-union Committee (*Comissão Intersindical*, CIS). Constituted by Union Delegates of one (CS) or several (CIS) trade unions.

As regards group level representation there is no formal structure for this in Portugal. However, there can only be one works council in any company. Where there are several workplaces, they set up sub works councils and send representatives to the company works council. The law also provides for coordinating councils of workers, who bring together works councils from different companies with the aim of creating links between them and having a positive role in economic restructuring. However, they barely exist.

In **Slovenia**, employees at the workplace are represented both through their local union structures and, in workplaces with more than 20 employees, a works council. In accordance to the Worker Participation in Management Act adopted in 1993 and followed by two non-comprehensive amendments in 2001 and 2007, trade union bodies and works councils both have information and consultation rights, although the works councils are more extensive, whereas the trade union can undertake collective bargaining. In practice works council members are frequently trade union activists, although the extent of trade union involvement varies from industry to industry.

In **France**, employees are represented through trade unions and structures directly elected by all workers. Representation for workers has been obligatory since 1945 at all workplaces with more than 11 or 50 employees, depending on the structure. These bodies are largely regulated by law. Nevertheless, there is room for regulation through collective bargaining as the social partners can create information and consultation bodies through collective agreement, to improve information and consultation within the company. They may negotiate improvements in facilities for employee representatives such as more paid time off or more resources.

Since the labour reform of 2017 ('Macron Reform'), the landscape of the workplace-level employee representation has considerably changed. This is due to the merger of the three main employees' information and consultation bodies: the staff representatives (*délégués du personnel, DP*); the works council (*comité d'entreprise, CE*); and the Health, Safety and Working Conditions Committee (*comité d'hygiène de sécurité et des conditions de travail*, CHSCT), into one Social and Economic Committee (*Comité Social et Économique,* CSE). The CSE must be implemented in all companies concerned by 1 January 2020 at the latest (see textbox below).
Trade union delegates (*délégué syndical*, DS) are present in workplaces with 50 employees or more, members of the same union are entitled to set up a union section (*section syndicale*). In workplaces with less than 50 employees, a member of the staff delegation to the Social and Economic Committee may be appointed by a union as union delegate. Representative unions have the right to appoint one or more union delegates, depending on the size of the workplace. In companies with 200 or more employees, a representative union has the right to nominate a distinct central union delegate. The main role of union delegates is to negotiate the collective agreements at the workplace or company level. In order to be valid, an agreement must be signed by unions which represent individually or together at least 30 per cent of the workforce and must not be opposed by unions that represent more than 50 per cent. In practice, workplace agreements are generally signed jointly by all the unions that are present at the workplace. Since 2018, it is possible in small workplaces without union delegates or elected representatives to adopt a text drafted by the employer as a collective agreement by means of a two-third majority vote of the employees.

Table 2. Workers representation bodies at the company level in France

Body	Composition	Threshold rules	Collective bargaining competence
Trade union representation (DS)	Trade union delegate(s)	50 employees	Yes
Works councils (CE) *(will not exist from 1 January 2020)*	Elected employee representatives and management representative	50 employees	Under certain conditions and only if no trade union representation is present
Staff delegates (DP) *(will not exist from 1 January 2020)*	Elected staff representative(s)	11 employees	Under certain conditions and only if no trade union representation is present
Single representation body (DUP) *(will not exist from 1 January 2020)*	Members of works council, health and safety committee and staff representatives, management representative for some of its functions	Possible for companies with fewer than 300 employees	Under certain conditions and only if no trade union representation is present
Health and Safety Committee (CHSCT) *(will not more exist from 1 January 2020)*	Representatives elected by the works' council or staff delegates, management representative	50 employees	No
Social and Economic Committee (SEC) *(From September 2017)*	Elected employees, representatives, management and, in companies with 50 employees and more, trade union representatives.	11 employees	Under certain conditions if trade union representation is not present or if a majority collective agreement transfers the power of negotiation from trade union representative(s) to the SEC.

Source: Authors

In the **Czech Republic**, the local union grouping traditional and still the main way employees are represented at the workplace. In addition, and in relation to the implementation of the EU Directive 2002/14/EC on information and consultation, a works council, which has fewer rights, can be set up. For this to happen, at least one third of the workforce must ask for such a body. Under the revised labour code, which was passed in 2006 and came into effect at the start of 2007, works councils or health and safety representatives could only be established if there was no trade union in the company, and they had to be dissolved if a trade union organisation was subsequently set up and signed a collective agreement. However, in March 2008 the constitutional court ruled that this legislation was unconstitutional. It is now possible for a company to have both a union and a works council or health and safety representatives. However, in practice, very few works councils have been set up and the dominant structure remains the local union organisation.

There are differences between the tasks and rights of the employee representatives at the workplace, depending on whether they are part of a union organisation or a works council, and these are set out in the Labour Code. While only trade unions at company level have the right to collective bargaining, there are also differences in the areas of information, consultation.

4.2.2 Material scope of information and consultation

Specific rights of the works council or similar employee representation bodies at the workplace and company level can be grouped into three different categories: First, the right to receive information and secondly the right to consultation on specific issues. Here, the EU Directive 2002/14/EC establishes a

common minimum floor of right / obligations of the employer throughout the European Union. However, while countries have to adopt at least the provisions of this Directive in their national regulation, the list of topics addressed by information and consultation often is broader and there are also national cases where employers need to reach an agreement with the employee representation body before a decision can be implemented. This third category relates to the right to veto or co-decision making.

For example, in **Croatia**, according to the Labour Code, the employer can only with the prior consent of the works council can dismiss a member of the work council. The same relates to works council candidates not elected yet or members of the election committee. Consent is also needed in case of dismissing workers with reduced abilities to work, disabled workers or workers older than 60. Similarly, workers' representatives in supervisory board can only be dismissed if the works council agreed. While there are further groups of workers that enjoy similar high protection (e.g. pregnant women), also the delivery of information about workers to third parties or even the gathering of information for such a purpose is a matter of stronger co-determination rules in Croatia.

The law provides the works council with a range of rights, which can be divided into four main categories:

- *Information*: where the works council must be informed;
- *Consultation*: where the works council's views must be listened to;
- *Veto*: Where the works council can block the employer's plans, although this opposition can be set aside by a decision of the labour court; and
- *Co-determination*: where the works council must agree before the employer can go ahead, unless the employer can persuade the "*conciliation committee*" (*Einigungsstelle*) to accept his or her proposals.

In **Germany**, the precise rights of the works council vary from area to area. The rights are strongest in the social area – organisation of hours, holidays, methods of payment and so on – and weakest in relation to economic issues such as investments or changes in the business model/strategy. This reflects the overall principle of that companies should be as far as possible free to take their own decision on economic matters.

The most extensive rights of the works council exist in relation to a range of day-to-day social issues, which affect the workforce. Here, enforceable co-determination rights exist in relation to the following issues:

- works rules;
- starting and finishing times and breaks;
- any temporary shortening or lengthening of working time - such as overtime or short time working;
- the time, date and method of payment;
- holiday arrangements;
- the introduction of cameras or other devices to measure work or check the behaviour of employees;
- health and safety arrangements within the framework of the legislation (It must also approve the appointment and dismissal of works doctors and health and safety specialists.);

- arrangements for the operation of works institutions like canteens or sports grounds;
- the rules for the use of works accommodation;
- the principles used for the payment of wages and salaries - for example, should they be based on bonus or time work;
- the setting of bonuses and targets;
- the operation of the works suggestions scheme and
- the introduction of group work;
- contents of staff questionnaires and the personal data held on individual employees for assessments.

All these issues can go to the conciliation committee if there are disputes means that on many of them the works council will be able to reach written agreements with the employer.

A major instrument of regulating day-to-day social issues in German establishments are agreements between the works council and the company management, so-called "works agreements". Reflecting also the different types of works councils, works agreements are negotiated at different level and may cover single establishments or plants, the whole company or all companies in a corporate group.

In **Portugal**, the competences of works commissions are largely limited to information and consultation. In contrast to regulation in many other European countries, the role of the works council is purely advisory and consultative. It does not have the decision making or veto powers. Besides this – as reported by interviewees – works councils find it difficult to ensure that they are given all the information that by law they should receive.

Though in 2009 and again in 2012, the legal possibility was established that trade unions may delegate their competence to sign collective agreements to the workers commission, this did not have any effect in practice. In fact, works commissions normally only exist where there is a strong union presence and the unions have effectively taken over many of their functions. Typically, in such cases, the workers commission / works council will be dominated by the largest union in the company, which will use the information and consultation rights as an indirect method of being informed and consulted.

In the context of dual workplace representation in **Slovenia** by works councils and trade union bodies, trade union representations must be informed and consulted by the employer: before adopting rules which lay down the organisation of work, in cases of redundancy and business transfer; and before the introduction of night work. The union must also be given details of the annual working time calendars. The employer must inform the union, where the employee affected wishes it, about the dismissal or disciplining of an individual union member. In both cases it can express an opinion on the employers' action, and, in the case of dismissal, a union objection leads to the dismissal being suspended until the issue has been determined in the courts.

The works council, under the amended "Workers' Participation in Management Act" of 2007, has a wider range of specific rights. It should receive information on the company's economic situation and prospects, changes in company activity, changes in the organisation of technology and production as well as a copy of the company's annual accounts. The works council should also be consulted on a range of issues. In these cases, consultation means giving the works council information at least 30 days beforehand and having a consultative meeting with the works council at least 15 days before the

employer takes the decision concerned. The aim of the consultation is to arrive at a jointly agreed position. The issues where this consultation is required include issues to do with the position of the company and issues to do with the position of employees. The main company-related issues are changes in the company's legal status, sale or closure of the company or substantial parts of it and significant changes in ownership. The employee-related issues are the need for new staff (how many and what sort); job classification, transfers (more than 10% moving out of the company or somewhere else within it), new rules on pensions and other benefits, job losses, health and safety and the disciplinary code. In addition, there are some areas where the works council must agree with the employer's proposals before they can be implemented. These are the arrangements for annual leave, performance assessment criteria, the suggestion scheme, the use of social facilities, such as holiday homes, owned by the company and the criteria for promotion. In all these cases, if the works council objects to the proposal, the issue goes to independent arbitration.

In **France**, in companies with 50 or more employees the *Comité Social et Économique* (CSE) – which is the sole representation committee since 2018 (see section above) should ensure that the interests of the workers are taken into account in company decisions relating to the economic and financial management of the company, work organisation, occupational training and production techniques. This is primarily achieved through its information and consultation rights. Specifically, since 2015 (*loi Rebsamen*) there are three broad areas (i.e. the strategic direction of the company; the company's economic and financial situation and the company's social policy as well as working conditions and employment) over which the CSE must be informed and consulted on a regular basis.

On other issues (e.g. the introduction of new technologies) the CSE's information and consultation rights relate to specific company actions, or are only triggered by specific events, like redundancies. In addition, the CSE has access to a specially constructed database of information on the company, and to a number of documents relating to employment and working time. The frequency of this consultation can be decided in a company-level collective agreement, signed either with the majority unions or a majority of the works CSE, if there is no union delegate, although the agreement cannot extend the period beyond three years. However, if there is no agreement consultation on these three issues must take place once every year. The information necessary for this regular consultation is in the company database. Consultation on the strategic direction of the company and its economic and financial situation should take place at company level, but, where there are several workplaces in the company, consultation on social policy, working conditions and employment should take place both at company level and workplace level, if these workplaces are likely to be affected. The CSE must also be consulted regularly on measures likely to affect the size or structure of the workforce; changes in the company's economic or legal structure; working conditions, particularly hours of work and training; the introduction of new technologies and major development modifying health and safety or working conditions; and measures to allow the employment of disabled workers.

There are number of circumstances mentioned in the legislation where consultation is required, although there is some overlap with the consultation obligations of the company already listed. These specific circumstances are the introduction of mechanisms for the monitoring or surveillance of employees; restructuring and reducing the number of employees; collective redundancies for economic reasons; any mergers; any proposals to take over other companies; and where the company may be liquidated or put into administration. The timetable for consultation can be agreed locally, although it must provide sufficient time for the CSE to consider the issue and present its view. However, if there is no agreement,

apart from areas where the law lays down a specific timetable, the CSE normally has a month from the date on which the employer presents its plans to give an opinion. It is important to remember that the right of the CSE to respond to the employer's plans and potentially to present its own alternative proposals does not guarantee that they will be changed. The process of consultation is normally procedurally very precise and formal, and management is obliged to listen to the views of the employee representatives, but it may continue with its plans regardless.

The CSE in companies with 50 or more employees also has a right to warn (*droit d'alerte*) in a number of different circumstances such as where the CSE becomes aware of worrying information on the economic situation of the company; where the company is making excessive use of precarious contracts; where individual rights are being infringed, such as through bullying and harassment; and where there is a serious and imminent danger to employees. When the CSE takes full responsibility for all company-level negotiations, its name changes to Company Council (*Conseil d'entreprise* – CE) and it gains new veto rights.

Both the company-level union organisation(s) and the works council have the right, as representatives of the employees, to be informed on the economic and financial position of the company and its probable development, the company's activities and their impact on the environment, and planned changes in the company's structure, status and business activities.

In the **Czech Republic**, both the trade union representation body as well as the works council have the right to be informed and consulted on the probable economic development of the company, working conditions issues, structural changes, rationalisation or organisational measures, measures affecting employment (particularly collective redundancies), likely future employment developments, the transfer of the company to another owner, health and safety topics, measures to ensure equal treatment of women and men, details of permanent employment, which would be of interest to existing temporary employees, and issues linked to the establishment of a European Works Council.

Where there are fewer than 10 employees, the representatives do not have the right to information on the company's economic situation or its activities and their environmental impact. Their consultation rights are also limited, covering just transfers and health and safety.

In case of collective redundancies, there are specific rules on consultation. The union and works council must be informed and consulted in advance, with the intention of reaching an agreement aimed at avoiding redundancies, if possible, and, if not, at mitigating their adverse impact on employees.

Trade unions at company level gain from additional information and consultation rights. For example, trade union organisations have a legal right to information on developments in wages and salaries including the average level of pay and its composition for various occupational categories in the company. The union should also be given details of the appointment of new employees.

As regards consultation, the Czech legislation states that trade unions at company level must be consulted on the following issues:

- the company's economic situation;
- workload and the pace of work;
- changes in work organisation;
- systems of employee pay and appraisal;
- training;
- measures relating to childcare, care of disabled persons, improvements in occupational hygiene and measures relating to employees' social and cultural needs; and
- other measures which "relate to a larger number of employees".

The trade union must also be consulted about further issues. These include the collective regulation of working hours, such as night working or working on normal rest days; the date on which employees are to be paid, unless this is set out in the collective agreement; the arrangements under which employees compensate their employer for damage they have caused or money they have lost; and compensation for those suffering from an occupational disease.

As regards the obligation of reaching an agreement between management and labour, there are only two issues which must be agreed with the trade union, where it is present in the workplace. These are the use of cultural and social funds of the company and secondly, changes to the company's work rules or work regulations. These work regulations describe the duties of the employees, setting out the details of the provisions of the labour code and other regulations which apply. They can only be modified with the prior written consent of the union active in the company.[93]

4.2.3 Board-level workers participation

In all countries that we looked at in this study, there is a legal provision of employee board level representation. Whereas in Portugal and the Czech Republic this participation is restricted to public companies, also workers in private companies have the right be represented in supervisory and/or management boards in the remaining four countries if certain thresholds or criteria are met. However, also in these countries there are significant differences as regards the regards the influences of workers in corporate boards in terms of number/share of seats as well as competences and rights. In most of the countries studied, workers board level participation has been in place already for a long time without any significant legal changes. However, in France and the Czech Republic there have been quite significant reforms in recent years that followed however quite opposite directions.

In **Croatia**, there is employee representation at board level in larger limited companies (limited companies with more than 200 employees and a certain amount of share capital are required by law to establish a supervisory board) and in all public limited companies, irrespective of the company having a two-tier corporate structure with a supervisory and a management board or only a single tier structure with just a management board. Also publicly owned companies must have an employee representative

[93] However, the level of pay during periods of short time working can be either fixed through an agreement with the union or through unilateral internal regulations by the management.

at board level. Employee representatives in corporate boards have the same legal position and rights as other board members.

A major limitation of board-level representation is that there is only one single workers' representative at board level who will be appointed by the works council or – if there is no works council, by the employees.[94]

Workers participation and co-determination rights in the supervisory boards was introduced in **Germany** already in 1951 in the coal and steel industry and was extended by the Co-Determination Act in 1976 to all larger companies with more than 500 employees. In public limited companies there is the legal obligation that at least one third of the supervisory board members are representatives of employees. This provision also applies for limited companies as well as some other company forms. In companies with over 2,000 employees, half of the seats on the supervisory board must be filled by employees. In the coal and iron and steel industries, the employee representatives have additional rights in the appointment of the labour director, who cannot be appointed against the wishes of the employee representatives. The labour director is responsible for personnel and employment issues.

The employee representatives have the same rights and duties as other supervisory board members. Depending on the size of the company and/or whether it belongs to the coal, iron and steel industry, the employee representatives are nominated by the works council or the trade union (in companies with more than 2,000 employees) However, all those nominated are also elected by all employees in secret ballot (on further details on the nomination and election process provisions see the more detailed country report in the annex). It should be noted that since 2016, there is a legal obligation that at least 30% of seats in the supervisory board should be filled by minority gender groups (most likely women).

Approximately one third of the total German workforce is employed by companies that are covered by supervisory board level workers representation. These companies contribute a share of around 40% to the national total turnover and even 45% of the value added.

As regards workers voice at the company level, surveys and polls show that workers participation is highly appreciated by the population. More than 80% associate something positive with workers participation and co-determination and around three quarters regard works councils as something that is good. These findings confirm the result of other research (see textbox below) that workers participation in Germany has positive effects not only for workers but also for the business.

Workers participation – a win-win institution for workers and the business

Company co-determination has clear positive effects. This is the result of an evaluation of various empirical economic research results on the topic. According to the study that was published in 2017, works councils contribute to higher productivity, higher wages and higher returns. In addition, co-determined companies are more likely to invest in green technologies and incremental innovation; they also invest more in further training and apprenticeships. Further positive impacts are lower staff turnover, fewer labour shortages, more family-friendly work organisation and flexible working time models. At the same time companies with co-determination perform better on issues regarding wage equality: salary differences between highly and low-skilled workers are smaller and the same applies for the wage gap between men and women.

[94] Whereas in other area of interest representation, the trade union can take on the rights and duties of the works council if it does not exist, this provision does not exist in the area of board-level participation.

Positive effects of worker participation and co-determination depend on various circumstances. The positive impact seems to be particularly strong for companies in crisis. Scientific research also shows that the benefits are greater for companies that are bound by collective agreements. The attitude of the management also has an effect: Hostile managers impair successful functioning. As an explanation, economists point to the collective representation of workers: Works councils and board-level employee representatives take up and communicate the needs of the workforce and thus contribute to motivation, identification of joint purposes and increased willingness of workers to cooperate. Furthermore, solid and clear structures and competences of workers participation based on clear and reliable regulation and provisions increase trust between the employer and employees.

Source: Jirjahn, U. and Smith, S.C. 2017: Non-union Employee Representation: Theory and the German Experience with Mandated Works Councils, IZA Discussion Paper Nr. 11066, October.

In contrast to the strong role of employee board level participation in Germany, the respective right in **Portugal** is quite limited and restricted to state-owned companies where it is a constitutional right since 1976. According to the Portuguese labour law workers commission in state-owned companies the right to elect representatives on to company bodies.

There is no such right for private-owned companies. Though legislation would permit employee representation in boards to be agreed between employers and unions, this does not happen according to interviews carried out in the context of this study.

By contrast, the regulation of employee representation at board level in Slovenia is quite similar to Germany. Slovenia is also the only country in our sample besides Germany where employee representatives have between a third and a half of the seats on the supervisory board of Slovenian companies with a two-tier structure. In companies with a single board they have at least a third.

As regards workers board-level representation, works councils have the right to nominate employee representatives in the supervisory board and management board (two-tier system) or in the board of directors (one-tier system). The threshold for board-level employee representation is 50 employees. Furthermore, companies with more than 500 employees could nominate an employee director for the management board in case of two-tier corporate structures or an executive director in the board of directors in a single-tier system.

Until 2013, employee representation at board level in **France** generally existed only in state-owned and privatised companies. This has changed significantly since then. With the law on employment security that was adopted in 2013 the range of companies with the obligation to have employee representation was widened. Further extensions of board-level participations were implemented in 2015 by the so-called *Rebsamen law* on social dialogue and employment and more recently, since 2019 by the so-called *Pacte law*. As a result, board-level employee participation today is obligatory in share-based companies with 1,000 or more employees in France or 5,000 in France and worldwide.

In private companies there must be at least one employee representative, where there are up to eight board members, and two where there are more than eight. This applies whether the company has a single board (*conseil d'administration*) or a two-tier board system in which case the employee representative or representatives become members of the supervisory board (*conseil de surveillance*). In state-owned companies a minimum of two and up to a third of the seats on the board are reserved for employee representatives that are called "employee administrators" (*administrateurs salaries*).

One important aspect of the French system of board-level representation is that the position of an employee representative at board level cannot be combined with any other elected position, such as a member of the works council/CSE or a trade union delegate. This applies in all cases, i.e. private companies with more than 1,000/5,000 employees, state-owned companies and companies voluntarily choosing to have employee representatives on the board.

Whereas in state-owned companies, irrespective of the size, one third of the supervisory board are employees of the company, elected by the workforce, the situation in privately owned companies has been the issue of recent changes and legal reforms in the **Czech Republic**: Until 2014, employees in privately owned public limited companies with at least 50 employees had the right to elect one third of the members of the supervisory board. This right was abolished by the *Business Corporations Act*, adopted in 2012 and board-level employee participation became a mere voluntary decision of the employer. However, also due to strong demands of the trade unions, the legal framework as amended in 2017 again and obligatory employee representations on supervisory boards was reinstalled again, though on the basis of an extended threshold of more than 500 employees. At least one third of the seats (but not more than half) on the board are reserved for employee representatives that are elected by the company's workforce.

As highlighted elsewhere,[95] there is some legal uncertainty in the current practice of board-level participation in the Czech Republic when it comes to applicable systems of board-level structures - while companies with a two-tier system and a supervisory board are covered, this is not totally clear for the increasing number of companies with a monistic governance system that have no supervisory board. Furthermore, the legislation leaves it to the company to establish the rules for electing and appointing board level employee representatives: While those voting must be employed by the company according to the law, employee representatives may also come from outside, including external trade union officials.

4.3 Challenges of information, consultation and workers participation

A quite remarkable result of the national analysis has been that – despite the significant differences in the national systems of industrial relations, structures and orientations of national trade unions and employer organisations as well as the traditions of social dialogues and collective bargaining – there are quite a large number of similarities as regards key challenges as well as structural weaknesses and shortcomings as regards information, consultation and workers participation in company boards.

Such similarities relate to new emerging needs in the context of managing a just transition in the context of digitalisation and climate protection policies as well as the efficiency and functioning of information, consultation and workers participation. Furthermore, as the following sections will show, information, consultation and workers participation not only are characterised by structural shortcomings and in some cases has been weakened by national policy reforms. What is also worrying is that European directives and legal frameworks are being used to avoid and circumvent higher standards of information, consultation and workers participation as in the case of Germany (and potentially further countries).

[95] See the more detailed country report in the annex as well as: Munkholm, N.V. 2018: Board level employee representation in Europe: an overview, published by EU Commission, https://eu.eventscloud.com/file_uploads/e0bd9a01e363e66c18f92cf50aa88485_Munkholm_Final_EN.pdf.

Besides this, the frustration and dissatisfaction of national trade unions about the current framework of transnational information and consultation, i.e. in the context of European Works Councils is a further critical finding of the national analysis. And here, the existing weaknesses of the EWC Directive as regards the articulation of local, national and transnational information and consultation practices are becoming more visible when current and future challenges in the context of global value chains, due diligence or just transitions are concerned.

In the following we provide a summary of finding of the six national cases that are described in more detail in the country reports in the annex to this report.

In **Croatia**, but also in other countries (see for example Portugal and Czechia below), national union representatives have reported that although the general framework, in which information and consultation rights are accepted by the social partners, a major problem is the weak enforcement of the respective legal provisions. This also results from a lack of capacities of the national labour inspection system and the slowness of the judiciary system. While employers as a rule respect information and consultation procedures related to dismissals, because failure to do so will almost certainly result in a court dispute, the situation is much less satisfactory regarding information and consultation obligations.

In addition, although the Labour Code include the obligation to have at least one workers' representative in the supervisory body this is not sufficient and there is the need to increase the number of workers representative on board level. This is essential to address future challenges related to digitalisation and climate change. Trade unions advocate the need to influence the future of work agenda by strengthening information and consultation rights with regards to new types of work, sustainable development, green deal and energy, digitalisation and AI, COVID-19 and the health and safety emergency. All these areas are out of their capacity to exercise influence at the national level, and if they cannot influence at national level it would be hard for them to make their voice hear at EU level as well.

In **Germany**, both main pillars of industrial relations have been under pressure and suffered from longer-term erosion trends, i.e. decreasing collective bargaining coverage as well as a decreasing share of companies with a works council. However, whereas in the field of wage formation and collective bargaining public reforms such as the introduction of a statutory minimum wage in January 2015 and measure to ease the extension of collective agreements have taken place, the developments as regards workers' information, consultation and participation so far have not led to any concrete reactions of the legislator.
A growing number of companies in Germany are trying to avoid statutory workers participation and co-determination obligations by ignoring legal obligations or by making use of legal loopholes and constructions in order to reduce or circumvent workers participation. As highlighted in various studies[96] this trend is particularly worrying because European regulation – in particular the SE Directive – increasingly is used for this purpose (see textbox).

[96] See for example: Kluge, N. 2019: Die deutsche Mitbestimmung wird in der EU unzureichend geschützt, in: Magazin Mitbestimmung, 2/2019.

European loopholes for avoiding workers participation

Whereas, the national legal framework has not been changed, it was European regulation that has opened new doors for avoidance and circumvention of worker participation in company boards. According to recent research, the number of companies with parity workers participation at the board-level decreased significantly between 2002 and 2018. Furthermore, one third of all companies with more than 2,000 employees that should have a parity representation at the board-level, simply ignore this legal obligation. Also worrying is the fact that only one out of five European Companies (SEs) has parity participation of workers in the boardroom. This has been made possible to a legal loophole in the SE Directive: Companies below the threshold of 2,000 employees transform into a SE and make use of the "freezing" of only minority workers representation in the boardroom.

Apart from using the legal form of SEs, there are also other more recent trends that show how companies avoid co-determination by making use of European legislation and jurisdiction: In the context of legal corporate engineering the participation rights of employees are circumvented or scrapped by establishing a new holding company and moving it to another EU country.

More recently, in 2019, the EU company law package has opened the door to even further risks: In case of a cross-border transfer of the company seat, workers participation rights are only guaranteed for a period of four years.

According to estimations of the Institute for Co-Determination and Corporate Governance (I.M.U.) of the Hans-Böckler-Foundation, at least two million employees in Germany currently are not covered by statutory right of parity workers participation in supervisory boards due to the various strategies of avoidance.

Workers' information, consultation and participation is a key element of modelling strategic orientations and just change processes at company as well as national level. According to various surveys, two out of three employees in Germany wish to have a stronger influence on the introduction of new technologies in their workplace. But this means that workers participation rights not only need to be guaranteed but also extended in order to address new emerging needs in fields such as employability, work organisations, use of data and data protection, crowd- and platform working and not at least in the field of further and lifelong training.

This strongly contrasts to the current reality: Results of company level surveys and workshops conducted by the IG Metall trade union have shown that despite the massive impact that digitalisation, demographic change and decarbonisation targets will have on the industry and manufacturing sectors, companies in the sector are not sufficiently prepared.

Trade unions in Germany are not questioning the international climate policy goals and the need to make real progress with the decarbonisation of the economy. However, trade unions currently are the only relevant actor that highlight the need to accompany the green deal also by a social deal and respective measures.

The trade union confederation DGB has highlighted three key pillars of a just transition process in the context of decarbonisation: First, the need safeguard employment by investing in workers skills and qualifications; secondly, the need to create alternative industrial workplaces also by longer-term investment strategy for structural disadvantaged regions and thirdly, by avoiding unconditional shutdown logics in energy production.

Portugal is a national case that shows that even in periods of positive economic development and policy reforms that aim at social improvements and halting negative trends resulting from the period of austerity and previous reforms, progress in terms of social dialogue and information and consultation as well as workers participation has been a striking leftover.

Compared to the social reforms during the left-wing government, there has been quite little change since 2015 that aimed at strengthening collective interest representation and the collective bargaining system. Trade unions still are in quite a weak position to shape and influence wage developments significantly. This is illustrated by wage agreements in most sectors that in recent years have been well below increases in productivity and inflation. A further indicator for the dwindling impact of collective wage bargaining is also the fact that still around one quarter of all employees in the private sector only earns the statutory minimum wage.

As regards the future and given the major challenges Portugal is facing in the context of climate change as well as digitalisation, there is a strong need to strengthen workers voice in the transition process at various levels.

However, against the overall unstable situation of collective bargaining practice in Portugal and the uncoordinated decentralisation of bargaining (which also at the company level very much is dominated by wage-related issues), it seems not likely that collective bargaining at company or sector level will become an efficient tool to shape digital transformation processes at company or sector level. A recent study on digitalisation and social dialogue in Portugal, commented that so far only few collective agreements at sector level included references to new technologies and digitalisation. Those that exist, did so mainly by including references to training and skills requirements and even those so far lack concrete measures. [97]

In the interview with a representative of CGTP in the context of the current study for the EESC Workers Group, the emergence of platform work was highlighted as an example of new needs of labour market regulation in the context of digitalisation. Platform work has emerged as a new form of employment that currently is not covered by existing regulations and raise new questions, especially on the best ways to assure social protection and reinforce the social security budget. As highlighted by the CGTP interviewee, there is also a strong need to support platform workers such as cyclists delivering food for platforms such as *UBER Eats* or *Glovo* in their fight for their rights of collective interest representation, social protection and acknowledgement of their status as workers.

Also, the UGT trade union has stressed that digitalisation has a massive impact on the society and the labour market and will substantially change the organisation of work. As regards trade union initiatives, the UGT representatives highlighted three objectives and needs as regards anticipating impacts and modelling practices of a just digital transition process:

1) Identifying and exploring international trends and changes of work organisation and labour market changes that are related to digitalisation;
2) Rebuild and anticipate the design that these changes had and may have in the future in Portugal through organisations characteristics, trade union activity and labour regulations in our country;

[97] Rego, R. 2018: DIRESOC Portugal Country Report, elaborated in the context of the DIRESOC (Digitalisation and Restructuring: Which Social Dialogue) Project. http://diresoc.eu/wp-content/uploads/2019/04/DIRESOC_Portugal-country-report.pdf, p. 9.

3) Reflection and recommendations for measures that allow UGT's trade unions to properly respond to challenges and problems resulting from digitalisation as well as harvest the opportunities that it offers, including increasing the efficiency of acquiring new trade union members, in collective bargaining and in the defence of workers' rights.

As regards both the green as well as digital transformation and transition process, trade union interviewees in the context of this study have stressed that both should be strictly "human-centred". This means that greening of the economy as well as digitalisation should be in favour for all and should not result in additional burden for some groups of the population, including workers but should contribute to a better live for all.

A human-centred approach also requires a solid and thorough analysis and anticipation of the employment impacts of any measure, respective legal reforms or investments. In case of negative employment impacts there is also a need to model social and employment measures that either provide alternative jobs or provide affective workers with the necessary skills and competences to move to a different job in the same organisation.

Also in **Slovenia**, where information, consultation and workers participation features a number of similarities to the works council systems as they exist in Austria and Germany, national interview partners have reported difficulties the operations of works councils which also risk jeopardizing the effectiveness of EU legislation regarding information and consultation rights.

The legal framework that is based on the Workers Participation in Management Act of 1993 according to the *Association of Free Trade Unions of Slovenia* (ZSSS) does not reflect the current needs of the economy and it is outdated. The ZSSS sees a number of aspects in the legal framework of information and consultation that needs to be improved urgently:

- The contents about which the works council should be informed, consulted and co-determinate should be revised, especially taking into consideration the digitalisation and its impacts on work organisation as well as the impact on employment by climate change. Some contents, such as the need of the works council consent for sale of company's holiday facilities, could be omitted as this was more the question of the socialist system. At the same time there are areas, which are very important for employees, like for example changes in working organisation due to the digitalisation and climate change which should be introduce, but which are not covered properly by the current Worker Participation in Management Act. Moreover, 'confidentiality' as it is not defined risks to undermine effective consultation.

- The current threshold of 50 percent for organising elections of works councils at the company level as indicated by the Worker Participation in Management Act should be reduced at least to 20 percent because it proves very difficult to be reached in practice.

- The interaction between works council and management should be made more flexible. Some activities could be done on-line, the decision-making process should be built on the premises not to hinder management activity, but to facilitate it. As for the existing requirement of the Worker Participation in Management Act sometimes the decision-making process is disproportionally long, thus the employers often tend to circumvent co-determination.

- The question of precarious workers needs to be addressed. By the current legislation only those having an employment contract with the employer can vote or can be voted for work councillors. All other, especially agency workers and those performing work on a civil basis, are excluded and cannot exercise participatory (and other collective) rights.

- As regards board-level employee representation, it has to be taken into account that the legislator already excluded board-level employee representatives from banks and the same tendency is now reflected in insurance business. With less workers having the right to be part of the employee participation system, there is a serious threat that the system will be impoverished.

The values of decent work and humanity should be assured and a fair transition toward a digital and green economy addressed. This requires that misclassification with regards to self-employed workers should be avoided and workers' rights guaranteed with better employment and social protection. The social partners together with the government have a very important and challenging task.

As described above and in more detail in the country report on **France**, there have been important legal changes on workers' information and consultation rights. As regards functioning, efficiency as well as the quality of information, consultation and workers participation, these reforms have been reviewed quite critically by French trade unions, as the following examples show:

- The introduction of an economic and social database at company level by Law 2013-504 has helped employer's fulfilling their legal information and consultation obligations but proved rather ineffective in terms of establishing a dialogue with the representatives because of the absence of consultation from the side of the employers.
- Law 2015-994 has then drastically limited the extent of workers' consultation right by gathering and dividing the seventeen topics on which annual mandatory consultation was originally due into only three topics (i.e. strategic orientations of the company; economic and financial situation of the company; social policy of the company). These recurring consultations differs from timely consultations. This consolidation of topics has led to lesser material means, lesser hours of delegation, lesser time to conduct consultation on key and strategic information and company decisions, and therefore it has turned to weaken workers' voice at the workplace. It has also yielded the reduction of meetings of the employees' representative at the workplace.
- Law 2016-1088 has weakened the protection of workers against dismissals for economic reasons and opened the door for circumventing trade unions representative workplace structures through the possibility of a workforce referendum.
- Furthermore, the reform weakened workers' consultation right at the workplace by merging the existing employees and unions' representative bodies into a unique one (i.e. CSE) because the unique body is underpinned by much less resources in terms material means and available time resources. In this context, the suppression of the specialized employee' representative bodies on health and safety (CHSCT) and its integration in the CSE is strongly rejected by the unions, even more today in the light of the COVID-19 crisis situation.
- Moreover, under the emergency of the COVID-19 crisis, the Macron government has also temporarily shortened the consultation period of the unique employee' representative body. This risks to further challenge workers' interests by enabling employers to rush through strategic

decisions without an adequate consultation of workers, thereby weakening furthermore the workers' voice in the aftermath of the crisis.

Also, the extension of employee board-level representation is regarded critical by the French trade unions: The limitation of seats for workers representatives is regarded as totally insufficient for guaranteeing an adequate and good quality of workers' involvement. On the other hand, the use of 'confidentiality' clause for board members is considered to destabilize workers' voice and create diffidence against trade unions at the workplace by distancing workers from their representatives while avoiding legal pursuit from the employer or shareholders.

French trade unions also regard the current system of transnational information and consultation as problematic and insufficient. Regarding European Works Councils, the main problems are related to the lack of uniformity of sanctions against violations of the information and consultation rights of the EWC but also on the circumvention by employers of legal obligations regarding their establishment; the abuse of confidentiality clauses, the difficult access to information by workers' representative and the difficulty regarding the '*locus standi*' at the beginning of the procedure for trade unions when the special negotiating body has not been put in place; the restrictive interpretation of 'trans-nationality'; the weak articulation of EWC with other representative structures at national and company levels; the impact of Brexit on the legal threshold for the establishment of the EWC.

In addition, regarding company restructuring and insolvency process, trade unions mention as problematic the lack (or tardive) involvement of workers and trade unions representative bodies and the absence of effective enforcement of the right of consultation and information of workers in absence of dissuasive sanctions. There is a difficulty employees' representative and trade unions encounter that is the obstacles to take legal action and to appeal to the court against a restructuring plan in due time to protect their claims. There are no effective legal obligations to prevent tactical insolvencies with a limited European business register and the preferential status of workers' claims (especially regarding remuneration) may be threatened in practice by including it in the moratorium or in the restructuring plan. In addition, job retention in case of restructuring or preventive restructuring is not anchored as procedural objectives in the national legislation and trade unions suffer limited accesses to external experts assisting workers' representative bodies. This is particularly the case under the 2017 Macron Law reforms merging existing employees' representative structures with lesser means.

As regards future challenges and just transition processes, also the French information and consultation practices still does not include workers' involvement regarding the introduction of new technologies and climate change. These topics either are still missing within the social dialogue agenda of many companies or if they are present, they are often unilaterally introduced by management rather than being the object of collective agreements and negotiation with the trade unions.

The French unions have also highlighted further topics and challenges that urgently need to be addressed by a strengthened framework of workers voices at national as well as transnational level:

The French trade unions advocate for more social democracy, including strengthening workers' voice and rights in companies. The issue is at the core of the current trade unions' activity in France. Reinforcing the capacity of social partners is an important step to social inclusive and democratic

societies. This is particularly true during a period characterized by the need to fighting for climate change and to guaranteeing a fair transition towards a green and a digital economy.

For example, fighting against discrimination at the workplace and guaranteeing plural and diverse societies should become an integrative and important topic of information and consultation. Furthermore, closing the gender pay and pension gap through reinforced collective bargaining, adequate labour market policies, more progressive tax policies or effective social protection systems is also key. This reflects concerns by the EU Commission reporting on the segmentation of the labour market and the social protection being a challenge in France. Social conditions for disadvantaged groups are problematic in France. Thus, further progress on the inclusion of disabled workers must also be a priority as information and consultation on accessibility of the workplace and adapted organisation of work could be strengthened. The foreseen EU Initiative on pay transparency could be relevant in this regard but it cannot replicate the shortcomings of the recent Gender Equality Index adopted in 2019 in France that weaken collective bargaining and the extent of the information and consultation of workers' representative on pay issues at company level.

Within a context of fragmentation of global value chains and constant reinforcement of outsourcing and division of the company structure, trade unions welcome the 2017 Law on corporate due diligence as a good step toward enforcement of legal obligations of employers through an internal alert mechanism regarding workers' fundamental rights across the globe.

At the same time, trade unions have advocated the following needs for improvement in the legal framework of corporate due diligence:

- Improve information for workers and trade unions' representative at the workplace and company levels. This implies, for example, that preliminary information for an effective consultation through a new category of the economic and social database indicating the subcontractors and suppliers of the company is needed;
- Introduce right of information on the existence of the "alert mechanism" along the value chain;
- Include "due diligence" related aspects in the categories reserved for compulsory consultation of workers' representatives;
- Extend consultation with workers' representative to every company involved in the value chain;

In addition, the COVID-19 crisis showed that the fragmentation of global value chains, which weakens the effective exercise of the right of information and consultation of workers by reducing labour costs, is not a valuable one from both an economic and social point of view. Further discussion is needed in the aftermath of this crisis with inclusion of workers' voice – with sectoral trade unions – to redefine the national and European industrial strategy to further protect workers' strategic autonomy.

Before the COVID-19, the economy of the **Czech Republic** maintained robust real growth for six consecutive years. Key determinants were growth of household consumption, driven by wage and salary growth and a very low unemployment rate. With unemployment rates around 2% in 2018 and 2019 the shortage of labour has been regarded as the main barrier to further growth in production. As regards the current situation, a forecast of the Czech Government published in May 2020, estimates the COVID-19 impact resulting in a slump in GDP by 7.6% and an increase in unemployment to 4% in 2020.

Despite the positive and stable macro-economic indicators before 2020, the Czech labour market and economy was characterised by serious structural weaknesses, such as the low employment rate of women, deficits of the vocational education and training system or a high vulnerability and risk of job losses resulting from digitalisation. According to assessments of the EU Commission, Czechia is amongst those countries in the EU that are likely to be heavily affected by technological change and digitalisation.

The Czech Republic has one of the highest shares of industrial production among EU countries, contributing a share of more than 30% to the GDP. Czech enterprises are highly integrated in value chains but due to the productivity gap, focus mainly on low value-added activities. Czechia had the highest volumes of regional value chain trade in the EU in 2014, based on the strong bilateral links with Germany. Nonetheless, Czechia is positioned more downstream in the global production chain, as a large part of the economic activity is based on compiling and assembling processes. In 2016, the share of domestic value added in the total exports amounted to 62%, one of the lowest figures in the EU. In the car industry, the share was even lower at 46%, compared to 76% in Germany. A recent analysis showed that 9 out of 10 most important economic sectors by export volume are placed on the parts of the value curve with low value added. Nonetheless, export composition has evolved in the last three decades, moving from metal products to machinery and electric products.

Czechia likely to be more affected by technological change and digitalisation than other EU countries

"Available research suggests that between 40% and 70% (depending on the methodology used) of the current jobs in the country may be at risk of being fully or partly automated in the next decades. The share is more pronounced in the automotive industry, in particular for jobs such as production workers or machine operators. The high potential for automation is in part related to the high importance of manufacturing in the economy (23.1% of GDP in 2018, 8.5 percentage points above the EU average). The automotive industry alone accounts for up to 10% of GDP and total employment when including all indirect suppliers. According to a 2018 study by the Czech government, in the short-term, the current AI technologies could substitute 50% of the work skills demands in 11% of professions. Over 30 years, automation could replace over 50% of skills in the vast majority of current professions, accounting for around 3.4 million employees."

Source: EU Commission 2020: Commission Staff Working Document – Country Report Czech Republic 2020, accompanying the 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, COM (2020) 150. SWD (2020) 502 final, Brussels, 26.2.2020, p. 38.

Though industrial policy and qualification and training challenges related to digitalisation and automation have been addressed by the Czech Government in consultation with the social partners quite early by national initiatives such as on "Industry 4.0" or the Work 4.0 action plan, there certainly is the need for further and concrete action in particular also at company and sector level.

As regards the transition towards a greener economy and decarbonisation, Czechia is also facing huge challenges. As a transit country with a high share of manufacturing in GDP, Czechia is currently witnessing some of the highest greenhouse gas emissions per capita in the EU. This is mostly due to a significant reliance on coal and a less than optimal level of energy efficiency. Coal production is a particularly important economic activity in three regions, which will need to undergo a socially fair transition in a cost-efficient manner. According to the country's recently unveiled National Investment

Plan, the costs of a full transition away from the use of fossil fuels by 2050 are expected to reach €25 billion (12% of GDP at 2018 prices).

Czechia is also one of the most energy-intensive countries in the EU and the use of renewable energy is below EU average. Furthermore, both indicators have remained quite static during the last years, indicating only low ambition to change. The public support scheme for renewable energy was abolished in 2014 and a comprehensive legal and institutional framework for supporting renewable energy is still pending.

As regards just transition policies, the Czech government has not set a final date for phasing out coal production. The Czech coal commission is required to analyse options regarding an exit from coal production and propose recommendations to the government by September 2020. This date is important for Moravskoslezsko and Severozápad, which are among the 6 largest coal-mining regions in the EU. The transition process is expected to affect over 21,000 direct and 19,000 indirect jobs in the country, most of them in the two regions mentioned above. While both regions still strongly depend on the mining sector, they are at various stages of transition to a zero-emission economy. They are supported by a specific government resolution called the Strategic Framework for Economic Restructuring (RESTART) which outlines a broad variety of measures to be prepared for accompanying the transition. Given the challenges and needs, local commitment and a coordinated action at regional and national level are key to achieve structural change and carbon neutrality.

Against the fact that the coal-mining and heavy industry regions are also located in structurally weak regions with below average GDP creation per inhabitant (e.g. the Karlovarký region, the social challenges posed by and effective and just transition according to the EU Semester Country Reprot on the Czech Republic will require a diversification of the regional economies, creating new business opportunities and upskilling and reskilling of workers.

4.4 Policy reform debates and demands as regards current and upcoming EU Council Presidencies

Most trade union experts in **Croatia** interviewed agreed that the lack of systematic information and consultation on established works councils and their activities at the national level presents a crucial problem in accessing the functioning of the system and its results by influencing them. This is an urgent need to address particularly in the light of recent changes (i.e. digitalisation, climate change, Covid-19) and the solution which needs to be found. Strengthening workers' rights of information and consultation at the national level is a prerogative to improve the participation of Croatian workers at the EU policy debate as well.

The programme of the **German** Presidency had to be adjusted to the continuing COVID-19 health crisis as well as the implementation of effective measures to manage the economic and social crisis that is affecting the whole of the EU with significant national and regional differences. Therefore, new priorities such as the implementation of the European Recovery Fund and measures to avoid further economic slumps as well as avoiding further waves of virus outbreaks and lockdowns will determine the agenda of the Presidency that very much the presidency that has the motto "Together for Europe's Recovery".

According to the German trade unions however, limiting the Germany Presidency to crisis management only would be the completely wrong approach. As highlighted by the DGB chair Rainer Hoffmann, it is important be more ambitious and combine economic recovery with a modernisation strategy that includes an investment budget. While the priority is European solidarity in managing the economic and social impacts of the lockdown and deploy effective support measures, it would be wrong to put aside the sustainability strategy and the climate protection targets because of COVID-19.

In this context, the DGB and other trade unions also stress the need that the German Council Presidency should implement a number of initial plans that aim at addressing urgent needs in relation to social imbalances, cohesion and solidarity in Europe as well as global responsibilities. These include the fostering of the introduction of an EU wide unemployment reinsurance scheme in order to provide a better protection of unemployed during crises through a common social security fund. Also, the plan of making progress with view on a common European framework for minimum wages is supported by the German coalition government as well as the trade unions, whereby the strong role of collective agreements in some countries for determining minimum wage levels of course should be respected.

Further demands of the German trade union as regards European initiatives that should be fostered by the Germany Presidency are related to the promise of the German coalition government to initiate a national legislative initiative on corporate mandatory human rights due diligence as regards human rights in global supply and value chains if voluntary measures of companies proof to be not sufficient.

Furthermore, the coalition agreement of government parties includes the commitment to stand up for an EU wide regulation on due diligence. Furthermore, in the context of the trio presidency of Germany, Portugal and Slovenia, the three trio partners agreed on the need for action and the need to strengthen corporate responsibility at EU level. These initiatives also reflect the announcement of the European Commissioner for Justice of April 2020 to develop and present a draft for European supply chain legislation in 2021.

As regards the need to improve and strengthen the legal regulation of national and transnational information, consultation and participation rights of workers in Europe as well as making these rights more resilient against neglect and circumvention, the German trade unions are quite disappointed about the silence of the German presidency on this matter. In fact, the DGB is a strong promoter of a European Framework Directive on information, consultation and board-level employee representation/participation and has published a detailed list of key demands.[98] As regards board-level employee representation and in order to prevent firms to evade or get rid of workers participation at board level, the DGB demands a minimum Europe-wide standard for board-level employee representation and includes common thresholds for board-level representation according to the ETUC's

[98] DGB 2020: Key points of the German Trade Union Confederation (DGB) for a European Framework Directive on Information, Consultation and Board-level Employee Representation (Company Codetermination), adopted at the DGB Federal Executive Board on 11.02.2020.

so-called escalator principle.[99] The scope of such a directive should encompass companies that rely on European directives to amend their company constitution (e.g. SE, SCE, cross-border conversion, transfer of seat, merger or division).

From the perspective of trade unions in **Portugal** contributing to this study, the key problem of the existing EU framework of information, consultation and participation of workers is the effective implementation of rules and obligations. While there also is the need for improving and strengthening existing legal frameworks, e.g. on European Works Councils, the main hindering factor of efficiency is poor implementation and lack of sanctions. This situation has become even worse as at the same time the number of labour inspections in Portugal has decreased significantly in the last decade, even halved since 2008. It has also been stressed by interviewees that quire frequently multinational companies use their economic weight and influence to achieve concessions as regards legal obligations (e.g. as regards overtime or weekend work premiums) without any consequences.

In its contribution to this study, the UGT trade union has highlighted in particular the need to strengthen the framework of information and consultation of workers in the transnational context, i.e. European Works Councils. UGT has highlighted a number of shortcomings and weaknesses of the current EWC Directive that needs improvements and adjustments in order to make transnational information and consultation processes more efficient. For further details see the full country report on Portugal in the annex.

Currently **Slovenia** features weak reflexive political considerations with regards to how to deal with the new challenges of the future of work. Debates are present but they are often developed at the political level and social partners are weakly - or often even not - involved in these discussions. There is therefore the need for a stronger trade unions and employees' involvement to these topics. This should be positioned at the core of a renewed political agenda in Slovenia which considers strategical thinking around the future of work as essential. Trade unions in Slovenia have recently presented a proposal on "The Future of Work and Security" to the national government where they indicate their views and strategies in this regard. However, they have received no answer so far.

The EU Commission in the 2019 European Semester report praises the growth the Slovenian economy has undertaken since the last years and which account for its high international competitiveness. However, economic growth depends on social stability which in turn depends on the democratic involvement and participation of all social forces. Trade unions and workers' councils are representing the interests of workers and therefore they play a relevant role in this regard. Thus, it is important to develop the tools which can help assessing their presence at the company and workplace levels. On the other hand, it is also relevant to strengthening the coordination of trade unions structures between the EU and national levels as the way to convey and improve influence from the bottom up to the top and

[99] The mechanism is clarified as follows: "The ETUC would propose an escalator approach with a lower proportion of WBLR for small enterprises and increasing to higher proportions depending on the size of the company (as well in the monistic as in the dualistic system): Small companies with 50 to 250 employees (within the company and its direct or indirect subsidiaries) should have a low proportion of WBLR (2 or 3 representatives); companies with 250 to 1,000 employees (within the company and its direct or indirect subsidiaries) one third participation; and big companies with more than 1000 employees (within the company and its direct or indirect subsidiaries) should have parity (half of the seats).", see: ETUC 2016: Orientation for a new EU Framework on information, consultation and board-level representation rights, adopted at the extraordinary ETUC Executive Committee on 13 April 2016 in The Hague and the ETUC Executive Committee on 9 June 2016 in Brussels. Available at: https://www.etuc.org/en/document/etuc-position-paper-orientation-new-eu-framework-information-consultation-and-board-level .

vice versa. Finally, there is a need to increase national awareness of the relevance of what trade unions 'stand for' and 'do' for those they represent and to shed light on the principles of social democracy underpinning workers' voice they account for.

According to the trade unions in **France**, the state of social dialogue in France is alarming due to recent and constant fusion or elimination of national social dialogue instances limiting the expression of workers' voice and concerns in a context featuring the acceleration of structural reforms on key components of the French social model (including vocational training system; unemployment insurance; social protection). According to the 2020 EU Commissions country report in the European semester, France has sustained its efforts on reforms to unlock productivity gains in the economy. Yet, it is difficult to fully rate the influence of trade unions on public policies and reforms programs. The French public health and care system in front of the Covid-19 – and its impact on the mitigation of the propagation of the virus with economic and social consequences – faces difficulties.

Trade unions also aim at addressing the shortcomings of the 2019 Company Law Package by putting in place a clear procedure of information and consultation of workers in case of restructuring and an EWC in case of restructuring towards a company of European size. The fusion of Directive 2002/14/EC (framework directive on information and consultation); Directive 98/59/EC (collective dismissals) and Directive 2001/23/EC (company transfers) for further legal certainty and coherence is also desired.

Workers' voice and trade unions representation play a fundamental role to ensure the social and fair dimension of "just transitions". Trade unions in France have always been involved on these issues and reinforced their expression and action since the Paris Agreement in 2015. Trade unions are therefore insisting on the respect and the enforcement of the Paris Agreement of 2015 and the international standards of the ILO but also on the need to include a new international labour norm on "social just transitions" on the agenda on the basis of the ILO guidelines on sustainable development, decent work and green jobs of 2015. The International Labour Conference in 2021 on social just transition will be key in this regard and the next International Climate Conference (COP26) will be also the opportunity to assess national engagements and the impact of the workers' voice. Even more necessary in the light of the Covid-19, a broader discussion must be led on an Industrial strategy and the future of the industry. Trade unions must play a key part in this regard at inter-professional, sectoral and company level – by respecting first and foremost the right to information and consultation of workers.

The social dimension of a fair digital transition process is often absent as the workers' voice is often lacking. A key element of the digital transition is the emergence of health and safety concerns due to new technologies and new tools. Strengthening the right of information and consultation for workers in the workplace is therefore capital to avoid changes in the organisation of work that may sacrifice the health and safety of workers, their work-life balance and their privacy rights. The suppression of the specialized employee' representative body on health and safety since 2017 weakens the trade union expertise in the workplace on this issue. Moreover, the ongoing fight against the misclassification of platform workers as independent bogus self-employed workers is also a symbolic example of the need to strengthen the workers' voice and recognize the rights of collective bargaining for platform work and the right to be represented by trade unions at both platform and sectoral level. Circumvention of workers' rights through new business models based on the growing use of new technologies such as apps is the counterexample of a socially just transition.

Artificial Intelligence (AI) is another example where the workers' voice must be reinforced through a strengthened right to information and consultation. The opacity around AI programming and algorithms risks to avoid proper information and consultation of workers that could lead to further discrimination and pressure on workers. Trade unions advocate a "human-centred" AI and digitalisation at the service of the "Human" that improve the health and safety of workers and their working conditions and push forward and safeguard social progress.

As regards the French Presidency of the EU Council in the 1st semester 2022, no preparatory work has been started and no consultation with French social partners has been launched so far. The EU presidency will intervene in an electoral period in France with the Presidential elections that should take place on May 2022 – therefore limiting the ability to move forward on EU initiatives – at least for legislative initiatives.

However, by establishing a legal framework of corporate due diligence obligations in 2017, France has been at the forefront of improving working conditions and sustainability in global supply chains. Against this, the French trade unions expect that the French Presidency of the EU Council should include activities and an initiative (if not included already in the German Presidency) at EU level on due diligence with legally binding obligations and effective sanctions. The right of information and consultation could be central and must be reinforced in this regard.

The last French Presidency (2nd Semester 2008) was key to secure the revision of the EU Directive on EWC. Although it is unlikely that this scenario will re-occur due to the current political context in France, however, recent reforms in France (especially the French Labour Law Reform in 2016 – a wave of Orders in 2017 – and more recently a new wave of Orders in 2020 in front of the COVID-19 crisis) have led to further deterioration of the right of information and consultation of workers – especially by limiting the mandate and the means of employee's representative bodies and workers' representatives at the workplace.

Without clear indication nor discussion on the work program of the EU French Presidency and the trio French-Czech-Swedish Presidencies, it is too soon for French trade unions to assess any positive elements to advance trade union demands.

As highlighted by a representative of ČMKOS in the context of this study, the main expectation of trade unions in the **Czech Republic** as regards the EU Council Presidency in the second half of 2022 is that the activities of trade unions are fully respected and workers participation rights, including board-level participation will be strengthened. Furthermore, there is a need to improve the law concerning the breaches of the right to workers' participation.

Further expectations and demands are stronger initiatives to reduce the gender employment gap, strenghen workers involvement in the digital transition process at the company level and shaping a just green transition process with a strong social component.

5. CONCLUSIONS AND POLICY RECOMMENDATIONS

5.1 *Summary of key findings*

The study for the EESC Workers Group has gathered evidence based on existing research and analyses as well as primary information gathered in the context of interviews at national level in six countries on the current state of workers' information, consultation and participation in the European Union.

The following key findings should be highlighted before drawing conclusion and sketching policy recommendations:

The current legal framework of workers' information, consultation and participation has been in place since the 1980s and 1990s, remaining untouched with few exemptions since then. It is embodied in EU secondary law in the field labour law, health and safety, company law and legal regulation of specific transnational circumstances.

The analysis of the framework and evidence as regards it robustness to safeguard strong information, consultation and participation of workers in corporate decision making has identified several weaknesses and shortcomings that are quite well known. They relate for example to poor effectiveness of workers' voice and EWCs in transnational restructuring and transnational company policies. As regards information and consultation rights, the analysis of the six national cases have shown that significant challenges exist as regards coverage of companies and workforces as well as in relation to effective enforcement and sanctioning in case of disrespect of rules. In the field of company law, the existing legal framework has created incentives for companies to reincorporate or merge for the sole purpose of avoiding employee participation.

The study has also shown that very little has changed during the last two decades in order to improve the EU framework: Apart from passing a recast of the EWC Directive 2009, soft-law initiatives such as a "*Quality Framework for the Anticipation of Change and Restructuring*" in 2013 or the European Pillar of Social Rights in 2017 no substantive change has taken place.

At the same time and triggered by ECJ case law and respective legal initiatives of the EU Commission, cross-border mobility of business and undertakings have been promoted quite actively with the company law package in 2019 being the most recent legal initiative. The latter shows that European company law only half-hearty addresses and supports workers voice in transnational corporate practice and restructuring.

In view of the great challenges Europe is facing today – the impact of globalisation, the need to accelerate the implementation of climate policy goals and the decarbonisation of our economies, managing the manifold challenges in the context of the digital transition process and its impact on employment and work (including the emergence of new forms of work that currently are not regulated), defending democratic values and structures against populism and nationalism – democracy at work not only should be an integral part of any strategy and pathway that aims to social balanced and just.

As examples of good practices at company, local and national level presented in this report shows strong information, consultation and participation also contributes positively to the management of change in

terms of outcomes and results. As proved by plenty of research, strong workers voice in corporate practices have positive impacts on the capacity to overcome economic and other crises, more resilient and sustainable strategies and business orientation, human rights due diligence or equality of income and opportunities within the workforce. In this context there is also a strong overlapping and correlation between strong workers voice and effective information, consultation and participation of workers and current concepts of just transition pathways, economic sustainability and resilient democracies.

Against this, the following major policy conclusions are drawn with view on the need for current and future legislative as well as further action at EU level.

5.2 *There will be no return to the 'Old Normal'*

According to the EESC, the COVID-19 crisis will have far reaching impacts on the economy and the labour market. It will accelerate corporate restructuring and speed-up structural change in nearly all businesses with far-reaching impacts on the labour market. As highlighted in the EESC Resolution of June 2020, "*the virus and subsequent economic shocks will impact the world of work in three key ways: 1) the quantity of jobs (both unemployment and underemployment); 2) the quality of work; and 3) effects on specific groups that are more vulnerable to adverse labour market outcomes*". [100]

The EESC also stressed that there will be no return of the 'old normal': "*We cannot simply restore what existed in the past; we need to restructure and improve it. For the EESC, restructuring and improvement will have to be based on the principles underpinning all our work: making the internal market fully functioning, protecting human rights, democratic values and the rule of law, achieving the SDGs, creating a circular economy and achieving climate neutrality in the EU by 2050 at the latest.*"

The key questions emerging in this context are: How must workplaces and companies be structured and managed in order to meet such objectives of democracy at work? How to make companies more sustainable providing for resilient and decent work that contributes to sufficient income in healthy and liveable environments?

As highlighted in the previous sections of this report and in several other EESC opinions,[101] Europe currently is not only facing the most severe economic crisis since 1945 but also the need to manage two additional transitions – the transition towards a green, climate neutral economy and the transition towards a digital economy, society and labour market. Furthermore, there is the need to defend the societal model of social inclusive, plural and democratic societies and democracy and make it more resilient against right wing populism and authoritarian tendencies.

But this is only the top of the iceberg: Faltering labour productivity growth and persistent inequality are still creating significant uncertainties for the future of the EU economy. The trend rate of productivity growth across the OECD declined from over 4% in the early 1970s to less than 1% today, resulting in a "secular stagnation" of the average growth rate in advanced economies[102].

---

[100] EESC 2020: EESC proposals for post-COVID-19 crisis reconstruction and recovery: "The EU must be guided by the principle of being considered a community of common destiny." adopted by the European Economic and Social Committee on 11 June 2020.

[101] See in particular: EESC 2019: Towards a more resilient and sustainable European economy. ECO/492.

[102] https://www.cusp.ac.uk/themes/aetw/wp12/

Even before the COVID-19 crisis, measures taken at the EU level to address this decline have led to increased income and wealth inequalities and unsustainable levels of debt. The top 5% of wealthiest Europeans now own almost 40% of total private wealth. In-work poverty has increased by 15% since 2010, with almost 10% of European workers being categorised as working poor. Nearly one quarter of our children and young people are at risk of poverty or in poverty, and millions of young people cannot find decent work to start shaping their adult life[103].

Technological breakthroughs in automation and artificial intelligence (AI) have the potential to reverse the decline in labour productivity growth, but the potential gains remain elusive at the macro-economic level. Gains in "marginal productivity" have gone to the shareholders of large corporations rather than to workers, disrupting the social contract, increasing inequality and undermining public trust in government. Reversing this trend through tax and wage policies is essential in order to ensure a fairer distribution of economic benefits.

New sustainable technologies have the potential to rejuvenate communities left behind by years of underinvestment and to enhance social wellbeing. But, single-minded focus on labour productivity growth without due attention to its environmental and social implications cannot regarded as a sustainable development solution.

5.3 *A sustainable economy requires sustainable companies with strong workers voice*

The EESC as well as other EU institutions and the European trade union movement frequently have demanded that there is a need for a new paradigm of shaping and managing change and adjustment processes in a way that also considers social costs of restructuring and change and that is not only based on costs and productivity indicators but also impacts on income distribution, age and gender equality impacts, environmental and employment quality and sustainability and social inclusion.

Such a new paradigm is must be different to corporate strategies and business models that only strive for shareholder interests, profit margins at the expense of decent working conditions and a fair share for workers.[104]

As an alternative, the concept of a sustainable and resilient economy has been sketched in several EESC positions. At the level of company, the concept of the sustainable company integrates conventional levers of corporate governance with corporate goals that aim at guaranteeing a sustainable viability. In the current crisis situation but also in view of fighting climate change and global inequality, the '*Leitbild*' must be regarded as the only sustainable way of recovery: Sustainable companies are balancing business and shareholder interests with strong involvement of stakeholders, in particular workers representatives at all levels from the workplace to the boardroom with a significant influence on corporate decision making and monitoring of corporate behaviour.

[103] Report of the Independent Commission for Sustainable Equality, 2019.

[104] See also the recent study elaborated by EY for the EU Commission on directors' duties: EU Commission 2020: Study on directors' duties and sustainable corporate governance. Final report, July, available at: https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en.

Workers involvement and articulation can find expression in a variety of forms or 'functional equivalents' of workers voice and participation, for instance mandatory co-determination in the supervisory board, different kinds of collective agreements, including international framework agreements or the establishment of tripartite bodies for representatives of societal interest groups in the company or at national level. There is a need to accept a broad variety of national legal provisions, cultures of industrial relations and practical procedures in detail.

Sustainable companies not only play a key role as regards a "Just Transition" towards an environmentally and socially acceptable economy, they must be regarded also a key prerequisite for key European objectives and values.

The hitherto existing and dominant model of shareholder orientated corporate governance will not be able to develop longer-term perspectives that balance economic, social as well as climate-related interests. Based on short-termism and the cost-oriented exploitation of national and cultural differences it appears rather as a burden and barrier compared to a sustainable business model that orients itself to the great questions of our time – such questions are global and do not care about borders or differences of culture, legislation or tax systems.

5.4 *Policy recommendations: Need to be more ambitious than restarting social dialogue*

As shown by the practice examples in this report as well as references to various research evidence, strong workers' information, consultation and participation practice facilitates an efficient and more effective practice of coping with corporate crises situations[105] as well as managing transitions in a way that ensures more sustainable, resilient economic activities that do not obstruct social, democratic and environmental values and goals.

There is a need for "*Democratizing Work*".[106] As highlighted in an EESC opinion that was published before the COVID-19 crisis, the kind of measures and scale of efforts required to handle the building of a more resilient and sustainable economy, the active involvement of the social partners (and other representative civil society organisations) in shaping the just-transition paths and paths to resilience will be indispensable. Strengthening worker participation and democracy in the workplace contributes to higher adaptability and resilience at industry level. It is a factor of resilience that, in turn, strengthens other factors with which it has a positive correlation in the functioning of companies and the economy: productivity, innovation capacity, quality of employment, etc.

The EESC opinion further argued that "*the participation of workers is essential for the success of green and digital transitions. Existing instruments for worker participation and democracy in companies must be used. The social partners and the European institutions must ensure that such instruments exist in all EU countries and that they establish relations with social dialogue procedures that promote fair transitions.*"

---

[105] On the COVID-19 crisis and the role of information, consultation and participation of workers see the ETUC COVID Watch Briefing Note, available at: https://www.etuc.org/sites/default/files/publication/file/2020-06/Covid-19%20Briefing%20Workers%27%20Information%20Consultation%20and%20Participation%20merged.pdf.

[106] See also the transnational initiative that was launched in May 2020 by a group of scholars who launched a corresponding Manifest that was triggered not only by the impact of COVID-19 but also the unfolding crises in health, climate, the economy, and political life, stressing that "*clearly and urgently – the core lesson (…) emerging: it is time to democratize firms, decommodify work, and remediate the environment.*" See: https://democratizingwork.org/

European Works Councils and SE Works Councils, as well as workers representatives, including health and safety representatives, and national works councils and trade unions are legitimate and essential actors to protect and promote collective and individual workers' rights and working conditions. This is clearly out in EU and national legislation. Workers' rights to information and consultation covers inter alia the undertaking's or the establishment's activities, the economic and employment situation and forecasts, and any anticipatory measures envisaged, in particular where there is a threat to employment, as well as decisions likely to lead to substantial changes in work organisation, working environment and contractual relations.

Furthermore, workers participation in company boards facilitate not only a direct access to crucial information and debates on longer-term corporate strategic goals and orientations, but also the potential to influence corporate decision making.

As research carried out on board-level participation and co-determination at the company level shows, strong workers' information, consultation and participation not only increases job and employment security in crisis situations but also contributes to corporate strategies that are more resilient, better prepared to anticipate and manage change and adjustment processes by innovations and longer term investments in sustainable growth paths.[107]

However, as shown in the previous sections of this report, including the sections on the six country cases, the current reality of workers' information, consultation and participation rights in the EU cannot be regarded as satisfying.

As in particular the example of Germany shows, an increasing number of national companies are using European regulation such as the SE Directive to avoid workers participation in boardrooms. It is also very likely that provisions of the recent company law package will be used for this purpose.

Thus, in order to protect workers participation and to strengthen workers' participation in order to strive from its benefits, there is a need for political corrections in order to apply statutory workers participation rights also for foreign legal company forms. Furthermore, there is a need for a General Framework Directive that guarantees certain minimum standards of workers participation all over Europe in order to close the door for "legal engineering" and "regime shopping" with the sole purpose of avoiding workers participation. It also should be noted that there is an economic cause for workers' participation – it reduces information asymmetries. However, given the increasing Europeanisation of corporate structures, there is a need for a European framework in order to fulfil this function properly.

In times of accelerated change due to powerful drivers such as digitalisation and automation, the climate change challenge and the current COVID-19 impact, structural weaknesses and deficiencies of the EU Acquis of information, consultation and participation of workers have become more visible. There is a need for a stronger and a more ambitious framework that involves more than just a "New Start of Social

[107] See as a more recent publication, based on evidence of more than 179 public listed larger German companies with employee board-level employee participation: Campagna. S.; Eulerich, B. et al. Entwicklung der Wettbewerbsstrategien in deutschen börsennotierten Unternehmen: Der Einfluss der Mitbestimmung auf die strategische Ausrichtung und deren Performance. Mitbestimmungsreport Nr. 57 der Hans-Böckler-Stiftung, April 2020. See also: Eulerich, M. and Fligge, B. 2020: Aggressive Berichterstattung in deutschen Unternehmen, Mitbestimmungsreport No. 62, 07/2020, Düsseldorf.

Dialogue". Workers involvement must be equipped with the necessary resources and powers of influence in order to translate abstract political intentions and values (e.g. sustainability, just transition, Green Deal, resilient labour markets, gender equality) in concrete action on the ground, that is the workplace and company level.

Such a stronger European framework of information, consultation and participation of workers would require the following in particular:

- A "mainstreaming of workers participation" as a cross-cutting structural element in all European legislation and initiatives that have an impact on working and living conditions;
- a regulatory framework that guarantees early information and consultation of workers in cross-border restructuring and avoid fraudulent and/or practices to circumvent legal requirements;
- an EWC Directive that better matches realities and needs of transnational restructuring and reflects the need to equip EWCs with necessary resources and competences to engage in transnational information and consultation at eye level;
- a level playing field of workers' board level participation and an approach that actively develops and promotes a mandatory minimum floor of participation rights and dynamic European minimum standards of representation rather than engaging in strategies to avoid such rights (as in legislative initiatives of past);
- a binding EU legal framework on due diligence and responsible business conduct with a strong workers involvement in order to be efficient and avoid window polishing;
- a more sustainable approach to corporate governance with a focus on strengthening stakeholder rights

Thus, the "*New Start for Social Dialogue*" that was launched by the EU Commission five years ago as a political initiative to address current and future challenges requires a more substantial approach defining a common and stronger floor of workers' information, consultation and participation rights for workers and their representative organisations at national and European level.

As in the case of the "Democratising Work" Manifesto, there is a need for a political awareness campaign on the value of obligatory workers participation for sustainable companies as an essential element of embarking on a more sustainable and resilient economic, social and environmental development path. In order to achieve this, there is a need to break out of the normal cycle of short-termed programmes and crises responses that normally characterise the agenda of EU Council Presidencies.

ANNEXES

ANNEX I: COMPARATIVE COUNTRY TABLES

CATE-GORY	INDICATOR	CROATIA	CZECH REPUBLIC	FRANCE	GERMANY	PORTUGAL	SLOVENIA
Trade unions	*Proportion of employees in unions*	< 25%	7%	8%	18%	19% (2015)	20%
Collective Bargaining	*Collective Bargaining Coverage*	53% (2013)	50%	98%	55%	87%	79%
Corporate governance	*Company board structure*	monistic or dualistic (choice)	dualistic	monistic or dualistic (choice)	dualistic	monistic	monistic or dualistic (choice)
Board level employee represent.	*Board level employee representative*	in some large and all public comp. - limit to one person	in public yes; in private no longer the right to represent. A third of the supervisory board, possibility to extent to 50%.	in public yes; since 2015 also in large private - at least one person	right to representatives: 33% in larger comp. (>500) and 50% (>2000)	representatives in public only with consultative role - not in private companies	yes, in larger companies; share if board dualistic 33-55% and if monistic 33%
Information and consultation	*Main employee representation at workplace through:*	Union and works council – but where no works council exist unions can take over its rights and duties	Union – but works council can be set up as well.	Union and works council / employee delegates – but union dominates.	Works council.	Union – works councils exist in theory but less frequently in practice.	Union and works council.
Information and consultation	*Main bodies (based on Eurofound ECS 2013)*	Trade union (87%) Works council (13%)	Trade union (93%) Works council (7%)	Workers' delegate (51%) Trade union delegate (34%)	Works council (82%) Employee's delegate (12%)	Shop steward (47%) Workplace union committee (30%)	Works council (44%) Trade union (32%)
Information and consultation	*Small*		10–49: 12%	20–49: 26% 50–99: 72%	5–50: 6%–7%* 51–100: 36%–37%*	Less than 50: 0.1%	'Small': 20%
	Medium		50–249: 46%	100–199: 90% 200–499: 95%	101–199: 57%–64%* 200–500: 71%–77%*	50–249: 6%	'Medium': 30%
	Large		250+: 74%	500+: 96%	500+: 90% – 89%*	250+: 40%	'Large': 75%

Sources: ETUI, Eurofound. Data on trade union membership and collective bargaining coverage are taken from "Collective bargaining in Europe: towards an endgame". Edited by Torsten Müller, Kurt Vandaele and Jeremy Waddington, ETUI, Brussels. (data for 2016/2017 if not indicate otherwise)

ANNEX II: COUNTRY CASE STUDIES

1. Croatia

1.1 Key features of industrial relation and social dialogue

Trade unions are fragmented (only 10 people are required to set up a trade union). Lists published by Ministry of Labour and Pensions System and reported by the ETUI[108] show that as of 30 July 2017, there were 328 unions registered nationally with the ministry – in other words operating in more than one of Croatia's 21 counties – and 298 registered and operating in just a single county. In addition, there were 23 higher level union organisations – bodies made up of at least two unions – including the three nationally representative confederations.

Until 2013 there were five nationally representative union confederations. Under the 2014 legislation, which tightened the rules on which bodies can be considered nationally representative, union confederations can only be considered nationally representative, and so have a right to participate in national tripartite bodies and have some specific collective bargaining rights if they have: union affiliates which together have at least 50,000 members; at least five union affiliates operating in different areas of the economy; regional offices or offices of its affiliated unions in at least four counties; and the appropriate premises and material resources, including at least five full-time permanent employees, to carry out their activities. The three union confederations which have managed to clear all these hurdles and become nationally representative are: the SSSH in 25 affiliated unions; the NHS in 59 affiliated unions; the MHS, also known as Matica, covering 26 unions. There are also two union confederations, HURS (previously HUS) and the URSH confederation, which are not nationally representative and did not attempt to gain this status in 2018. There appear to be no major political divisions between the union confederations, although there is competition for unions between union confederations, and this may amplify the divisions that do exist.

There is only one employers' organisation — the Croatian Employers' Association (CEA) — meeting the representation criteria for participation in the Economic and Social Council (ESC).

The key tripartite body at the state level is the Economic and Social Council (ESC), established in 2000. The main role of the ESC is cooperation between the Government, trade unions and employers' organisation(s) in solving economic and social issues and problems, but it also serves as a consultative and advisory body of the Government, which "gives opinions, proposes and evaluates" certain issues within its scope of work. There are also a number of sectoral tripartite and bipartite social councils, as well as county-level economic and social councils.

Workplace representation in Croatia is provided both through trade unions and works councils, although if no works council has been set up the union representative can take on almost all its duties and responsibilities. Unions are free to operate at the workplace and, according to the Labour Act, they have "the right to promote the rights and interests of trade union members in respect of their relations with the employer". This can be done either through external union officials or through union representatives who are also employees of the organisation. In practice, as only 10 individuals are required to set up a union and because there are a large number of unions, in many cases workplace representation will be through a union or unions, all of whose members work for the same employer. In other cases, the union members will belong to a larger union with members spread across several employers, or even the whole

[108] See http://www.worker-participation.eu/National-Industrial-Relations/Countries/Croatia/Trade-Unions

country. In companies with at least 20 employees (bodies which are part of the state administration are an exception), the Labour Act states that the employees have the right to be represented through a works council. Its role is that it "protects and promotes the interests of employees". In practice, unions, which have the right to nominate candidates, are key in initiating the process of setting up a works council. There are also employee safety representatives who must be elected once there are 20 employees, or even fewer if there are significant health and safety risks.

The main legislative acts in the field of labour market and employment in Croatia are the Labour Act, the Law on Employment Mediation and Entitlements during Unemployment, the Law on the Promotion of Employment, the Law on the Labour Market, and the Minimum Wage Act; however, there are a number of other labour-related laws. The Croatian legislative system is frequently amended, and labour legislation is no exception.

Given the on-going debate on the need to bring more flexibility to the field of employment protection in order to boost employment, the government amended the existing Labour Act (from 2009) back in June 2013 by introducing some liberalisation in the field of employment protection but also by harmonising some of the provisions of Croatian labour market regulations with those of the EU. In this instance, part of the legislation related to temporary employment contracts has been liberalised, primarily by introducing the possibility for the first fixed-term contract to last longer than three years. The amendments also brought some liberalisation in the field of collective dismissals by simplifying some provisions. In July 2014, a new Labour Act was introduced that brought further flexibilisation in the field of collective dismissals but also in the area of 'regular' (open-ended) employment contracts. Although some standard indicators, such as the OECD's employment protection legislation (EPL) index show that these changes within the employment protection have contributed to overall flexibilization.[109] the boom in employment happened mainly in the area of temporary employment, while the effects on overall employment are much less visible.[110]

In 2017 a new Law on Employment Mediation and Entitlements during Unemployment was introduced, and it regulated many issues: employment mediation, vocational guidance, unemployment insurance, active employment policy measures, financing, organisation, management and performance of the Croatian Employment Service (CES). The Law on the Promotion of Employment regulating the conditions for hiring the long-term unemployed, use of active labour market programmes for "hiring" young people, and simpler ways of hiring seasonal workers for temporary jobs in agriculture. Both these laws ceased to exist from January 2019 and have been replaced by the Law on the Labour Market that covers all previously mentioned aspects.

A new Minimum Wage Act has been in effect since 1 January 2019. Although it maintains the key features of the previous legislation, there were a few important changes aimed at making minimum wage policy more predictable and transparent. One change is that those who are self-employed, if the only worker in the entity, are exempt from an obligation to pay the minimum wage. The Act gradually abolishes the deduction on employers' social security contributions for minimum wage workers

[109] See Kunovac, M. 2014: Employment Protection Legislation in Croatia, Financial Theory and Practice, 38(2), p. 139-172.

[110] See: Tomić, I., Rubil, I., Nestić, D., Stubbs, P. 2019: The employment and social situation in Croatia, Study for the Committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg.

introduced in 2018, while it also prescribes that the Government sets the minimum wage level once a year for the next calendar year, with the level based on the recommendation of the Minister in charge of labour affairs after consultations with the social partners. In addition, the new Act introduces a Commission for Monitoring and Analysis of the Minimum Wage as a new body to assist in the policy process. The Commission is a consultative body to the Minister, analysing recent trends relevant for minimum wage policy and proposing the minimum wage level for the next year.[111]

The information and consultation rights, which the Croatian Labour Code defines as the "workers' participation in decision-making", apply to all workers employed by an employer employing more than 20 workers, with the exception of workers employed in state administration bodies. In all companies and other legal entities falling under this scope the workers "have the right to take part in decision-making on issues related to their economic and social rights and interests".

The above-mentioned right is typically exercised through the right of workers to elect one or more representatives, i.e. the works council, which "shall represent them before the employer in relation to the protection and promotion of their rights and interests". Alternatively, if the works council is not established despite of the legal conditions to do so, and there is a trade union presence in the can take on almost all workplace, trade union representative is automatically entitled the right to take on works council's competences.[112] Beside the works council, Croatian Labour Code envisages two other mechanisms for worker's participation in decision-making, the general assembly of workers and the workers' representative in the supervisory board.

The establishment of works councils is treated as the right of workers and not the obligation of the employer. It can be initiated by proposal coming from the trade union, or at least 20 percent of the workers. The size of the works council is determined in accordance with the number of workers employed with the employer. Works council protects and promotes the interests of workers by providing advice, by participating in decision-making and by negotiating with the employer. In general, it should monitor compliance with the Labour Code, employment rules, collective agreements and other regulations adopted for the benefit of workers. Also, works council should monitor whether the employer fulfils, in timely and orderly manner, obligations related to the calculation and payment of social security contributions, and has the right to access the relevant documentation for this purpose. Specific rights of the works council (defined as the employer's duties) can be separated into three groups: (1) the right to information, (2) the right to consultation and (3) the right to co-decision making. The employer is obliged to inform the works council in due time, accurately and integrally. Consultation should happen before rendering a decision which is "important for the position of workers", the employer is obliged to consult the works council about the proposed action. The works council is entitled to receive the information important for rendering such decision and understanding its impact on the position of workers. The employer is also obliged, upon the request by the works council, to allow holding a council's meeting for the purpose of consultation within the council and elaboration of its opinion. Information must be delivered to the works council integrally and in due time, so that the council can put forward comments and proposals, i.e. in order to enable the results of the consultation process to have material impact on decision-making.

[111] See European Commission 2019: The Employment and Social Situation in Croatia, provided at the at the request of the European Parliament's Committee on Employment and Social Affairs.

[112] Except the right to appoint workers' representative in the supervisory board, which is in such case elected through a procedure stipulated for the election of the works council.

In accordance to the Labour Code decisions which the employer can render only with the prior consent of the works council are: (1) dismissing the member of the works council, (2) dismissing a candidate for the works council who was not elected, or a member of the election committee, during the period of three months following the establishment of the election results, (3) dismissing a worker with reduced ability to work, worker in immediate danger of disability or disabled worker, (4) dismissal of worker older than 60, (5) dismissal of workers' representative in supervisory board, (6) including in redundancy social security plan a person who is pregnant, using any kind of parental leave or working on shortened work time due to the reasons of care for a child with serious developmental problems, (7) collecting, processing, using and sending to third persons the information about workers and (8) appointing a person authorised to supervise whether personal information about workers is collected, processed, used or sent to third persons in accordance with the Labour Code.

The institute of the workers' representative in employer's bodies supervising the business (supervisory board, steering committee, managing board or a similar body) was introduced through the Labour Code amendments in 2001. The obligation to have at least one workers' representative in the supervisory body was originally prescribed for companies with more than 200 workers, those with more than 25 percent public ownership, and public institutions. The 2010 Labour Code expanded the scope of this provision to include all companies and cooperatives which are in legal obligation to form a body supervising the business. The workers' representative in the supervisory body must have the same status as its other members.

1.2 Current and future challenges of workers' information, consultation and participation

In 2008 the Croatian Government initiated the process of adopting the new Labour Code in order to harmonise labour legislation with relevant EU directives. Although the adoption of new law was envisaged for the summer of 2009, the process of adjusting the positions of social partners turned to be harder and longer than expected. Even after several planed changes that were not connected to harmonisation process were left out for the future, the consensus on harmonisation issues was not reached among the social partners. Trade unions claimed that Government tried to use the harmonisation as an excuse for lowering existing workers' rights in several instances and even organised demonstrations against the new proposal of the Labour Code. The Croatian Parliament finally adopted the new law on 4 December 2009, with Social Democrats and other opposition parties leaving the session before the voting, in protest of new "anti-workers" legislation. Some trade unions advocate that still today some of provisions adopted are not in accordance with EU legislation and especially with the intention of the relevant Directives as interpreted by the European Court of Justice.

The new law brought only minor changes to the national framework for workers' information and consultation rights. A completely new chapter was included in the Labour Code to deal with European Works Councils and European Societies and Cooperatives. With both trade unions and employers being focused on more urgent issues for the national framework, it can be only said that harmonisation in this field was done rather "mechanically" and that any systematic analysis of legal provisions as well as their implementation were weak. Problems are identified with regards to consultation and the effective possibility by trade unions to do anything with the collected information because of on 'confidentiality' rules often jeopardise the communication between and within workers and unions' representative bodies. On the other hand, national legislation on the setting of a trade union in Croatia is too broad and with so many trade unions and works councils sometimes it is hard to work together. Branch unions attempts to establish close collaboration with works councils by increasingly organising training for

their members engaged in the work of works councils Further efforts in this direction are needed, as well as in systematic work with established works councils on behalf of branch unions, but their staff capacities in this respect are often limited.

The general framework, in which information and consultation rights are exercised through works councils, is accepted by both employers' organisations and trade unions, although negative attitudes are frequently present on company level on both sides. The main problem remains the weak enforcement of the law, with the functioning of information and consultation mechanisms in practice being weak as well as in other areas of labour relations, main reasons being the weak capacity of Croatian labour inspection and slowness of judiciary system. While employers as a rule respect information and consultation procedures related to dismissals, because failure to do so will almost certainly result in a court dispute, the situation is much less satisfactory regarding information and consultation obligations.

In addition, although the Labour Code include the obligation to have at least one workers' representative in the supervisory body this is not sufficient and there is the need to increase the number of workers representative on board level. This is essential to address future challenges related to digitalisation and climate change. In particular, trade unions advocate the need to influence the future of work agenda by strengthening information and consultation rights with regards to new types of work, sustainable development, green deal and energy, digitalisation and AI, Covid-19 and the health and safety emergency. All these areas are out of their capacity to exercise influence at the national level, and if they cannot influence at national level it would be hard for them to make their voice hear at EU level as well.

1.3 Policy reform debates and demands as regards the EU Council Presidency

Most trade union experts interviewed agreed that the lack of systematic information and consultation on established works councils and their activities at the national level presents a crucial problem in accessing the functioning of the system and its results by influencing them. This is an urgent need to address particularly in the light of recent changes (i.e. digitalisation, climate change, Covid-19) and the solution which needs to be found. Strengthening workers' rights of information and consultation at the national level is a prerogative to improve the participation of Croatian workers at the EU policy debate as well.

2. Germany

2.1 Key features of industrial relations and social dialogue

Legal basis and social partners

The social relations established in the post-war period have been an essential component of the overall successful economic development and high social cohesion in Germany. This social model is based on three key principles[113]:

The first of them is the principle of the "social market economy" (*Soziale Marktwirtschaft*), which implied companies were required to create a social order that balances the interests of employees and employers.

The second principle is related to the autonomy of social partners and the equality between them. This principle is guaranteed by the German basic law (*Grundgesetz*). Tripartism is limited to the social partners' participation in state institutions; when it comes to regulating working conditions and labour law, however, the autonomy and freedom of the social partners and the legal and actual powers of collective agreements are far reaching. Any state law regulating working conditions is in danger of breaching the social partners' autonomy. The intervention must therefore be objectively justified.

The third principle is workers participation or – as it is called in Germany – co-determination (*Mitbestimmung*) on establishment level as well as on company level as a central feature and foundation of the characteristic relations of "social partnership relations between employers and employee representatives.

There are no official estimates of trade union density in Germany and figures published by union organisations include a substantial number of retired trade union members. Applying this proportion to total union membership results in estimations of around 17% trade union membership rate for 2018 according to the OECD (see below and table in annex).

Thus, only around a sixth of employee in Germany are trade unions members and trade unions have been facing a long trend of declining membership (although this decline has slowed down in recent years). However, declining membership and recruitment problems amongst certain groups should not be interpreted as a signal that employees no longer regard unions as relevant or are disappointed with their work: According to the nation-wide German General Social Survey (ALLBUS, around 70% of the surveyed employees agree with the statement that employees need strong trade unions.[114]

Though trade union competition has increased in recent decades due to emergence of occupational trade unionism[115], the vast majority of union members are concentrated in the eight affiliated member unions

[113] See: Kocher, E. 2008: Country Report Germany, in: EU Commission 2008: Employee representatives in an enlarged Europe, Luxembourg, p. 219-246.

[114] See Schneider, H. 2018: Gewerkschaften: Ja bitte, aber ohne mich! IW-Kurzbericht Nr. 80, 20 December 2018.

[115] There are autonomous unions for specific occupations, of which the most important are those for hospital doctors (*Marburger Bund*, already established in 1947), flight attendants (UFO), airline pilots (Cockpit), and air traffic controllers (GdF). The locomotive drivers' union GDL, which is often included with these unions, is in fact an affiliate of the trade union of civil servants, dbb (*Deutscher Beamtenbund*).

of the German Trade Union Confederation DGB (*Deutscher Gewerkschaftsbund*) which is also the only German member union of the ETUC. According of own information, the DGB in 2019 represented nearly six million employees that are affiliated to the eight DGB member unions, most of them in the two largest sectoral unions, *IG Metall* (2.2 million) and *ver.di* (1.9 million).[116]

Historically, DGB unions were organised primarily on an industrial basis, with unions for metal workers, chemical workers, employees in the public sector, finance and retail and so on. The structure set up when the DGB was created in 1949 remained largely unchanged for many years. However, from the start of the 1990s there were several major mergers, which fundamentally changed the picture. The most important one was the merger of five public and private service trade union and the establishment of *ver.di* in 2001.

The structure of employer organisations in Germany is characterised by several national organisations that are divided into regional occupational structures or chambers with complementary responsibilities and powers, e.g. representing employers in collective bargaining.

The Confederation of German employers' associations, BDA (*Bundesvereinigung der Deutschen Arbeitergeberverbände* represents the employers in all sectors of the economy and is organised on a sectoral basis, along the lines of the unions, having around 50 sectoral employer organisations. These include *Gesamtmetall* for the metalworking industry, BAVC (*Bundesverband Chemie*) for chemicals, VDMA for mechanical construction and HDB (*Hauptverband der Deutschen Bauindustrie*) for building construction.

The Federation of Germany Industry, BDI (*Bundesverband der Deutschen Industrie*) covers 39 regional and sectoral industrial groups. BDA and BDI have close links and are sharing tasks. Both are members of *BusinessEurope*. While BDA deals with labour relations, working conditions, employers' functions and the trade unions, the BDI is focused on economic questions.

The VKA (*Verband der Kommunalen Arbeitgeberverbände*) which is affiliated to CEEP, and TdL (*Tarifgemeinschaft deutscher Länder*) group together local public bodies and the Länder.

The Association of German chambers of trade and industry, DIHT (*Deutscher Industrie- und Handelstag*/) brings together about one hundred chambers. These public bodies to which membership is compulsory deal with local problems and vocational training and are present in the SME sector.

Not only unions but also employer organisations have been affected by a decline in membership. Density figures cannot be provided because the employer organisations release figures on their number of organisational members, not on individual members.

For weathering the membership decline, the majority of employer organisations offer membership without binding obligation to apply collective agreements. The Federal Labour Court decided that they can do so but only if the members that are not applying collective agreements do not influence the

[116] Trade union figures since 2010 are documented on the DGB website: https://www.dgb.de/uber-uns/dgb-heute/mitgliederzahlen/2010?tab=tab_0_0#tabnav.

organisation on issues regulated by collective bargaining. Craft guilds engaged in collective bargaining are prohibited to provide non-binding memberships.

Two main pillars of industrial relations in Germany

There are two main pillars of the German industrial relations model that - until today - are regarded as important preconditions of the success and effectiveness of the German economy. The dual model is characterised by a coordinated system of collective bargaining between trade unions and employer organisations at sector level on the one hand and strong information, consultation and co-determination rights of employees at company level via works councils and employee representation at the administration or supervisory management boards in larger companies.

Though there are interlinkages between the two pillars, both are formally separated and based on two different legal sources: The Collective Agreements Act (*Tarifvertragsgesetz*) that came into force in 1949 and is a remarkably short legal text, comprising only around a dozen paragraphs and undergoing only a few legal reforms since then, as well as the Works Constitution Act (*Betriebsverfassungsgesetz*), which lays down how the workplace labour relations system in Germany should operate. The Works Constitution Act goes back to Works Councils Law of 1920; it came into force in 1952 during the post-war period, but saw significant reforms since then (namely 1972, 2001 and 2017). In contrast to the Collective Agreements Act, the Works Constitutions Act is a very detailed legal source of regulation, comprising more than 130 paragraphs.

Collective agreements at sector level and/or regional level play a crucial role for wage setting as well as the regulation of further working conditions in Germany; cross-industry and national agreements do not have a real tradition, also because tripartite institutions do not exist.

Collective agreements are negotiated for specific sectors and branches of the economy. In many sectors (for example the metal and electronics industry), collective bargaining is taking place at the level of federal states and thus allows for differentiations that reflect regional economic strengths and weaknesses. Collectively agreed wage setting and regulation of issues such as working time, wage groups, additional remuneration components or further working conditions should support the development of a level playing field and avoid competition based purely on wage competition. By shifting collective bargaining from the company to the higher regional or even national sectoral level, the system also discharges company level actors – most of the bargaining efforts are with trade unions and employer organisations. This enables company level actors to focus on issues such as modernising technologies, productivity, innovation, work organisation, qualification, skills development and other issues relevant for the competitiveness of the firm.

It should be noted however, that wages and working conditions can not only be set in sectoral level agreements. Also, company level collective agreements (*Firmentarifverträge*) or individual work contracts are eligible sources of wage setting or the regulation of working conditions. In fact, there has been a long trend of decentralisation of collective bargaining that is illustrated in particular by the decrease of companies covered by a sectoral collective agreement and a strong increase the number of companies that are affiliated to a sectoral employer organisation but without the requirement to comply

with the collective agreement.[117] This trend has also been facilitated by collective agreements at sector level that contain "*opening clauses*" which explicitly allow for company-specific adjustments, which may be less favourable than the standards defined in the sectoral agreement.

According to data from the regular survey conducted by the IAB Establishment Panel, only 57% of employees in Western Germany are directly covered by a collective agreement at sector level (49%) or by a company level collective agreement (8%). In East Germany, the figure is as low as 44%.[118] Germany is characterised by a steady and continuing fall in collective bargaining coverage from the mid-1990s up to the present. Although industry-level collective agreements exercise an indirect influence over employers that have opted to remain outside their formal scope, there are today large parts of the economy, especially in services such as the IT, hotels and restaurants or the retail sector, that are no longer covered by sectoral collective bargaining.

The erosion of collective bargaining coverage is closely linked to the steady decline the membership rates of trade union and employer organisations. According to the OECD ICTWSS database (Version 5.1), the employer density rate (as proportion of employees in employment) in 2011 (latest available figure) was 58% while the trade union membership density rate (net union membership as a proportion of wage earners in employment) in 2018 according to the OECD employment database was 16.5%.

As regards workers voice at the company level, surveys and polls show that workers participation is highly appreciated by the population. More than 80% associate something positive with workers participation and co-determination and around three quarters regard works councils as something that is good.[119]

Also, surveys of works council representatives show, that despite 10% reporting quite a negative relationship with the management, the majority feels that the cooperation with management is constructive and 60% report that the relationship with the management is good or even very good.[120]

These findings confirm the result of other research (see textbox below) that workers participation in Germany has positive effects not only for workers but also for the business.

[117] This is known at 'OT membership', whereby OT means 'ohne Tarifbindung', i.e. without being bound to the collective agreement'. For the increase of such OT members within the metalworking employer organisation Gesamtmetall. See Haipeter, T. (2016): Variety of Strategies. Arbeitgeberverbände ohne Tarifbindung in Deutschland. In: Zeitschrift für Politikwissenschaft 26, Sonderheft 2, S. 75–92.

[118] Ellguth, P. and Kohaut, S. 2018: Tarifbindung und Interessenvertretung: Aktuelle Ergebnisse aus dem IAB Betriebspanel 2017, WSI-Mitteilungen, 71. Jg., 4/2018.

[119] Werner Nienhüser, Heiko Hoßfeld, Esther Glück, Lukas Gödde: Was Menschen über Mitbestimmung denken. Empirische Analysen, Study der HBS-Forschungsförderung Nr. 408, Dezember 2018.

[120] Helge Baumann: Auswertung der Betriebsrätebefragung 2017; Böckler Impuls 19/2018.

Workers participation – a win-win institution for workers and the business

Company co-determination has clear positive effects. This is the result of an evaluation of various empirical economic research results on the topic. According to the study that was published in 2017, works councils contribute to higher productivity, higher wages and higher returns. In addition, co-determined companies are more likely to invest in green technologies and incremental innovation; they also invest more in further training and apprenticeships. Further positive impacts are lower staff turnover, fewer labour shortages, more family-friendly work organisation and flexible working time models. At the same time companies with co-determination perform better on issues regarding wage equality: salary differences between highly and low-skilled workers are smaller and the same applies for the wage gap between men and women.

Positive effects of worker participation and co-determination depend on various circumstances. The positive impact seems to be particularly strong for companies in crisis. Scientific research also shows that the benefits are greater for companies that are bound by collective agreements. The attitude of the management also has an effect: Hostile managers impair successful functioning. As an explanation for these findings, economists point to the collective representation of workers: Works councils and board-level employee representatives take up and communicate the needs of the workforce and thus contribute to motivation, identification of joint purposes and increased willingness of workers to cooperate. Furthermore, solid and clear structures and competences of workers participation based on clear and reliable regulation and provisions increase trust between the employer and employees.

Source: Jirjahn, U. and Smith, S.C. 2017: Non-union Employee Representation: Theory and the German Experience with Mandated Works Councils, IZA Discussion Paper Nr. 11066, October.

By contrast, in many companies there is no workers participation at company level, even though they meet the requirements of the Works Constitution Act.[121] Only nine per cent of private sector companies with five or more employees have a works council. This low share reflects the lack of works councils in small companies.[122] If the density of works councils is calculated on the basis of employees covered, the picture looks better: Four out of ten employees work in a company that has a works council.

Information, consultation and participation workers' rights at company level

In Germany, works councils provide representation for employees at the workplace and they have substantial powers – extending to an effective right of veto on some issues. Although not formally union bodies, union members normally play a key role within them. There is a clear legal basis for the workplace representation of employees in all but the very smallest companies. Under the Works Constitution Act (*Betriebsverfassungsgesetz*), a works council can be set up in all private sector workplaces with at least five employees. In the public sector, there is a system of staff councils which have a broadly similar structure.

[121] A recent prominent example has been the financial technology company *Wirecard*: After a rapid rise from a minor play to one of Germany's biggest companies in the IT and fintech sector with clients such as Allianz, Qatar Airways, KLM or Transport for London, *Wirecard* was the centre of Germany's biggest corporate accounting scandals in recent years after it became public that the company wrongly reported a net revenue of 1.9 billion Euros that never existed. As a result, the company not only was taken from the DAX, the stock index of Germany's thirty biggest companies, the CEO resigned and was arrested and the company with a global workforce of 5,800 employees of which 1,500 are employed at the headquarter in Germany eventually filed for insolvency at the beginning of July. Despite its size, *Wirecard* never had a works council. While this might not have been a problem for employees in time of boom and rapid growth, the consequence in the current insolvency situation is fatal: There is no body on the employees' side that negotiates something for everyone with the management or the public insolvency administrator – compensatory redundancy payments or a social plan, for example. Without a works council, every employee is on his own.

[122] Only 5% of companies with less than 50 employees have a works council, in companies with 51-100 employees the share is 32% and it increases to 53% in companies with 101-199, 73% in companies with 200-500 and to 87% in large companies with more than 500 employees. See: Ellguth, P. and Kohaut, S. 2019: Tarifbindung und betriebliche Interessenvertretung. Aktuelle Ergebnisse aus dem IAB-Betriebspanel 2018.

Works councils are not directly trade union bodies. But the unions have a major influence on their operation. Previous research has shown that around three-quarters of elected works council members were members of unions in the DGB, the main trade union confederation. Union membership of works council members was particularly high in sectors such as chemicals and energy and in the metal and textile industry.
Other links between unions and works councils are that works councils have the right to invite trade unions to attend their meetings, provided a quarter of the members are in favour, and works council members often go on union-organised training courses.

However, the labour law in Germany does not provide a separate statutory structure for union workplace representatives. However, some unions make provision for them. Their rights and duties are normally fixed by the unions, although in some industries their position is also regulated by collective agreements. In an ideal situation they exist alongside the works council. In practice there is often no separate specific trade union structure and the members of the works council will take over their tasks.

Works councils are purely employee bodies. There are no members representing the employer. Manual and non-manual employees should "as far as possible" be represented in proportion to their numbers in the workforce. Since 2001, agency workers who have worked in the workplace for at least three months have been entitled to vote, and, in March 2013, the labour court ruled that they should be counted in the numbers employed. This potentially increases the size of the works council, as well as the numbers of those entitled to time-off.

There is also a requirement that the gender which is in a minority in the workforce must be represented in proportion to its presence in the workforce on all works councils with three or more members. The aim of this change, which was introduced in 2001, was to increase the number of women in works councils and research on works council elections since then suggests that it is having some effect. The proportion of women has increased gradually, from 23% in 2002 to 32% in 2018.[123] However, the researchers estimate that women continue to be under-represented in relation to the number of women employees.

In companies with more than 100 permanent employees, the law requires the setting up of another body, the economic committee. This committee is consulted on economic and financial issues. But it is chosen by the works council, and in certain circumstances the works council can decide to do without an economic committee, and directly take over its functions.

Health and safety committees should be set up in all workplaces with more than 50 employees and in some with between 20 and 50 employees. Members of the works council take part in the meetings of the safety committee.

There is also separate representation for young people and the disabled, who are able to take part in works council discussions of concern to these groups.

[123] Trendreport Betriebsratswahlen 2010 (https://www.boeckler.de/pdf/p_arbp_231.pdf) and Trendreport Betriebsratswahlen 2018 – Erste Befunde (https://www.boeckler.de/pdf/p_mbf_report_2018_45.pdf).

Besides, works councils at workplace level, the law also requires the setting up of a central works council at company level (*Gesamtbetriebsrat*) if a company has several works councils. This brings together representatives of the individual plant works councils – normally one or two from each. This body tackles issues which affect more than one workplace and cannot be dealt with by a single works council.

It is also possible to set up a works council at group level, covering all the companies in a group (*Konzernbetriebsrat*). However, this is not obligatory, and can only happen if works councils covering 50% of the total group workforce want to set one up. It deals with issues that affect the whole group or more than one company with the group and cannot be resolved at the level of the central works council.

Information and consultation of workers in Germany is driven by the motivation of the legislator to that key decisions at the workplace are not taken by the employer unilaterally but involve representatives of the workforce. However, the works council cannot consider just the interest of the employees. Its legal basis is to work together with the employer "*in a spirit of mutual trust ...for the good of the employees and the establishment*". At the same time the law recognises that there will inevitably be conflicts between the interests of the employer and the workforce, and also makes it clear that trade unions have a separate duty to protect the interests of their members.

The law provides the works council with a range of rights, which can be divided into four main categories:

- *Information*: where the works council must be informed;
- *Consultation*: where the works council's views must be listened to;
- *Veto*: Where the works council can block the employer's plans, although this opposition can be set aside by a decision of the labour court; and
- *Co-determination*: where the works council must agree before the employer can go ahead, unless the employer can persuade the "*conciliation committee*" (*Einigungsstelle*) to accept his or her proposals.

The precise rights of the works council vary from area to area. The rights are strongest in the social area – organisation of hours, holidays, methods of payment and so on – and weakest in relation to economic issues such as investments or changes in the business model/strategy. This reflects the overall principle of that companies should be as far as possible free to take their own decision on economic matters.[124]

The works council must be consulted on planned changes, like cut-backs, closure, or the introduction of new work methods, which may produce major disadvantages for the workforce, i.e. redundancies. In these circumstances, the works council will normal have a two-fold response. It will try to negotiate the way the changes are implemented, through a so-called "*reconciliation of interests*", so as to limit their impact, and it will also aim to agree a "*social plan*" to compensate employees for their losses. The reconciliation of interests is a voluntary agreement between the two sides, but the social plan, which

[124] On economic issues, the works council should be informed about the economic situation, with quarterly reports in larger companies (more than 1,000 employees) and be consulted about changes in the workplace which could lead to disadvantages for the workforce, including the introduction of new technologies and new processes. In workplaces with more than 100 employees, many of these rights are exercised by the *economic committee*, made up partially or wholly of works council members, to which the employer should report once a month. The issues covered by the economic committee include the company's economic and financial situation, investment and rationalisation plans, work methods, closures and transfers, environmental policies and any possible takeover of the company.

typically includes elements like the level of redundancy payments, earnings protection in the case of job changes, is subject to enforceable co-determination, i.e. it will be dealt with in the *conciliation committee*, if the two sides cannot agree.

On staff planning and training, the employer is required to inform the works council of overall the staffing needs and discuss these with it. The works council has a particular role in promoting gender equality and it can also make proposals, such as changing working hours, to enhance job security. The works council has a general right to be consulted on training and, where workers need to be re-trained, the issue is subject to enforceable co-determination. Decisions on the implementation of training, such as the practical experience of trainees, the selection of trainees and the introduction of workplace examinations, are also subject to enforceable co-determination, although not whether training takes place at all. The works council also can veto the appointment of trainers if it thinks they are unsuitable.

On health and safety, the works council has a general responsibility to ensure that the health and safety provisions and accident prevention measures are observed, a right to participate in health and safety inspections. It must also agree to the appointment of safety delegates, who are individual employees concerned with health and safety, appointed by the employer

On individual personnel issues, appointments, grading and re-grading, transfers and dismissals, the employer must inform the works council before acting, and the works council can withhold its consent (appointments, grading and re-grading and transfers) or oppose the planned action (dismissal). However, the works council can only do this in certain specific circumstances, such as where the proposal clashes with existing agreements or guidelines, would lead to unfair treatment for the individual concerned or (in dismissal cases) where the employer has failed to take sufficient account of social issues. If the employer does not accept the works council's position, he or she can take the issue to the labour court, which can overrule the works council's opposition. The works council has enforceable co-determination rights in companies/workplaces with more than 500 employees, when the employer wants to draw up guidelines for future action in these areas, for example selection criteria for redundancy.

Individual grievances can also be taken to the works council, and, where the works council takes them up, and cannot reach agreement with the employer, the issue goes to the conciliation committee.

The most extensive rights of the works council exist in relation to a range of day-to-day social issues, which affect the workforce. Here, enforceable co-determination rights exist in relation to the following issues:

- works rules;
- starting and finishing times and breaks;
- any temporary shortening or lengthening of working time - such as overtime or short time working;
- the time, date and method of payment;
- holiday arrangements;
- the introduction of cameras or other devices to measure work or check the behaviour of employees;
- health and safety arrangements within the framework of the legislation (It must also approve the appointment and dismissal of works doctors and health and safety specialists.);

- arrangements for the operation of works institutions like canteens or sports grounds;
- the rules for the use of works accommodation;
- the principles used for the payment of wages and salaries - for example, should they be based on bonus or time work;
- the setting of bonuses and targets;
- the operation of the works suggestions scheme and
- the introduction of group work;
- contents of staff questionnaires and the personal data held on individual employees for assessments.

All these issues can go to the conciliation committee if there are disputes means that on many of them the works council will be able to reach written agreements with the employer.

A major instrument of regulating day-to-day social issues in German establishments are agreements between the works council and the company management, so-called "works agreements".
Reflecting also the different types of works councils, works agreements are negotiated at different level and may cover single establishments / plants (*Betriebsvereinbarung*), the whole company (*Gesamtbetriebsvereinbarung*) or all companies in a corporate group (*Konzernvereinbarungen*).

A recent survey has found that on average each works council has 23 "works agreements" (*Betriebsvereinbarungen*), with working time, holidays and health and safety issues among the topics most frequently covered.[125]

Works agreements should not be mixed with collective agreements. By law, works councils should normally not be involved in collective bargaining on issues, such as pay or working time, which are dealt with by the trade unions. However, recently works councils have had a greater role in these issues, as some agreements include "*opening clauses*", which allow the works council and local management to agree variations to the deal reached by the union and the employers' association at industry level (see also above the section on collective bargaining trends).

The trade union representatives in the workplace are there to promote the interests of the union, observe the implementation of collective agreements as well as representing union members.

Workers board-level participation
As in 18 of the 27 EU Member States, workers participation and co-determination rights in Germany are not restricted to the workplace level but workers also are participation in the monitoring and controlling of corporate executive and management boards as well as participate in the strategic orientation of the company.

Workers participation in the supervisory boards to which the day to day management of the company reports, was introduced in the coal and steel industry already in 1951 and – after intensive political debates – extended to all larger companies with more than 500 employees by the co-determination act

[125] Baumann, H.; Maschke, M. and Merich, S. 2018: Betriebsvereinbarungen 2017. Verbreitung und Trendthemen, WSI-Policy Brief 25,2018.

1976.[126] In public limited companies there is the legal obligation that at least one third of the supervisory board members are representatives of employees. In companies with over 2,000 employees, half of the seats on the supervisory board must be filled by employees.[127]

Since 2016, there is a legal obligation that at least 30% of seats in the supervisory board should be filled by minority gender groups (most likely women). An analysis of the largest public limited companies shows that there has been a continuous increase in female board-level members and the share in 2018 was slightly above 30%. However, there is also a significant group of very large companies that still clearly lack behind the obligation.[128]

The supervisory board can normally appoint and dismiss the main management board, and it reviews its performance. The supervisory board gives advice, participates in setting the company's strategy, and is provided with financial and other information. The supervisory board also draws up a list of operations where its approval is required before they are undertaken. However, the supervisory board should not take on the functions of the management board.

The core of the Germany economy is covered by workers participation: Around one third of the total German workforce is employed by companies that are covered by supervisory board level workers representation. These companies contribute a share of around 40% to the national total turnover and even 45% of the value added.

2.2 Current and future challenges of workers' information, consultation and participation

As highlighted at the beginning of this section, the German system of industrial relations is based on the two main pillars of collective bargaining at sector level and statutory workers participation – including co-determination rights at company level. Both pillars have been under pressure and suffered from longer-term erosion trends (i.e. decreasing collective bargaining coverage as well as a decreasing share of companies with a works council) as well as more recent developments.

Whereas the in the field of wage formation and collective bargaining public reforms such as the introduction of a statutory minimum wage in January 2015 and measure to ease the extension of collective agreements[129] have taken place, the developments as regards workers' information, consultation and participation so far have not led to any concrete reactions of the legislator.

Despite the proved positive economic and social impacts, a growing number of companies in Germany are trying to avoid statutory workers participation and co-determination obligations by ignoring legal

[126] This right applies both in a public limited company (AG) and a limited company (GmbH), as well as in some other company forms. It does not apply in "ideological companies" – companies whose purposes are primarily political, religious, educational or artistic, or produce news or comment.

[127] However, there is no equality in the weighting of the employee and employer sides, because in the event of a tie, the vote of the Chairman of the Supervisory Board counts twice.

[128] See Weckes, M. 2019: Strahlungsarmes „Quötchen". Die Geschlechterverteilung im Aufsichtsrat und Vorstand 2019, Mitbestimmungsreport 48, Düsseldorf: Hans-Böckler-Stiftung.

[129] As a result of trade union campaigning, a law on strengthening collective bargaining autonomy (*Tarifautonomiestärkungsgesetz*) was passed by the German government in 2014: The aim is to "strengthen collective bargaining autonomy and to ensure decent working conditions for employees (...)." The law eased the possibility of extending collective agreements insofar as it abolished the 50% quorum and strengthened the principle of a "public interest" minimum standard of wage and salary conditions.

obligations or by making use of legal loopholes and constructions in order to reduce or circumvent workers participation. As highlighted in various studies[130] this trend is particularly worrying because European regulation – in particular the SE Directive – increasing is used for this purpose.

Whereas, the national legal framework of parity co-determination has not been changed, it was European regulation that has opened new doors for avoidance and circumvention of worker participation. According to recent research, the number of companies with parity workers participation at the board-level decreased from 767 in 2002 to 638 in 2018. [131] Furthermore, one third of all companies with more than 2,000 employees that should have a parity representation at the board-level, simply ignore this legal obligation. Also worrying is the fact that only one out of five European Companies (SEs) has parity participation of workers in the boardroom. This has been made possible to a legal loophole in the SE Directive: Companies below the threshold of 2,000 employees transform into a SE and make use of the "freezing" of only minority workers representation in the boardroom.

Apart from using the legal form of SEs, there are also other more recent trends that show how companies avoid co-determination by making use of European legislation and jurisdiction: In the context of legal corporate engineering the participation rights of employees are circumvented or scrapped by establishing a new holding company and moving it to another EU country.[132]

Though there have been always companies in Germany that tried to ignore statutory co-determination rights (also because the sanction regime is weak), the main reason for the continuous increase in avoidance of workers participation at the board-level has been new possibilities and options created by European legislation and jurisdiction: Apart from the strategy to use the "Before and After" principle of the SE Directive to freeze participation in order to maintain minority representation, decisions of the European Court of Justice (CJEU) on the freedom of establishment has opened the door for circumventing co-determination: Companies are able to do business in Germany under a foreign corporate legal form that is not covered by any workers participation rights, even if the number of employees normally would qualify for minority or parity workers participation.[133]

More recently, in 2019, the EU company law package has opened the door to even further risks: In case of a cross-border transfer of the company seat, workers participation rights are only guaranteed for a period of four years.

According to estimations of the Institute for Co-Determination and Corporate Governance (I.M.U.) of the Hans-Böckler-Foundation, at least two million employees in Germany currently are not covered by statutory right of parity workers participation in supervisory boards due to the various strategies of avoidance.[134]

---

[130] See for example: Kluge, N. 2019: Die deutsche Mitbestimmung wird in der EU unzureichend geschützt, in: Magazin Mitbestimmung, 2/2019.

[131] Sick, S. 2020: Erosion als Herausforderung für die Unternehmensmitbestimmung, in: Hans-Böckler-Stiftung / I.M.U.: Mitbestimmung der Zukunft. Mitbestimmungsreport Nr. 58, 04.2020, p. 13-17.

[132] An example for this is the case of Linde AG that after the merger with Praxair became Linde PLC in 2018, headquartered not in Germany but in Ireland. Other prominent cases are McDonalds or Amazon.

[133] See Sick, S. 2015: Mibestimmungsfeindliches Klima. Mitbestimmungsreport Nor. 13, Hans-Böckler-Foundation.

[134] Hans-Böckler-Foundation 2020: Böckler Impuls - Schwerpunktausgabe Mitbestimmung, 7/2020, April, p. 8.

Thus, in order to protect workers participation, there is a need for political corrections in order to apply statutory workers participation rights also for foreign legal company forms. Furthermore, there is a need for a General Framework Directive that guarantees certain minimum standards of workers participation all over Europe in order to close the door for "legal engineering" and "regime shopping" with the sole purpose of avoiding workers participation.

Challenges in the context of just transitions

Workers' information, consultation and participation is a key element of modelling strategic orientation at company as well as national level when it comes to the big questions of our time: the digital transformation and the transition towards a green economy in order to fight climate change. Political reform debates as well as modelling pathways of just transitions as regards both challenges illustrate the strengths of workers participation: In the context of climate, energy or digitalisation policies at federal state level or at national government level, sectoral level initiatives or transition strategies at company level are social partners actively involved and bi-partite as well as tripartite social dialogue is playing an important role, despite all conflicts and contradictions.

According to the German trade unions, workers participation at the workplace as well as in strategic decision-making at company level is a key prerequisite of managing challenges in a way that balances the interests of workers and stakeholders as well as employers and shareholders and contribute a sustainable transformation and just transition.

As regards modelling a just transition process in the context of digitalisation, the key challenge is to manage the massive changes that are expected in the labour market in a socially just way and develop framework conditions that protect and maintain employability. And here, results of company level surveys and workshops that have been conducted by the IG Metall trade union in the context of elaborating "transformation maps" (*Transformationsatlas*) are rather worrying: Despite the massive impact that digitalisation, demographic change and decarbonisation targets will have on the industry and manufacturing sectors, companies in the sector are not sufficiently prepared for this huge structural change, not to mention their preparedness to safeguard employment by efficient just transformation policies.[135]

According to various surveys, two out of three employees in Germany wish to have a stronger influence on the introduction of new technologies in their workplace.[136] But this means that workers participation rights not only need to be guaranteed but also extended in order to address new emerging needs in fields such as employability, work organisations, use of data and data protection, crowd- and platform working and not at least in the field of further and lifelong training.

As regards the green deal, sustainable and socially just transition is at least as important: Trade unions in Germany are not questioning the international climate policy goals and the need to make real progress with the decarbonisation of the economy. However, trade unions currently are the only relevant actor that highlight the need to accompany the green deal also by a social deal and respective measures. This means for example that at company level transition processes are combined with measure that strengthen

[135] See the statement of the IG Metall Chairman, Jörg Hofmann: https://www.igmetall.de/politik-und-gesellschaft/zukunft-der-arbeit/digitalisierung/transformation-viele-arbeitgeber-haben-keine-strategie.

[136] See Klebe, T. 2019: Künstliche Intelligenz – eine Herausforderung für die Mitbestimmung, in: Soziales Recht 3/2019.

the employability of workers, e.g. by further qualification or retraining measures. This must be embedded in a broader and longer-term corporate change and business reorientation strategy. At sector level and with view on industries such as steel and coal or energy, the green deal has to be accompanied by massive public investments in the context of an anticipatory industrial and energy policy as well as structural regional policies and investments that support those regions that are affected most by decarbonisation and ecological change.

As highlighted by just transition experts of the DGB in the 2020 German-French Trade Union Forum, trade unions along other stakeholders such as NGOs and civil society groups are at the forefront of just transition processes because – in contrast to political parties, governments and companies – they have a longer-term perspective regarding change and environmental, social as well as economic needs.[137]

The trade union confederation DGB has highlighted three key pillars of a just transition process in the context of decarbonisation:

- Safeguarding employment, in particular by qualification and training offers in order to maintain job security for employees.
- In order to substitute jobs that are going to disappear and create alternative industrial workplaces, there is a need to for a longer-term investment strategy for structural disadvantaged regions. The DGB supports the plan of the federal government to allocate 40 billion Euros over a period of 20 years.[138] However, it also demands that social partners have to actively involved in the design of structural policy measures in order to guarantee a longer term and sustainable perspective.
- The DGB is *against any unconditional shutdown logic* – any decisions should be part of a package that guarantees security of supply, affordability and competitiveness of energy prices)

2.3 Demands as regards the EU Council Presidency

Germany took over the Council Presidency from Croatia on 1 July 2020, at a point of time when the European Union is facing the most severe challenge in its history. The programme of the German Presidency had to be adjusted to the continuing COVID-19 health crisis as well as the implementation of effective measures to manage the economic and social crisis that is affecting the whole of the EU with significant national and regional differences. Therefore, new priorities such as the implementation of the European Recovery Fund and measures to avoid further economic slumps as well as avoiding further waves of virus outbreaks and lockdowns will determine the agenda of the Presidency that very much the presidency that has the motto "Together for Europe's Recovery".

According to the German trade unions however, limiting the Germany Presidency to crisis management only would be the completely wrong approach. As highlighted by the DGB chair Rainer Hoffmann, it

[137] See: Friedrich-Ebert Stiftung: 10. Deutsch-Französisches Gewerkschaftsforum – Bericht zum Forum am 27. Februar 2020 in Berlin, https://www.fes.de/internationale-politikanalyse/artikelseite-ipa/10-deutsch-franzoesisches-gewerkschaftsforum.

[138] See: https://www.dgb.de/presse/++co++1496b812-c971-11e9-81dd-52540088cada.

is important be more ambitious and combine economic recovery with a modernisation strategy that includes an investment budget.[139]

Of course, the priority is European solidarity in managing the economic and social impacts of the lockdown and effective support measures for those countries in Southern and Eastern Europe that have suffered most dramatically. But simultaneously, it would be wrong to put aside the sustainability strategy and the climate protection targets because of COVID-19.

According to the DGB, there is a need for courageous and decisive action that constitutes a new start for Europe and European responsibility.

In this context, the DGB and other trade unions also stress the need that the German Council Presidency should implement a number of initial plans that aim at addressing urgent needs in relation to social imbalances, cohesion and solidarity in Europe as well as global responsibilities. These include the fostering of the introduction of an EU wide unemployment reinsurance scheme in order to provide a better protection of unemployed during crises through a common social security fund. Also, the plan of making progress with view on a common European framework for minimum wages is supported by the German coalition government as well as the trade unions, whereby the strong role of collective agreements in some countries for determining minimum wage levels of course should be respected.

Further demands of the German trade union as regards European initiatives that should be fostered by the Germany Presidency are related to the promise of the German coalition government to initiate a national legislative initiative on corporate mandatory human rights due diligence as regards human rights in global supply and value chains if voluntary measures of companies proof to be not sufficient.[140]

Furthermore, the coalition agreement of government parties includes the commitment to stand up for an EU wide regulation on due diligence.[141] Given that there is free movement of goods in Europe, however, national provisions are not enough. Parallel with the national NAP process, the Federal Ministry of Labour and Social Affairs will use Germany's Presidency to promote a binding EU standard of due diligence. In order to do so, the Ministry of Labour and Social Affairs plans to organise a high-level multi-stakeholder conference on human rights and decent work in global supply chains in Autumn 2020.

---

139 https://www.dgb.de/themen/++co++0ea577fc-b9eb-11ea-a4c5-52540088cada

140 In fact, in July 2020 the Federal Ministers for Economic Cooperation and Development and for Labour and Social Affairs jointly presented the results of a monitoring process in the framework of the National Action Plan for Business and Human Rights on corporate practices of due diligence of larger German companies with more than 500 employees (out of a total of 2,250 companies that were invited by the Government to participate in the survey, only 455 companies delivered valuable responses). The monitoring clearly showed that significantly less than half of those companies that participated in the monitoring have a policy of duty of care as regards human rights and social conditions in their supply and value chain. According to the two Ministries these results strongly call for a legislative regulation. See: https://www.bmas.de/DE/Presse/Pressemitteilungen/2020/bundesminister-heil-mueller-koalitionsvertrag-fuer-lieferketten-gesetz.html.

141 The coalition agreement of 2018 states: "*Falls die wirksame und umfassende Überprüfung des NAP 2020 zu dem Ergebnis kommt, dass die freiwillige Selbstverpflichtung der Unternehmen nicht aus-reicht, werden wir national gesetzlich tätig und uns für eine EU-weite Regelung ein-setzen.*" (CDU, CSU and SPD:"Ein neuer Aufbruch für Eurropa. Eine neue Dynamik für Deutschland. Ein neuer Zusammenhalt für unser Land". Koalitationsvertrag für die 19. Legislaturperiode, p. 155. https://www.bundesregierung.de/resource/blob/975226/847984/5b8bc23590d4cb2892b31c987ad672b7/2018-03-14-koalitionsvertrag-data.pdf?download=1

Furthermore, in the context of the trio presidency of Germany, Portugal and Slovenia, the three trio partners agreed on the need for action and the need to strengthen corporate responsibility at EU level. These initiatives also reflect the announcement of the European Commissioner for Justice of April 2020 to develop and present a draft for European supply chain legislation in 2021.

Reflecting also the position of the European trade union movement, the German trade unions already in the context of their involvement in the National Action Plan for Business and Human Rights have demanded a legislation on mandatory corporate due diligence as regards human rights in supply and value chains.

As regards the need to improve and strengthen the legal regulation of national and transnational information, consultation and participation rights of workers in Europe as well as making these rights more resilient against neglect and circumvention, the German trade unions are quite disappointed about the silence of the German presidency on this matter. In fact, the DGB is a strong promoter of a European Framework Directive on information, consultation and board-level employee representation/participation and has published a detailed list of key demands. As regards board-level employee representation and in order to prevent firms from being able to evade workers participation at board level, the DGB demands that,

"*The framework directive should include a mechanism to ensure board-level employee representation, based on the ETUC's so-called 'escalator principle'. This principle provides for Europe-wide thresholds to make up for patchy national thresholds for board-level employee representation as they affect certain companies.*"[142]

[142] DGB 2020: Key points of the German Trade Union Confederation (DGB) for a European Framework Directive on Information, Consultation and Board-level Employee Representation (Company Codetermination). Adopted at the DGB Federal Executive Board on 11.02. 2020.

3. Portugal

3.1 Key features of industrial relations and social dialogue

The Portuguese system of industrial relations that developed after the 1974 Revolution of the Carnations (*Revolução dos Cravos*) has experienced important changes over the years. This intensified from the late 1980s, with the emergence and institutionalisation of tripartite concertation and its direct and indirect influence on labour legislation and collective bargaining.

Since around 2000, however, after the integration in the euro zone and in the new context of global competition, the legal foundations and institutions of collective bargaining have been significantly challenged. In 2003 and 2009 major changes in labour legislation reconfigured the legal framework of collective bargaining, established in late 1970 (see section below).

The right to organise in a trade union is guaranteed by the Constitution of the Portuguese Republic and by the Labour Code (*Código do Trabalho*). Very few groups are excluded from this right, namely members of the armed forces and militarised security forces.

The Portuguese labour movement still is fractured by long-lasting ideological and political divisions that continues although mutual recognition and occasional joint action improved as time passed. The landscape of trade unionism in Portugal since the revolution is shaped by two large and competing confederations, the CGTP-IN (*Confederação Geral dos Trabalhadores Portugueses–Intersindical Nacional*) and the UGT (*União Geral de Trabalhadores*), which was establishedin 1978. Both confederations are represented in the national tripartite Economic and Social Council (*Conselho Económico e Social*) and the social concertation at macro level that is executed by the "Standing Committee for Social Concertation", CPCS (see textbox below).

Tripartite concertation: The Standing Committee for Social Concertation

The tripartite body for social concertation at macro level is the Standing Committee for Social Concertation (*Comissão Permanente de Concertação Social* – CPCS). It was created in 1984 and produced several agreements on income policies, setting reference values for the wage increases in collective bargaining. In 1990 and 1996, broad pacts covering a wide range of areas were signed, for example on health and safety at the workplace or vocational education and training). These agreements were only signed by one trade union confederation, UGT; CGTP-IN did not sign any of them.

In 1991, the first specific agreements were signed at the CPCS, one on health and safety at the workplace and the other on vocational education and training. After the last broad agreement signed in 1996 (which was also the last agreement with guidelines for wage bargaining), this new type of specific agreement became the dominant means of social concertation until 2008. CGTP-IN signed several agreements of this type. The areas covered by these specific agreements were health and safety (1991, 2000, 2006), occupational training (1991, 2000, 2007), public pension schemes (2001, 2006), and the minimum wage mid-term agreement (2006). The tripartite agreements of 2008 and 2012 encompassed again a large number of issues including the revision of labour legislation, both against the opposition of CGTP. Analysis of social dialogue under the shadow of Troika and of tripartite agreement 2012 suggest that mostly the government combined unilateral decision with subordinating social dialogue to MoU demands and that no significant trade-off was really achieved.[143]

[143] Campos Lima, M.P.; Abrantes, M. 2016: Country report Portugal, DIADSE – dialogue for advancing social Europe, Amsterdam, University of Amsterdam. https://www.cesis.org/admin/modulo_projects/upload/files/DIADSE_Portugal%20Report.pdf.

Since the last quarter of 2014, tripartite concertation regained importance with the signing of a tripartite agreement on an increase in the minimum wage. In the new political cycle, initiated at the end of 2015, with the government of the Socialist Party supported by left-wing parties, three tripartite agreements were signed for 2016, 2017 and 2018 covering various issues (minimum wage update 2016, extension of collective agreements 2017, combatting precarious work 2018). At the same time, the tripartite agreement of 2018 introduced new challenges regarding collective agreements and workplace decision-making on working time flexibility. The tripartite agreements of 2017 and 2018 were not signed by CGTP-IN. Among the reasons for not signing was CGTP's demand for an in-depth revision of the legal framework of collective bargaining in order to fully re-establish the principle of *favor laboratoris* and to allow collective agreements to expire only following a joint decision of the signatory parties.

While UGT has 50 member unions and seven federations, CGTP-IN has 126 member unions. Besides the two large confederations there are many smaller trade unions. Total trade union membership is estimated at between 500 – 600,000.[144] While also in Portugal the trade unions have experienced a decrease in trade union membership, there are also trends that indicate at least a partial revival of trade union strength. As reported by the CGTP-IN representative in the context of an interview for this study, the trade union in recent year has recruited quite a large number of new members.

Measuring trade union membership in Portugal is difficult because most unions do not provide updated and accurate information. Since 2010, the annual mandatory survey for all companies in the market sector includes a question to employers about the number of employees affiliated to trade unions. As highlighted in the Green Paper on Labour Relations 2016, the percentage of companies that indicate unionised workers is less than 4% and the data on unionised workers points to a union density between 11% and 9% in the period of 2010-2014. For 2015, the OECD has estimated the density of trade unions in the private sector at 10-20%.[145] It should be noted that these data do not include the public sector where trade union density is always much higher.

As regards employer organisations, there is an important distinction between those organisations that are recognised as social partners and are engaged in collective bargaining and trade associations. The main employers' organisations that are represented in the most important cross-sectoral, national institution for social dialogue, the Permanent Commission of Social Concertation (*Comissão Permanente de Concertação Social*, CPCS) are CIP (*Confederação Empresarial de Portugal*), the CCP (*Confederação do Comércio e Serviços de Portugal*), the Confederation of Farmers of Portugal, CAP (*Confederação dos Agricultores de Portugal*), and the Confederation of Portuguese Tourism, CTP (*Confederação do Turismo Português*).

There are no published membership data regarding employers' organisations. According to the annual mandatory survey to all companies in the market sector (*Relatório Único*) the overall employers' organisations density in terms of the percentage of companies that are affiliated in 2014 was estimated at only 19% and in terms of active employees, 39%.[146]

[144] According to a briefing on trade unions in Portugal published by the Friedrich-Ebert Foundation, see: FES Briefing Portugal – Gewerkschaftsmonitor, April 2020, available at: http://library.fes.de/pdf-files/id/gewerkschaftsmonitore/16064/2020-portugal.pdf.

[145] OECD: Collective Bargaining in EU and accession countries. Portugal. https://www.oecd.org/employment/emp/collective-bargaining-Portugal.pdf

[146] https://www.eurofound.europa.eu/country/portugal#actors-and-institutions

Labour law reforms

As mentioned above, the legal framework of industrial relations and collective bargaining experienced major changes, triggered mainly by reforms of the Labour Code in 2003, 2009 and the 2011 Memorandum of Understanding between the Portuguese Government and the Troika institutions.

The 2003 and 2009 reforms (see textbox below) paved the way for the erosion of the unions' bargaining power namely by breaking with the favourability principle, as well as allowing the unilateral termination of collective agreements.

The 2003 and 2009 reforms of the Labour Code

As a unilateral initiative without consultation with the social partners, a centre-right coalition between the Social Democratic Party (Partido Social Democrata, PSD) and the Social and Democratic Centre (CDS-Partido Popular, CDSPP) implemented a major reform of the Labour Code in 2003. First of all it broke with the favourability principle, allowing collective agreements to deviate *in pejus* (detrimental) from statutory regulations; and secondly it broke with the principle of continuity by allowing any signatory party to request unilaterally the expiry of existing agreements after a period of unsuccessful negotiations.[147] The Government used the new regulation and its prerogative to block extension ordinances of collective agreements. Collective bargaining entered into crisis with an unprecedented fall in the number of renewed collective agreements and the proportion of workers covered. After a landslide election victory of the Socialist Party in 2005 and based on an agreement on between the government and the social partners in 2006 as well as a tripartite agreement on raising wages in 2007, collective bargaining became again important for wage developments and wage raises in particular in the lower wage groups. When the global financial crisis started in 2008, new labour market reforms were already under way. The government and social partners (with the exception of CGTP), concluded a tripartite agreement in 2008. This served as the basis for the 2009 Labour Code. This included the right to conclude collective agreements in public administration, although with much more limited scope. However, the 2009 reform did not re-establish the favourability principle but did lay down conditions on which collective agreements could not deviate *in pejus* from statutory regulations. It also did not reverse the possibility of cancelling collective agreements unilaterally but introduced further and new rules facilitating the expiry of existing agreements with a 'survival clause'. On the other hand, guarantees were introduced to protect certain individual rights of workers whose collective agreements expired. It also introduced the possibility for non-union representative structures to conclude agreements at company level, if they have a trade union mandate.

Between 2011 and 2014, after the intervention of the Troika, consisting of the European Commission, the European Central Bank and the International Monetary Fund, drastic legislative and other government measures, in particular limiting the extension of collective agreements and reducing agreements' period of validity has plunged collective bargaining into the greatest crisis seen in 40 years of democracy.[148]

Since then and facilitated by electoral change in 2015 and a social-democratic coalition government based on an alliance between the PS and the left parties, the destruction of the collective bargaining system (and other harsh measures such as the reduction of dismissal protection or abolition of social benefits) has been haltered. The coverage of workers by collective agreements that before the crisis

[147] Ramalho, R.P. 2013: Portuguese labour law and industrial relations during the crisis, Working Paper No.54, Geneva, International Labour Office. https://www.fd.unl.pt/docentes_docs/ma/DCM_MA_27484.pdf.

[148] Campos Lima, M. P. 2019: Portugal: reforms and the turn to neoliberal austerity, in: Müller, T.; Vandaele, K. and Waddington, J. (eds.): Collective Bargaining in Europe: towards an endgame, Brussels, ETUI, p. 483-504.

years 2013/14 was about 90%, decreased significantly and in 2016 was about 87.5% according to the Portuguese government.[149]

Following a long and controversial negotiation process after a tripartite agreement in 2018[150], the Government in September 2019 published amendments to the Labour Code. The reform included measures to reduce the large number of temporary employment contracts and the phasing out of individual working time accounts – which allow negotiations to take place between employer and employee, bypassing collective agreements – after a maximum of one transition year before being eliminated. The implementation of group working time accounts – to be applied to all workers in a team, section or economic unit as long as it is approved by the workers in a supervised referendum – will require new detailed provisions to be made operational.

The Left Bloc, the Portuguese Communist Party and The Greens voted against the amendment to the Labour Code and asked the Constitutional Court to review some of the Labour Code provisions on the grounds that they violate the principles of fairness and security at work, e.g. the extension of the trial period from 90 to 180 days when hiring first-time jobseekers and those who have been unemployed for a significant period of time as well as the increase in the duration of very short-term contracts from 15 days to 35 days, allowing their use beyond seasonal activities in the agriculture and tourism sectors.

Information, consultation and participation workers' rights at company level
The rights of works councils (*comissões de trabalhadores*) and trade union organisation at the company level are guaranteed by the Constitution and regulated by the Labour Code. The Constitution and the Labour Code provides for three different forms of workers voice at company level – all of them be established in all companies and there is no threshold:

- Workers' Commission (*Comissão de Trabalhadores*, CT), elected by all workers in the company.
- Trade union delegate (*Delegado Sindical*), delegate elected by the members of the respective trade union employed in the company.
- Union Committee (*Comissão Sindical,* CS) or Inter-union Committee (*Comissão Intersindical,* CIS). Constituted by Union Delegates of one (CS) or several (CIS) trade unions.

Transposing the EU Directive 2002/14/EC on information and consultation, the Portuguese Law 7/2009 of 12 February 2009 regulates the establishment of work councils ("workers commission", CT) in Portugal, representing the whole workforce. There are also health and safety representatives.

The competences of works commissions are largely limited to information and consultation. Though in 2009 and again in 2012, the legal possibility was established that trade unions may delegate their competence to sign collective agreements to the workers commission, this did not have any effect in practice. In fact, works commissions normally only exist where there is a strong union presence and the unions have effectively taken over many of their functions. Typically, in such cases, the workers

[149] DGERT: Relatório sobre Regulamentação Coletiva de Trabalho 2017.

[150] Social and Economic Council (CES): Combater a precariedade e reduzir a segmentação laboral e promover um maior dinamismo da negociação coletiva.

commission / works council will be dominated by the largest union in the company, which will use the information and consultation rights as an indirect method of being informed and consulted.

In Portugal the workers commission discusses with the management about the work rules and working conditions, monitors the company's economic and financial situation, gives advice and formulates proposals on the functioning of the company. According to the legal regulation, the workers commission is entitled to:

- Receive the information necessary to perform their activity;
- Exercise control over the management of the company;
- Participate, among others, in the process of restructuring the company in the preparation of plans and reports regarding training and procedures involving changes in working conditions;
- Participate in the preparation of labour legislation, directly or through its committees' coordinators;
- Manage or participate in the management of the social work in the company;
- Promote the election of employee representatives to the governing bodies of public companies;
- Meet at least once a month, with the management of the company for issues in the exercise of their rights.

Thus, the works council should receive a range of economic, financial and employment information. These include the financial plans of the business, the annual and quarterly accounts, the extent of taxation paid, plans to alter the capital structure of the business; production levels and their likely implication for employment, information on sales; personnel policy and works rules. In companies with more than 100 employees, the works council and the unions should be given a detailed annual report on staffing (the social balance sheet). In practice, works councils find it difficult to ensure that they are given all the information that by law they should receive.

Works councils should also be consulted over a range of issues with a right to present a view before the decision is taken. These include: the closure of the company or significant parts of the business; anything that could produce a significant reduction in the number of employees or a major worsening of working conditions; relocation; changes in working hours and the organisation of annual holidays; changes in grading and promotion procedures. They have 10 days to give their views in most cases.

In addition, the works council has consultation rights over any redundancies or dismissals or cuts in the normal working week. It has a right to express an opinion on the financial plans of the business and on training and retraining.

It should be noted, that in contrast to regulation in many other European countries, the role of the works council is purely advisory and consultative. It does not have the decision making or veto powers.

The number of members of the workers commission varies with the size of the company, i.e. from two in companies with less than 50 employees up to 7-11 in companies with more than 1,000 employees.

As regards trade union delegations, it is up to the trade unions and the members in the workplace to decide on the number of trade union delegates they want to elect. However, there are legal limits on the

number who can benefit from specific legal rights and protections, e.g. only one in companies with less than 50 employees up to 6 in companies with 200 – 499 employees. Above 500 union members there is one extra trade union delegate with protection for each additional 200 members.

If there are sufficient union delegates – there are no precise rules on this – they come together in a committee and where there are several unions in a workplace (fairly common because of the structure of Portuguese unions), they may form a joint union committee. They adopt their own rules of procedure.

The role of the trade union delegates includes providing a link between union members and the union, through recruitment and campaigning activity; ensuring that existing collective agreements are properly applied; and negotiating new collective agreements at company level.

Trade union delegates are entitled to information on "*recent and probable development of the employer's activities and economic situation*" and information and consultation on "*the situation, structure and probable development of employment*", as well as measures planned to maintain staffing levels, together with "*measures likely to lead to substantial changes in work organisation*". This wording is in line with the EU framework directive on information and consultation (2002/14/EC).

The trade union committee or the joint trade union committee has the right to call all employees to a meeting in works time, subject to giving 48 hours' notice and without prejudicing essential operations. The total time of such meetings may not exceed 15 hours a year. In addition, in areas such as working time, training and temporary closures, the trade union delegates should be informed and consulted, if there is no works council.

As regards group level representation there is no formal structure for this in Portugal. However, there can only be one works council in any company. Where there are several workplaces, they set up sub works councils and send representatives to the company works council. The law also provides for coordinating councils of workers, who bring together works councils from different companies with the aim of creating links between them and having a positive role in economic restructuring. However, they barely exist.

Workers board-level participation

The 1976 Constitution provides works councils in state-owned companies the right to "*promote the election of workers' representatives in the governing bodies of companies belonging to the state and other public bodies*". Furthermore, legislation on works councils of 1979 (Lei nº 46/79) gives workers commissions in state-owned companies the right to elect representatives on to company bodies and this was later incorporated into the labour code. However, the legislation states that the number of employees to be elected, as well as the body on which they sit, are to be determined by the company's own rules.

According to assessments of a country report prepared for the ETUI[151], also in state-owned companies it appears that relatively few state-owned Portuguese companies have implemented these provisions.

[151] Fulton, L. 2013: Worker representation in Europe. Labour Research Department and ETUI. Produced with the assistance of the SEEurope Network, Country Profile Portugal, available at: http://www.worker-participation.eu/National-Industrial-Relations/Countries/Portugal/Board-level-Representation.

In the private business sector, there is no legislation giving employee the right to be represented at the board level. Legislation permits employee representation to be agreed between employers and unions, but in practice this does not happen.

3.2 Current and future challenges of workers' information, consultation and participation

After a period of drastic austerity measures under the fiscal adjustment programme during the period that worsened the economic, employment and social crisis in Portugal during the period of 2011 to 2014, social and economic policies of the government led by the Socialist Party (PS) that has been supported by the Communist Party (PCP) and the Left Bloc (BE) have focussed strongly on social improvements and cushioning measures for workers and their families.

In this context, the increase of the statutory minimum wage (which was frozen between 2010 and 2014 at 485 EUR and increased until 2019 to 600 EUR per month), transformation of precarious in more stable and secure direct employment in public services, the introduction of social security contributions for self-employed, strengthening of the public system of social security, measures to improve public education and training, the public health service or significant investments in public local transport have contributed to a sustainable economic recovery that has been quite stable until the COVID-19 outbreak at the beginning of 2020.

After three successive years with negative growth between 2011 and 2013, economic recovery started 2014 with a growth rate of 0.9%, reaching a peak of 2.7% in 2017. Against this, the unemployment rate between 2014 and 2018 decreased from 16.5% to 7%. It should be noted however, that most of the newly created jobs were short-term contracts which in 2016 had a share of 22% (compared to an European average of 14%)

The pandemic hit the economy very hard, also because it very much depends on a booming tourism sector. The number of workers affected by temporary lay-offs and short-time work increased rapidly during March from around 1,000 to 550,000 (11% or all employees).[152]

Challenges regarding workers voice

Though the Portuguese economy since 2015 experienced growth rates that in 2019 were above the EU average, this did not translate into income convergence with more advanced Member States. Also at the end of 2019, Portugal's per capita income in purchasing power standards (PPS) remains around 77% of the EU average. This development differs significantly from other catching-up economies. In fact, the average per capita income in PPS for the 10 countries that joined the EU in 2004 is already at the same level as Portugal, overcoming a gap of about 17 percentage points in 15 years.[153]

As highlighted in the previous section, during the last decade, the role of collective bargaining as a key source of social and employment regulation has been undermined by policy measures, resulting in

[152] According to a briefing on trade unions in Portugal published by the Friedrich-Ebert Foundation, see: FES Briefing Portugal – Gewerkschaftsmonitor, April 2020, available at: http://library.fes.de/pdf-files/id/gewerkschaftsmonitore/16064/2020-portugal.pdf.

[153] See: European Commission 2020: Commission Staff Working Document – Country Report Portugal 2020, accompanying the 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, COM(2020) 150. SWD(2020) 521 final, Brussels, 26.2.2020, p. 8.

individualisation of labour relations and a breakdown of collective bargaining[154] that also is reflected in a dramatic decline in the numbers of agreement and collective bargaining coverage.[155]

Compared to the reforms during the previous left-wing government, there has been quite little change since 2015 that aimed at strengthening collective interest representation and the collective bargaining system. Trade unions still are in quite a weak position to shape and influence wage developments significantly. This is illustrated by wage agreements in most sectors that in recent years have been well below increases in productivity and inflation. A further indicator for the dwindling impact of collective wage bargaining is also the fact that still around one quarter of all employees in the private sector only earns the statutory minimum wage.

According to assessments of national experts[156], it is unlikely that the overall weak position of social dialogue and workers voice will change significantly to the better in the coming years. Only in June 2018 it was possible to sign a new social pact, however without receiving a signature from CGTP. For CGTP, while the social pact contained some positive measures it also deployed measures that contributed to weakening collective bargaining, reducing work payment and increasing precarious working practices, such as extending the trial period from 90 to 180 days. Despite significant protests, such as the Lisbon street demonstration of 9 June 2018, which attracted many thousands of workers from all the country, the repeal of several labour reforms is not expected for the new future. Collective bargaining will thus hardly change substantially. Some ongoing negotiations are mainly related with the need to update wages in keeping with the rise in the national minimum income in 2017.

Challenges in the context of modelling a just transition model

Portugal is heavily affected by climate change and natural hazards such as floods, coastal erosion, droughts and forest fires are expected to become more frequent and extreme. The country has recently experienced dramatic forest fires and the worst drought recorded in the history of the country. Flooding is a recurrent problem in some regions.

Therefore, measures and investments in risk prevention and climate-change adaptation and mitigation are necessary to achieve sustainable growth. Portugal was one of the first EU countries to commit to net zero emissions by 2050 and published in June 2019 its long-term strategy for carbon neutrality of the Portuguese economy.[157] This strategy is also a key input to the Portuguese integrated National Energy and Climate Plan, which is the main instrument for the decade 2021-2030, setting new national targets for the reduction GHG emissions, renewable energy and energy efficiency.

---

154 Campos Lima M. P. and Jørgensen C. (2016) Trajectories of collective bargaining in Denmark and Portugal: from national determined 'organized Industrial Relations' to supra-national determined 'disorganized Industrial Relations'?, in Larsen T.P. and Ilsøe A. (eds.), Den danske model set udefra –komparative perspektiver på dansk arbejdsmarkedsregulering, Copenhagen, Jurist-og Økonomforbundets Forlag, 223-247.

155 Campos Lima M. P. and Carrilho P. 2017: Portugal: Developments in working life 2017, Eurofound, available at: https://www.eurofound.europa.eu/sites/default/files/wpef18041.pdf

156 See for example: Rego, R. 2018: DIRESOC Portugal Country Report, elaborated in the context of the DIRESOC (Digitalisation and Restructuring: Which Social Dialogue) Project. http://diresoc.eu/wp-content/uploads/2019/04/DIRESOC_Portugal-country-report.pdf.

157 See: European Commission 2020: Commission Staff Working Document – Country Report Portugal 2020, accompanying the 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, COM(2020) 150. SWD(2020) 521 final, Brussels, 26.2.2020, p. 8.

However, with view on achieving the objectives defined in its long-term strategy for carbon neutrality of the economy, Portugal faces important implementation challenges, including the replacement of fossil fuels with renewables sources in electricity production and the electrification of sectors such as transport. This will require significant adjustments and investments that are projected at around 2 billion EUR (1.2% of GDP) per year.[158]Though European and national public funding will be important, public and private companies will also need to provide a certain share.

Apart from decarbonisation of the economy, the digital transformation process already today is second major issue that already today characterises corporate changes and reorganisation.

In order to support corporate adjustment processes, the Portuguese government in 2017 has launched the *Industria 4.0* initiative as a flagship measure that has the ambition to support tens of thousands of companies, in particular SMEs, and train over 20,000 workers in digital skills over a period of four years.[159]

Against the overall unstable situation of collective bargaining practice in Portugal and the uncoordinated decentralisation of bargaining (which also at the company level very much is dominated by wage-related issues), it seems not likely that collective bargaining at company or sector level will become an efficient tool to shape digital transformation processes at company or sector level. A recent study on digitalisation and social dialogue in Portugal, commented that so far only few collective agreements at sector level included references to new technologies and digitalisation. Those that exist, did so mainly by including references to training and skills requirements and even those "*seem to be more of an intent than a compromise with concrete measures.*"[160]

The report also analysed positions of the social partners on digitalisation, highlighting that the employer organisation CIP as well as the CGTP agree that digitalisation will have an important impact on the Portuguese economy, leading to important innovations and have the potential of creating new opportunities, for example by creating new job opportunities. Both also agree that significant adjustment and needs will be required in the field of education and training. However, the social partners disagree very much on the need to shape certain impacts of digitalisation and draw quite different conclusions as regards needs for action: While the employers' side focuses on the business efficiency, the workers' side is worried over job losses and working conditions.

In the interview with a representative of CGTP in the context of the current study for the EESC Workers Group[161], the emergence of platform work was highlighted as an example of new needs of labour market regulation in the context of digitalisation. Platform work has emerged as a new form of employment that currently is not covered by existing regulations and raise new questions, especially on the best ways to assure social protection and reinforce the social security budget. As highlighted by the CGTP interviewee, there is also a strong need to support platform workers such as cyclists delivering food for

158 Ibid.

159 https://ec.europa.eu/growth/tools-databases/dem/monitor/sites/default/files/DTM_Ind%C3%BAstria%204.pdf

160 Rego, R. 2018: DIRESOC Portugal Country Report, elaborated in the context of the DIRESOC (Digitalisation and Restructuring: Which Social Dialogue) Project. http://diresoc.eu/wp-content/uploads/2019/04/DIRESOC_Portugal-country-report.pdf, p. 9.

161 Carried out in May 2020.

platforms such as *UBER Eats* or *Glovo* in their fight for their rights of collective interest representation, social protection and acknowledgement of their status as workers.[162]

Also, the UGT trade union has stressed that digitalisation has a massive impact on the society and the labour market and will substantially change the organisation of work.[163] As regards trade union initiatives, the UGT representatives highlighted three objectives and needs as regards anticipating impacts and modelling practices of a just digital transition process:

4) Identifying and exploring international trends and changes of work organisation and labour market changes that are related to digitalisation;
5) Rebuild and anticipate the design that these changes had and may have in the future in Portugal through organisations characteristics, trade union activity and labour regulations in our country;
6) Reflection and recommendations for measures that allow UGT's trade unions to properly respond to challenges and problems resulting from digitalisation as well as harvest the opportunities that it offers, including increasing the efficiency of acquiring new trade union members, in collective bargaining and in the defence of workers' rights.

As regards both the green as well as digital transformation and transition process, trade union interviewees in the context of this study have stressed that both should be strictly "human-centred". This means that greening of the economy as well as digitalisation should be in favour for all and should not result in additional burden for some groups of the population, including workers but should contribute to a better live for all.

A human-centred approach also requires a solid and thorough analysis and anticipation of the employment impacts of any measure, respective legal reforms or investments. In case of negative employment impacts there is also a need to model social and employment measures that either provide alternative jobs or provide affective workers with the necessary skills and competences to move to a different job in the same organisation.

3.3 Policy reform debates and demands as regards the EU Council Presidency

From the perspective of Portuguese trade unions contributing to this study, the key problem of the existing EU framework of information, consultation and participation of workers is the effective implementation of rules and obligations. While there also is the need for improving and strengthening existing legal frameworks, e.g. on European Works Councils (see below), the main hindering factor of efficiency is poor implementation and lack of sanctions.

In this context, the representatives of the CGTP-IN for example has highlighted that companies increasingly do not respect legal obligations and rules when it comes to various aspects of workers protection and social rights. This situation has become even worse as at the same time the number of labour inspections in Portugal has decreased significantly in the last decade, even halved since 2008.

Besides poor law enforcement, there are also further elements that hinder an efficient information, consultation and participation of workers and limit their influence on company decisions: As highlighted

[162] See also the article on the CGTP website: http://www.cgtp.pt/accao-e-luta-geral/12921-uber-eats-e-glovo-recusam-celebrar-contratos-de-trabalho-com-distribuidores?highlight=WyJnbG92byJd.

[163] Written statement received in the context of this study in May 2020.

by the interviewee, in particular multinational companies use their economic weight and influence to achieve concessions as regards legal obligations (e.g. as regards overtime or weekend work premiums) without any consequences.

Taking also into account that the overall legislative framework of labour law, labour protection and collective bargaining in the last two decades has been liberalised significantly, the actual influence of workers voice at sectoral and company level has weakened and increasingly relies mainly on the organisational power of trade unions.

In its contribution to this study, the UGT trade union has highlighted in particular the need to strengthen the framework of information and consultation of workers in the transnational context, i.e. European Works Councils. UGT has highlighted a number of shortcomings and weaknesses of the current EWC Directive that needs improvements and adjustments in order to make transnational information and consultation processes more efficient. Such improvements according to the UGT are particularly important as regards the following aspects:

- The law must be effective. In order to discourage companies of infringing these rights, it is important to reinforce sanctions of the disciplinary framework for violation of information and consultation;
- there is also an urgent need to clarify better the obligation of the management to provide information well before any decision is taken – the current provision to do this "in good time" is totally insufficient;
- as regards the proof of transnational issues, the Directive needs to clarify that the burden of proof lies on the company management and not on the workers representatives
- in order to avoid misuse, there is a need to improve the clarity of the concept of confidentiality and make sure that communication between EWC members and other structures of worker representatives and individual workers is not obstructed;
- existing thresholds for establishing an EWC do not reflect ongoing trends of internationalization of corporations and business – there is a need to reduce thresholds of workers (from 1,000 to 500 in at least two member states and from 150 to 100 in each of the Member States);
- further improvements of the current Directive are also needed in relation to strengthening the gender dimension (e.g. as regards the composition of special negation bodies and EWCs); the number of EWC plenary meetings (the minimum standard should be two at least per year); or creating the possibility of partial adjustment of clauses of an existing older EWC agreement that are not congruent with the current legal framework.

4. Slovenia

4.1 Key features of industrial relations and social dialogue and social challenges

The Slovenian trade union movement is highly fragmented, with seven union confederations as well as several autonomous unions. The largest confederation is ZSSS which grew from the trade union structures that had existed before Slovenian independence in 1991, but it began to face competition in the early 1990s. A new trade union confederation KNSS was set up in 1990 and two others *KSS Pergam* and *Konfederacija* broke away from ZSSS. Later two new confederations emerged, *Alternativa*, primarily representing transport worker unions formerly in KNSS in 1999, and *Solidarnost* in 2000. The main strength of these confederations is in manufacturing industry and more traditional trade union areas such as transport. A large part of the public sector workforce is organised in unions outside these confederations, and in 2006 five of the largest unions in the public sector came together to form a new confederation KSJS. The largest union within KSJS is the teachers' union SVIZ. In addition, there are a large number of autonomous unions, which have membership in specific areas. The majority of trade union membership is concentrated in the two biggest confederations, ZSSS and KSJS, and recent estimates from the Institute of Social Sciences at the University of Ljubljana state that 90% of all union members are in these two plus KNSS and Pergam.[164]

The law allows unions to gain representative status, and, although this is not necessary in order to negotiate, representative unions have several advantages. For example, only agreements reached by representative unions can be extended to those not directly involved in the negotiations. In order to be judged representative, a union must, among other formal requirements, show that it is financially independent and has existed for at least six months. A union confederation covering the whole country must also have 10% of the employees in membership in the industries, businesses or professions where it seeks to be representative. A union operating on its own must have 15% of the employees in membership in an industry, business, profession or local area in order to be representative there. The decision as to whether a union is representative is taken by the minister based on evidence provided by the union, although where a union is seeking to be representative at purely company (business) level, the decision is taken by the employer. The union confederations that are representative at national level sit on the tripartite economic and social council, the ESS, made up of representatives of the unions, employers and the government.

The *Chamber of Commerce and Industry of Slovenia* (CCIS) is the largest and most influential employers' organisation in Slovenia. Together with another organisation – the Employers Association of Slovenia (EAS) – it represents the interests of large and medium-large companies. A similar interest representation exists for small companies.

At the national level social dialogue takes place in a tripartite committee named the Economic and Social Council (ESS), with representatives of employers' organisations, trade unions and government. As the committee cannot adopt any legally binding act, it has primarily an advisory role. However, the committee has an important role in examining draft legislation covering the entire spectrum of economic and social relations on the labour market and in negotiations for social and wage policy agreements.

[164] See http://www.worker-participation.eu/National-Industrial-Relations/Countries/Slovenia/Trade-Unions.

In accordance to the Worker Participation in Management Act adopted in 1993 and followed by two non-comprehensive amendments in 2001 and 2007, the workplace level representation is provided by both the union and the works councils. Both have information and consultation rights, although the works councils are more extensive, while only the union can undertake collective bargaining. Employees at the workplace are represented both through their local union structures and, in workplaces with more than 20 employees, a works council. In practice works council members are frequently trade union activists, although the extent of trade union involvement varies from industry to industry.

Since 2008 important structural reforms in the labour market and the pension system were initiated. The goal is to flexibilising the system which took place in the context of the growing dissatisfaction of workers which turned into a wage rises and an improvement of working conditions. The government responded to this pressure, which the unions later translated into their demand for a rise in the minimum wage, with a radical 23 per cent increase in the minimum wage at the start of the following year (OECD, 2011). Despite trade unions opposition the government insisted on realizing two radical reforms: public sector and pension reform. On the one hand, it wanted to limiting public sector costs. It proposed a 15 per cent wage decrease to public sector unions and thereby caused a general strike of public sector employees in April 2012. After the ensuing negotiations, the wages were cut by 8 per cent (Law on balancing public finances, 2012). During this open conflict with the public sector unions, the government successfully concluded its negotiations with the trade unions and employers on the pension system reform. The reform adopted in 2012 introduced tougher retirement conditions for men and women – the retirement age was set at 65 for men and 60 for women, with a 40-year qualifying period. In the context of the threatened arrival of the troika structural reforms were continued.

In 2013, the government and social partners tackled the labour market with the introduction of a new "Employment Relationships Act". While improving the position of fixed-term workers, agency workers, and students, the reform at the same time liberalised the regime of laying off the "standardly employed" workforce. Due to the layoff procedures having been made easier, the lowest-paid "standardly employed" workers – in terms of wages, uncertainty and other employment characteristics – started to move very close to the "standards" of precarious labour, while on the other side new forms of unprotected precarious labour (e.g. bogus self-employment) began to emerge. In the post-crisis, policies set by the previous governments were continued. They also embedded a process of privatizing state-owned companies.[165]

As indicate above both the union and the works councils have information and consultation rights, although the works councils are more extensive and key task of the union representatives is to carry out collective bargaining. Thus, trade unions in companies have a general right to "*provide and protect the rights and interests of trade union members with the employer*" (Employment Relations Act 2002). In detail this means that the union must be informed and consulted by the employer: before adopting rules, which lay down the organisation of work, in cases of redundancy and business transfer; and before the introduction of night work. The union must also be given details of the annual working time calendars. The employer must inform the union, where the employee affected wishes it, about the dismissal or disciplining of an individual union member. In both cases it can express an opinion on the employers' action, and, in the case of dismissal, a union objection leads to the dismissal being suspended until the issue has been determined in the courts.

[165] See Stanojevic M., 2018: Slovenia: neo-corporatism under the neo-liberal turn, Employee Relations, 40(4):709-724.

The works council, under the Workers' Participation in Management Act amendment in 2007, has a wider range of specific rights. It should receive information on the company's economic situation and prospects, changes in company activity, changes in the organisation of technology and production as well as a copy of the company's annual accounts. The works council should also be consulted on a range of issues. In these cases, consultation means giving the works council information at least 30 days beforehand and having a consultative meeting with the works council at least 15 days before the employer takes the decision concerned. The aim of the consultation is to arrive at a jointly agreed position. The issues where this consultation is required include issues to do with the position of the company and issues to do with the position of employees. The main company-related issues are changes in the company's legal status, sale or closure of the company or substantial parts of it and significant changes in ownership. The employee-related issues are the need for new staff (how many and what sort); job classification, transfers (more than 10% moving out of the company or somewhere else within it), new rules on pensions and other benefits, job losses, health and safety and the disciplinary code. In addition, there are some areas where the works council must agree with the employer's proposals before they can be implemented. These are the arrangements for annual leave, performance assessment criteria, the suggestion scheme, the use of social facilities, such as holiday homes, owned by the company and the criteria for promotion. In all these cases, if the works council objects to the proposal, the issue goes to independent arbitration.

Workers board-level participation

Works councils have the right to nominate employee representatives in the supervisory board and management board (two-tier system) or in the board of directors (one-tier system). The threshold for board-level employee representation is 50 employees. The share of employee representatives on the supervisory board should not be lower than one-third and not higher than half of the seats; in the case of board of directors the minimum is one employee representative out of every three board members. Companies with more than 500 employees could nominate an employee director to sit on the management board (two-tier system) or to be and executive director in the board of directors (one-tier system) to represent the interests of employees. Board-level employee representatives are usually nominated in bigger and state-owned companies.

4.2 Current and future challenges of workers' information, consultation and participation

In accordance to the 1993 Worker Participation in Management Act, with very slight amended in 2001 and 2007, works council legislation in Slovenia draws heavily on the experiences in Germany and neighbouring Austria. However, difficulties are mentioned regarding the operations of works councils which also risk to jeopardise the effectiveness of EU legislation regarding information and consultation rights. In particular, where there are differences with the employer, it can take a long time to get issues to arbitration. It is often reported in policy and academic debates that the law of 1993 does not reflect the current needs of the economy and it is outdated. In general, legislative amendments which are concentrated in five main areas are advocated:

(1) The contents about which the works council should be informed, consulted and co-determinate should be revised, especially taking into consideration the digitalisation and its impacts on work organisation as well as the impact on employment by climate change. Some contents, such as the need of the works council consent for sale of company's holiday facilities, could be omitted as this was more the question of the socialist system. At the same time there are areas, which are very important for

employees, like for example changes in working organisation due to the digitalization and climate change which should be introduce, but which are not covered properly by the current Worker Participation in Management Act. Moreover, 'confidentiality' as it is not defined risks to undermine effective consultation.

(2) The current threshold of 50 percent for organising elections of works councils at the company level as indicated by the Worker Participation in Management Act should be reduced at least to 20 percent because it proves very difficult to be reached in practice.

(3) The interaction between works council and management should be made more flexible. Some activities could be done on-line, the decision-making process should be built on the premises not to hinder management activity, but to facilitate it. As for the existing requirement of the Worker Participation in Management Act sometimes the decision-making process is disproportionally long, thus the employers often tend to circumvent co-determination.

(4) The question of precarious workers needs to be addressed. By the current legislation only those having an employment contract with the employer can vote or can be voted for work councillors. All other, especially agency workers and those performing work on a civil basis, are excluded. For example, agency work is not limited in Slovenia, so agency workers can work for an employer – user for several years but cannot elect the works council. Therefore, they (together with other precarious workers) cannot exercise participatory (and other collective) rights. Additionally, when analysing this question, it has to be taken into account that the legislator already excluded board-level employee representatives from banks and the same tendency is now reflected in insurance business. With less workers having the right to be part of the employee participation system, there is a serious threat that the system will be impoverished.[166]

(5) The introduction of 'independent' experts on economic and health and safety issues supporting company dialogue is desired. Currently, the request of expertise is at will on the side of the employers since only 'professional' company experts are considered under board-level participation.

The current labour market setting and the national legislation (i.e. Worker in Management in Participation Act) are not in favour of collective labour rights, including the employee participation system. Building on the European union premises, that the social dialogue is a value and it should be promoted, this shall be reflected also in national legislation. For a greater development of the employee participation system in Slovenia the law needs major changes as it is outdated in most of its provisions and does not correspond to the current economic and social circumstances. Thus, and based on the economic and social changes the current law, The Worker Participation in Management Act, needs to be revised in order to guarantee a solid development of the employee participation system. The revision should take into consideration the asked flexibility from the employers' side as well as the guarantee of employees' rights on the other. Together with that the main trade union organisation should approach the issue decisively, but with caution. There is a huge need for a trade union strategy how to build the relationship with works councils and board-level employee representative in order to strengthen the employee voice and to build solid relations with management. With this regards it needs to be mentioned that although trade unions are generally aware of the usefulness of the information and consultation

[166] See also Franca V. 2018: Co-Determination in Slovenia: An Analysis of Economic, Social and Legal Challenges.

mechanism competition with works councils is sometimes seen a threat to their functions at the company level.

Collective labour relations, including the employee participation system, should be maintained and reinforced as there are several positive effects of a solid structure of collective bargaining and, consequently, of the coverage of collective agreements, inter alia, greater wage equity. The lack of organized employee voice promotes the growth of the dualistic labour market, especially if considering that the local collective agreements are concluded only in larger companies.

The values of decent work and humanity must be assured and a fair transition toward a digital and green economy addressed. This requires that misclassification with regards to self-employed workers should be avoided and workers' rights guaranteed with better employment and social protection. The social partners together with the government have a very important and challenging task.

4.3 Policy reform debates and demands as regards the EU Council Presidency

Currently Slovenia features weak reflexive political considerations with regards to how to deal with the new challenges of the future of work. Debates are present but they are often developed at the political level and social partners are weakly - or often even not - involved in these discussions. There is therefore the need for a stronger trade unions and employees' involvement to these topics. This should be positioned at the core of a renewed political agenda in Slovenia which considers strategical thinking around the future of work as essential. Trade unions in Slovenia have recently presented a proposal on "The Future of Work and Security" to the national government where they indicate their views and strategies in this regard. However, they have received no answer so far.

The EU Commission in the 2019 European Semester report[167] praises the growth the Slovenian economy has undertaken since the last years and which account for its high international competitiveness. However, economic growth depends on social stability which in turn depends on the democratic involvement and participation of all social forces. Trade unions and workers' councils are representing the interests of workers and therefore they play a relevant role in this regard. Thus, it is important to develop the tools which can help assessing their presence at the company and workplace levels. On the other hand, it is also relevant to strengthening the coordination of trade unions structures between the EU and national levels as the way to convey and improve influence from the bottom up to the top and vice versa. Finally, there is a need to increase national awareness of the relevance of what trade unions 'stand for' and 'do' for those they represent and to shed light on the principles of social democracy underpinning workers' voice they account for.

[167] European Commission 2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011.

5. France

5.1 Key features of industrial relations and social dialogue and social challenges

The French system features a high degree of fragmentation for both the trade unions and employers' organisations. In the private sector, there are five representative trade union confederations: the CFDT (*Confédération Française Démocratique du Travail*) first union in France, the CGT (*Confédération Générale du Travail*); the FO (*Force Ouvrière*, officially CGT-FO) as an anti-communist split of the CGT. FO is more present in the public than in the private sector; a minority of the ancient CFTC continues the Christian tradition under the old name; the CGC (*Confédération Générale des Cadres*) renamed CFE-CGC (*Confédération Française de l'Encadrement-CGC*). It understands itself as a non-political representation of clerical and professional staff ('cadres').

Three major employers confederations participate in collective bargaining at the peak level: the MEDEF (*Mouvement des Entreprises de France*), formerly CNPF, representing companies of all sizes; the Confederation of Small and Medium Companies (CPME), formerly CGPME; the U2P (*Union des Entreprises de Proximité*), formerly UPA (*Union Professionnelle de l'Artisanat*), represents small employers, in particular in the crafts sector. It has recently merged with the UNAPL, which represents health professionals or lawyers.

Historically, there is a great variety of employee representation institutions at the workplace level which, except for the trade unions delegates, are based on elections by the whole workforce. However, recent changes in legislation have introduced an elective filter to the nomination of union delegates. Where the unions are present, they coordinate the whole system of worker representation and participation. The main classical institutions are: (1) Employee delegates (*délégués du personnel*, DP) have the right to be elected in workplaces with 11 or more employees. Employee delegates are elected for a period of four years on the basis of lists presented by the unions at the workplace and they are entitled to present individual or collective complaints about working conditions and the respect of legal or conventional rules. In workplaces without a works committee (see below) they exercise some of information and consultation rights; (2) Works committees: a works committee (*comité d'établissement or comité d'entreprise*, CE) is mandatory in workplaces with 50 employees or more. It is elected by the workforce for four years according to an election system similar to the one for the employee delegates. In a company with more than one workplace, there is a central works committee (*comité central d'entreprise*), composed of delegates elected by the various works committees (two delegates per works committee). A group committee (*comité de groupe*) can be established in a company that have the form of a group. The works committee has a mixed composition of elected employee representatives, union representatives and the employer, who chairs the body. But the employee delegates also meet separately, votes separately and elects a secretary. The works committee has mainly information and consultation rights.

Since 1993, it was possible, in smaller companies with less than 200 employees, to merge employee delegates and the works committee into a unique workforce delegation (*délégation unique du personnel*), either on the initiative of the employer or on the basis of an agreement with the majority unions. The law 2015-994 broadened the unique workforce delegation in companies with less than 300 employees, by embedding of the health and safety committee (comité d'hygiène de sécurité et des conditions de travail, CHSCT).

Following the changes introduced by the 2017 Macron legislation, the representation of the whole of the workforce is now provided by a single elected committee (i.e. the Social and Economic Committee or *Comité Social et Économique* – CSE). This brings together three previously separate bodies representing employees at the workplace – the employee delegates (DP), the works council (CE) and the health and safety committee (CHSCT).

It is only in larger companies, those with 300 or more employees, that a sub-committee of the Social and Economic Committee dealing specifically with health, safety and working conditions (CSSCT) must also be formed since 2018. On the basis of a majority company agreement, it is also possible to create a "works council" (conseil d'entreprise) which will merge the former with the prerogatives of collective bargaining up to now hold by the union delegates.

Union delegates are present in workplaces with 50 employees or more, members of the same union are entitled to set up a union section (*section syndicale*). In workplaces with less than 50 employees, a member of the staff delegation to the Social and Economic Committee may be appointed by a union as union delegate. Representative unions have the right to appoint one or more union delegates (*délégué syndical*, DS), depending on the size of the workplace. In companies with 200 or more employees, a representative union has the right to nominate a distinct central union delegate. Their main role of union delegates is to negotiate the collective agreements at the workplace or company level. In order to be valid, an agreement must be signed by unions which represent individually or together at least 30 per cent of the workforce and must not be opposed by unions that represent more than 50 per cent. In practice, workplace agreements are generally signed jointly by all the unions that are present at the workplace. A non-representative union is not allowed to participate in workplace bargaining but can appoint a representative of the trade union section that has significantly fewer rights and facilities. In workplace with 11-49 employees it is not possible to negotiate an agreement with elected employee representatives mandated by trade unions or with employees mandated by the trade unions. Since 2018, it is possible in small workplaces without union delegates or elected representatives to adopt a text drafted by the employer as a collective agreement by means of a two-third majority vote of the employees. Moreover, the Law 2015-994 which was put into force the 1st of July 2017 established a Regional and Cross-sectoral Committee jointly managed by French social partners , with an equal number of representatives from trade unions and employers, at regional level to represent both employers and workers in small companies below 11 employees. This Committee must be put in place in the absence of joint regional or local Committees at sectoral level through collective bargaining.

Recent major national reforms[168]

2000-2008: In 2001 employers and trade unions (excluding the CGT), signed the joint opinion on "the ways and means of strengthening collective bargaining" of the procedures of the collective bargaining. In this agreement, only in exceptional cases 'opening clauses' were allowed. A negative majority principle for the validity of collective agreements was introduced. In accordance, agreements at national sector level should only be valid if a majority of trade unions does not make use of the right of opposition. 'Majority' here refers to the number of organisations, and not to their representativeness in terms of membership or election results. At the workplace level, and in small companies, without trade

[168] See Rehfeldt U. 2018: Industrial relations in France: From the underdevelopment of collective bargaining to the failure of neocorporatist concertation, Employee Relations,40(4): 617-633 And Rehfeldt U. and Vincent C. 2018: The decentralisation of collective bargaining in France: an escalating process, in Leonardi S. and Pedersini R. (eds) Multi-employer bargaining under pressure – Decentralisation trends in five European countries, Brussels: ETUI.

union presence it should be possible to negotiate an agreement with elected employee representatives or with employees mandated by the trade unions. This joint opinion was legally implemented through the Fillon Law in 2004. This law also allowed for derogation by a workplace or company agreement, unless the sector agreement expressly forbids derogation. Only in four areas are derogations absolutely prohibited: minimum wages, classifications, supplementary social insurance and financing of sector-level training funds. Since 2007, the "Larcher Law" obliges the government, before any legislative initiative in the field of labour law, to give the social partners the opportunity to negotiate a collective agreement, which the government then has to implement by law although little changes are allowed.

2008-2014: Both the Larcher Law and the crisis of 2008 had the effect to reactivate a policy of tripartite concertation. Following CGT and CFDT claiming the introduction of a true majority principle into the bargaining rules, in 2008 the employers' organisations signed a joint opinion on trade union representativeness and the majority principle. Consequently, only trade unions that have received a minimum of votes in the workplace elections should now have the right to participate in collective bargaining. These thresholds were defined as 8 per cent at the sector and inter-professional level and 10 per cent at the workplace or company level. Agreements should only be valid if the agreement is signed by one or more trade unions representing at least 30 per cent of the employees and if trade unions representing the majority of the employees do not make use of their right to oppose the agreement.

In August 2008, this joint opinion was implemented by the "*Law on the Renovation of Social Democracy*". In 2012 the Hollande government presented a road map for a negotiation to secure employment. This negotiation ended with a "national inter-sector agreement" (ANI) on competitiveness and job security, signed in 2013 by the employers' organisations and three trade union confederations (CFDT, CFTC and CFE-CGC). In 2014, the government asked the social partners to negotiate a "pact of responsibility and trust" in support of its policy of tax and social contribution reduction for the companies in order to enhance competitiveness and to facilitate job creation. In March 2014, the three trade unions CFDT, CFTC and CFE-CGC signed such an agreement with employers' organisations.

2015-2017: following Myriam El Khomri's first attempt, the 2017 Macron legislation was successful in advancing a reform of the Labour Code whose main features concern (1) the collective bargaining system and the generalisation of the primacy of company bargaining through derogation of sector-level agreements; and (2) the possibility to circumvent the unions in small and medium companies. Since 2018, in workplaces with less than 11 employees and in workplaces, with less than 21 employees without union delegates or elected representatives, it is possible to adopt an 'agreement' drafted by the employer by the means of a referendum.

Information, consultation and participation workers' rights at company level

The system of information and consultation rights in France is one of the most embedded and mature ones.[169] Employee representation at the workplace gets practiced through unions as well as works councils, whereas the former are the dominating form.[170] With regards to workers' rights of information

[169] Eurofound 2011: Information and consultation practice across Europe five years after the EU Directive, 32 pp.

[170] Sources: European Worker Participation Competence Centre (EWPCC): http://www.worker-participation.eu/National-Industrial-Relations/Countries (July 2015) and Baker & McKenzie (2014), The Global Employer: Focus on Trade Unions and Works Councils, Key Workplace Documents, Cornell University ILR School.

and consultation, both unions as well as works councils can be found, whereas here the works councils play a stronger role.[171]

In companies with 50 or more employees the *Comité Social et Économique* (CSE) – which is the sole representation committee since 2018 and the Macron reform – should nsure that the interests of the workers are taken into account in company decisions relating to the economic and financial management of the company, work organisation, occupational training and production techniques. This is primarily achieved through its information and consultation rights. Specifically, since 2015 (loi Rebsamen) there are three broad areas (i.e. the strategic direction of the company; the company's economic and financial situation and the company's social policy as well as working conditions and employment) over which the CSE must be informed and consulted on a regular basis. On other issues (e.g. the introduction of new technologies) the CSE's information and consultation rights relate to specific company actions, or are only triggered by specific events, like redundancies. In addition, the CSE has access to a specially constructed database of information on the company, and to a number of documents relating to employment and working time. The frequency of this consultation can be decided in a company-level collective agreement, signed either with the majority unions or a majority of the works CSE, if there is no union delegate, although the agreement cannot extend the period beyond three years. However, if there is no agreement consultation on these three issues must take place once every year. The information necessary for this regular consultation is in the company database. Consultation on the strategic direction of the company and its economic and financial situation should take place at company level, but, where there are several workplaces in the company, consultation on social policy, working conditions and employment should take place both at company level and workplace level, if these workplaces are likely to be affected. The CSE must also be consulted regularly on measures likely to affect the size or structure of the workforce; changes in the company's economic or legal structure; working conditions, particularly hours of work and training; the introduction of new technologies and major development modifying health and safety or working conditions; and measures to allow the employment of disabled workers.[172]

There are number of particular circumstances mentioned in the legislation where consultation is required, although there is some overlap with the consultation obligations of the company already listed. These specific circumstances are the introduction of mechanisms for the monitoring or surveillance of employees; restructuring and reducing the number of employees; collective redundancies for economic reasons; any mergers; any proposals to take over other companies; and where the company may be liquidated or put into administration. The timetable for consultation can be agreed locally, although it must provide sufficient time for the CSE to consider the issue and present its view. However, if there is no agreement, apart from areas where the law lays down a specific timetable, the CSE normally has a month from the date on which the employer presents its plans to give an opinion. It is important to remember that the right of the CSE to respond to the employer's plans and potentially to present its own alternative proposals does not guarantee that they will be changed. The process of consultation is normally procedurally very precise and formal, and management is obliged to listen to the views of the employee representatives, but it may continue with its plans regardless.

[171] European Commission 2013: Fitness Check Information & Consultation Directives.

[172] See https://www.etui.org/Covid-Social-Impact/France/Industrial-relations-in-France-background-summary.

The CSE in companies with 50 or more employees also has a right to warn (*droit d'alerte*) in a number of different circumstances such as where the CSE becomes aware of worrying information on the economic situation of the company; where the company is making excessive use of precarious contracts; where individual rights are being infringed, such as through bullying and harassment; and where there is a serious and imminent danger to employees. When the CSE takes full responsibility for all company-level negotiations, its name changes to Company Council (*Conseil d'entreprise* – CE) and it gains new veto rights.

Workers board-level participation

Employees are represented in boards of public companies, and since 2013 also in boards of larger private companies. This follows the 2013 inter-professional national agreement "*for a new economic and social model in the service of entreprise competitiveness and of secured professional paths*" which was signed by CFDT, CFTC, CFE-CGC (CGT and FO did not sign). This agreement, which was transposed in a law of the same name, lays down the obligation to have employees' representative administrators in executive board of a company with: 1) at least 5,000 employees and its direct and indirect subsidiaries, whose head office is located on French territory; 2) or with at least 10, 000 employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad. Only Limited Liability Company (*Sociétés Anonymes*) are concerned.

The 2015-994 Law on social dialogue and employment (the so called *Rebsamen Law*) has broadened the obligation to have employees' representative administrators in the executive board of a Limited Liability Company to companies which employ: 1) at least 1,000 (instead of 5,000) employees within the company and its direct and indirect subsidiaries, whose head office is located on French territory; 2) or that has at least 5,000 (instead of 10,000) employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad.

The minimum number of employee representatives which are represented in boards of public companies is only one person and, since 2019 (because of the adoption of the 2019-486 Law PACTE), 2 in companies with more than 8 board members.[173] In all state-owned companies, employee representatives with voting rights, which are called "employee administrators" (*administrateurs salaries*), account for a maximum of one third of the management or supervisory board. They are elected by the employees on the basis of lists presented by representative unions or they are appointed, as the case may be, by the CSE, the group committee, by the union with the most vote casts at the first round ballot, by the EWC/SE Works Council. Once they are elected or appointed, they must abandon all other mandates of employee representation in the company. Most of the privatised companies have kept this board-level representation, but with a lesser proportion. Since 2015, all companies with 1,000 and more employees in France or 5,000 employees worldwide that have their headquarters in France and that do not yet have board-level employee representatives must introduce one or two representatives. The appointment of these employee representatives is no longer mandatory by election.

[173] See http://de.worker-participation.eu

5.2 Current and future challenges of workers' information, consultation and participation

Assessment of the national legal framework

Workers' information and consultation rights are codified in the French Labour Code (art. L2323-1 and following) and progressively complemented by specific legislation on information and consultation at the workplace. There has been no significant modification to the French legislation in the transposition of the directive 2002/14/EC establishing a general framework for informing and consulting employees. However, effective application of the French legislation on workers' information and consultation rights vary depending on the size of the company, its history and sector of activity. The difficult anticipation of the economic situation of the company and the changing quality of industrial relations and social dialogue – depending on the willingness of the employer to cooperate – play also a key role on the effectiveness of workers' information and consultation rights.

Since 2013, the French legislation has introduced important changes on workers' information and consultation rights. As indicated (see above) the Law 2013-504 has established an economic and social database for workers' representative and trade unions in order to facilitate them accessing strategic company's information, and therefore allowing workers to strengthen their bargaining position at company level. However, whereas updating this database has helped employer's fulfilling their legal obligation of communication it has also proved rather ineffective in terms of establishing a dialogue with the representatives because of the absence of consultation from the side of the employers. The Law 2015-994 has then drastically limited the extent of workers' consultation right by gathering and dividing the seventeen topics on which annual mandatory consultation was originally due into only three topics (i.e. strategic orientations of the company; economic and financial situation of the company; social policy of the company). These recurring consultations differs from timely consultations (i.e. implementation of monitoring tools on the activity of the workers; restructuring process and staff cuts; collective dismissals for economic reasons; public acquisition offer; safeguard, reorganizing and judicial liquidation proceedings…). This consolidation of topics has led to lesser material means, lesser hours of delegation, lesser time to conduct consultation on key and strategic information and company decisions, and therefore it has turned to weaken workers' voice at the workplace. It has also yielded the reduction of meetings of the employees' representative at the workplace. Likewise, the Macron 2015 Law, the Law 2016-1088 has also contributed to weaken the rights to dismiss for economic reasons regarding the justification for dismissal. On the other hand, the circumvention by the employer of workers and trade unions representative workplace structures through direct referendum has led to the weakening of the coordination of workers' voice, yielding to further disruption of the 'collective' at the workplace.

The 2017 Macron reform has limited the overall extent of workers' consultation right at the workplace by merging the existing employees and unions' representative bodies into a unique one (i.e. CSE) with lesser material means and hours of delegation for its members. With regards to board level representation where the number of union representatives is limited to only 2-3 members, and therefore it is insufficient to guarantee an adequate and good quality of workers' involvement. On the other hand, the use of 'confidentiality' clause for board members is considered to destabilize workers' voice and create diffidence against trade unions at the workplace by distancing workers from their representatives while avoiding legal pursuit from the employer or shareholders. Moreover, under the emergency of the Covid-19 crisis, the Macron government has also temporarily shortened the consultation period of the unique

employee' representative body.[174] This risks to further challenge workers' interests by enabling employers to rush through strategic decisions without an adequate consultation of workers, thereby weakening furthermore the workers' voice in the aftermath of the crisis.

The weakening of workers' information and consultation rights has important implications for employees and unions' representative bodies at different levels. By finalising the merger of the workers and trade unions' representatives bodies under the conditionality of a collective agreement to be signed by the majority of the representative trade unions for companies under 300 employees, the Law 2017-1386 introduces some perplexities regarding its effectiveness because of the difficulties to establish in practice a unique body through organising in due time professional elections in every workplace. The French trade unions according to interviews carried out in the context of the EESC study have already alerted the French Labour Ministry in December 2019 of these difficulties.

Regarding the articulation of the Group Work Council, the EWC, the Company Work Council and the Business Work Council *("Comité d'établissement"*), the Law 2015-994 has put into place new rules blurring the articulation between these instances. The timely transmission of information is often lacking and the restrictive interpretation of the concept of trans-nationality has entailed further distance between European- and company-level representation and lesser scope for coordination. The trade unions consider the legislation on due diligence as an opportunity to overcome this constraint and therefore possible enabling to reinforce the articulation between different levels of workers' representation.

Assessment of the European legal framework

In France the EWC Directive 2009/38/EC is often criticized as not having improved legal certainty on the timing on the information and consultation procedures.[175] This relates the timing of the information of the European social partners as well as the timing of negotiations. It is also often pointed out that definitions are still too open and broad for interpretation.[176]

Regarding EWCs the main problematic issues are: the lack of clarity on the rules on the legal status of EWC and limited means of EWC members; the lack of uniformity of sanctions against violations of the information and consultation rights of the EWC but also on the circumvention by employers of legal obligations regarding their establishment; the abuse of confidentiality clauses, the difficult access to information by workers' representative and the difficulty regarding the *'locus standi'* at the beginning of the procedure for trade unions when the special negotiating body has not been put in place; the restrictive interpretation of 'trans-nationality'; the weak articulation of EWC with other representative structures at national and company levels; the impact of Brexit on the legal threshold for the establishment of the EWC. In addition, regarding company restructuring and insolvency process, trade unions mention as problematic the lack (or tardive) involvement of workers and trade unions representative bodies and the absence of effective enforcement of the right of consultation and information of workers in absence of dissuasive sanctions. There is a difficulty employees' representative and trade unions encounter that is the obstacles to take legal action and to appeal to the court against a restructuring plan in due time to protect their claims. There are no effective legal obligations to prevent tactical insolvencies with a limited European business register and the preferential

[174] The shortened consultation period is applicable until the 23 August 2020.

[175] European Commission 2018: Evaluation Report 2009/38.

[176] Ibid.

status of workers' claims (especially regarding remuneration) may be threatened in practice by including it in the moratorium or in the restructuring plan. In addition, job retention in case of restructuring or preventive restructuring is not anchored as procedural objectives in the national legislation and trade unions suffer limited accesses to external experts assisting workers' representative bodies. This is particularly the case under the 2017 Macron Law reforms merging existing employees' representative structures with lesser means.

Finally, there is no mention in the law about workers' involvement regarding the introduction of new technologies and climate change. These topics either are still missing within the social dialogue agenda of many companies or if they are present, they are often unilaterally introduced by management rather than being the object of collective agreements and negotiation with the trade unions (see e.g. Orange policy on data and inclusive AI).

Future challenges and trade unions

The French trade unions advocate for more social democracy, including strengthening workers' voice and rights in companies. The issue is at the core of the current trade unions' activity in France. Reinforcing the capacity of social partners is an important step to social inclusive and democratic societies. This is particularly true during a period characterized by the need to fighting for climate change and to guaranteeing a fair transition towards a green and a digital economy (see *"Making Sure Artificial Intelligence in the Workplace Benefits People"* by Franca Salis-Madinier, CFDT and member of EESC).

On the other hand, fighting against discrimination at the workplace – as a key topic of information and consultation – but also in recruitment processes is also relevant for guaranteeing plural societies. Furthermore, closing the gender pay and pension gap through reinforced collective bargaining, adequate labour market policies, more progressive tax policies or effective social protection systems is also key. This reflects concerns by the EU Commission reporting on the segmentation of the labour market and the social protection being a challenge in France. Social conditions for disadvantaged groups are problematic in France.[177] Thus, further progress on the inclusion of disabled workers must also be a priority as information and consultation on accessibility of the workplace and adapted organisation of work could be strengthened. The foreseen EU Initiative on pay transparency could be relevant in this regard but it cannot replicate the shortcomings of the recent Gender Equality Index adopted in 2019 in France that weaken collective bargaining and the extent of the information and consultation of workers' representative on pay issues at company level.

In addition, the COVID-19 crisis has showed that the fragmentation of the global value chains, which weakens the effective exercise of the right of information and consultation of workers by reducing labour costs, is not a valuable one from both an economic and social point of view. Further discussion is needed in the aftermath of this crisis with inclusion of workers' voice – with sectoral trade unions – to redefine the national and European industrial strategy to further protect workers' strategic autonomy. Strengthening the right of information and consultation of workers in case of restructuring is therefore much needed to avoid the pursue of counter-productive strategic choices in the long term that would be also detrimental for the level of employment and the economic activity at local and national level. – Within a context of fragmentation of global value chains and constant reinforcement of outsourcing and

[177] European Commission 2020: 2020 European Semester: Country Report – France, English.

division of the company structure, trade unions welcome the 2017 Law "Due Diligence" as a good step toward enforcement of legal obligations of employers through an internal alert mechanism regarding workers' fundamental rights across the globe.

Trade unions' recommendations for addressing current and future challenges

At the national level trade unions agree on the need to revisit the Law 2016-1088 and the Law 2017-1386 by ending the employers' ability to circumvent workers' voice and trade unions representation rights. This implies for some trade unions to re-institute the French hierarchy of norms and the more favourable disposition principle in collective bargaining. Other trade unions as CFDT are rather in favour of a proximity collective bargaining at workplace level with safeguards set up at the branch/sectoral level. In addition, trade unions point to the abolishment of the Law 2017-1386 in order to: ending the merging of the employees' representative bodies[178] and to guarantee further material means and delegation hours for workers and trade unions' representative structures at the company level; enlarging the scope and the content of the workers' information and consultation rights with broader themes of mandatory consultation; strengthening the right to training on social and economic issues of workers and trade unions' representative structures.

In the light of the current COVID-19 crisis trade unions ask to reinstitute the specialized employee' representative body on health and safety and to revoke the shortening of the consultation period of the employee' representative body and to ensure effective consultation and information to workers and trade unions representatives. Moreover, trade unions ask to reinstitute real local employee delegates who is no longer compulsory since the Law 2017-1386.

At the European level trade unions agree on the need to review the EU legislation on information and consultation by reducing the reinforced exception provided in the Directive 2002/14/EC on the limited transmission of information by employers to workers and trade unions representatives for "interference in the functioning of the company" in the transposition of the Directive 2016/943/EC on business secrets.

The need for advancements is also mentioned by unions when examining the Review of EU Directive 2009/38/EC on EWCs. In particular, trade unions point to clarify the rules on the legal status of EWC and to reinforce means for EWC members. They indicate the need for a stronger articulation between the EU and national levels of consultation and information as well as stronger workers participation on decision-making at the board level. Moreover, trade unions ask for the need to prevent the abuse of confidentiality rules by clarifying on what grounds, under what circumstances and how long an employer may withhold information. In addition, trade unions ask for dissuasive and uniform sanctions to prevent abuses from employers and violations of workers' information and consultation rights as well as the introduction of stronger rules on the right to information and 'locus standi'. There is also the need for a more concise interpretation of the concept of 'trans-nationality' in the corpus of the directive in order to prevent restrictive interpretation by national jurisdictions and the need of setting a legal threshold adapted to Brexit in order to guarantee the continuity of participation of British EWC members and the integration of British staff in the calculus of the threshold to put in place an EWC (see above). Regarding the positive transposition of the directive 2019/1023 on restructuring and insolvency, trade unions raise the following requirements: the involvement of workers' representatives at an early stage

[178] As commented by the CFDT interviewee in the context of this study, CFDT is against a mandatory merging of the employees' representative bodies, but CFDT is fine with the possibility to adopt a collective agreement (with majority unions) setting up the merger of employees' representative bodies.

via their statutory information and consultation rights; the exclusion of employee claims from the moratorium and the restructuring plan; the guarantee of the privileged creditor status of workers in case of insolvencies; the introduction of a clause on anchoring job retention as a procedural objective in the national legislation; the exclusion of any restrictions on labour law in the event of insolvency; the facilitation of the access of workers representatives to external experts to reinforce their position into consultations and negotiations proceedings.

Trade unions also aim at addressing the shortcomings of the 2019 Company Law Package by putting in place a clear procedure of information and consultation of workers in case of restructuring and an EWC in case of restructuring towards a company of European size. The fusion of directive 2002/14/EC (framework directive on information and consultation); directive 98/59/EC (collective dismissals); directive 2001/23/EC (company transfers) for further legal certainty and coherence is also desired.

At the level of value chain due diligence, trade unions advocate three main proposals:

- Improve information for workers and trade unions' representative at the workplace and company levels. This implies, for example, that preliminary information for an effective consultation through a new category of the economic and social database indicating the subcontractors and suppliers of the company is needed otherwise workers' representative cannot know the full scope of companies concerned;
- Introduce right of information on the existence of the "alert mechanism" along the value chain;
- Include "due diligence" related aspects in the categories reserved for compulsory consultation of workers' representatives;
- Extend consultation with workers' representative to every company involved in the value chain;

Guaranteeing a fair transition towards a green and digital economy

Workers' voice and trade unions representation play a fundamental role to ensure the social and fair dimension of "just transitions". Trade unions in France have always been involved on these issues and reinforced their expression and action since the Paris Agreement in 2015. The international action alongside the International Trade Union Confederation is therefore focused on the International Labour Organisation that must lead the social regulation at international level. Trade unions are therefore insisting on the respect and the enforcement of the Paris Agreement of 2015 and the international standards of the ILO but also on the need to include a new international labour norm on "social just transitions" on the agenda on the basis of the ILO guidelines on sustainable development, decent work and green jobs of 2015. The International Labour Conference in 2021 on social just transition[179] will be key in this regard and the next International Climate Conference (COP26) will be also the opportunity to assess national engagements and the impact of the workers' voice. Even more necessary in the light of the Covid-19, a broader discussion must be led on an Industrial strategy and the future of the industry. Trade unions must play a key part in this regard at inter-professional, sectoral and company level – by respecting first and foremost the right to information and consultation of workers.

The social dimension of a fair digital transition process is often absent as the workers' voice is often lacking. A key element of the digital transition is the emergence of health and safety concerns due to new technologies and new tools. Strengthening the right of information and consultation for workers in

[179] Following the deferral of the 109th Session from 2020 to 2021, the agenda of the session is subject to confirmation by the Governing Body.

the workplace is therefore capital to avoid changes in the organisation of work that may sacrifice the health and safety of workers, their work-life balance and their privacy rights. The suppression of the specialized employee' representative body on health and safety since 2017 weakens the trade union expertise in the workplace on this issue. Moreover, the ongoing fight against the misclassification of platform workers as independent bogus self-employed workers is also a symbolic example of the need to strengthen the workers' voice and recognize the rights of collective bargaining for platform work and the right to be represented by trade unions at both platform and sectoral level. Circumvention of workers' rights through new business models based on the growing use of new technologies such as apps is the counterexample of a socially just transition. At the EU level ETUC and Business Europe have recently signed a framework agreement on "Digitalisation" for the respect of the human dignity of platform workers by securing employment while promoting digital skills and guaranteeing rights of connecting and disconnecting in the light of the protection of work-life balance (Cfr. "European Social Partners Framework Agreement on digitalisation"), which could be a good tool to be implemented at the country-level.

AI is another example where the workers' voice must be reinforced through a strengthened right to information and consultation. The opacity around AI programming and algorithms risks to avoid proper information and consultation of workers that could lead to further discrimination and pressure on workers. Trade unions advocate a "human-centred" AI and digitalisation at the service of the "Human" that improve the health and safety of workers and their working conditions and push forward and safeguard social progress.

Trade unions express contrasting feelings when assessing the preparedness of France to address the challenges mentioned above. This is because of several reasons:

Concerning workers' voice, recent structural reforms have weakened workers' collective and individual rights – including the right to information and consultation – but also trade union' rights and the mandate and means for workers' representatives. The suppression of the specialized employee' representative bodies on health and safety (CHSCT) since 2017 is the more egregious example of this, even more worrisome in the context of the Covid-19 crisis.

Concerning corporate due diligence, France has been at the forefront of the progress on this issue these past years thanks to action of French trade unions to guarantee legal obligations with effective sanctions – even if the French legislation could be reinforced. The French Presidency of the EU Council could therefore be the key to finalize an EU initiative in this sense with legally binding obligations with effective sanctions. As previously shown, the right of information and consultation could be central and must be reinforced in this regard.

Concerning climate change and green transition, recent initiatives against social dialogue and the social tensions resulting from the lack of fairness and progressivity of tax policies regarding green-related issues such as gas or fuel illustrate the unpreparedness of France on these issues. Regarding progress in reaching the national targets under the Europe 2020 strategy, France needs additional efforts to meet the targets on using renewable energy and improving energy efficiency. The carbon tax increase has been suspended since 2019 following social unrest. Further pressure on the nuclear industry - the first decarbonized energy in France – and on civil servants in the French Environment Ministry and its administration are also negative signals in this regard. The recent setback regarding the EU green

taxonomy on nuclear power due to loosening of the French position in the negotiations shows little preparedness of the next French Presidency.

Concerning the digital transition, in a recent report from the European Commission it is stated that there has been some progress in improving the digital infrastructure. On digitalisation, the French government unlocked €3.3 bn to boost additional private investment in rolling out ultra-fast broadband across the country. Besides the priorities of innovation and ecological transition, France managed to mobilise the European Fund for Strategic Investments for digitalisation.[180] The French Presidency will certainly also focus on further initiatives, but great attention needs to be posed also to the social dimension. The willingness to pursue voluntary social charter for digital delivering platforms even after the critic from the French Constitutional Court and the recent requalification of the status of an Uber driver as an employee or worker instead as an independent self-employed worker by the highest civil jurisdiction shows that there is still a lot to be done for a socially fair digital transition. Furthermore, continuous push towards digitalization of public services clashes with the French equality republican principle due to the digital divide.

The state of social dialogue in France is alarming due to recent and constant fusion or elimination of national social dialogue instances limiting the expression of workers' voice and concerns in a context featuring the acceleration of structural reforms on key components of the French social model (including vocational training system; unemployment insurance; social protection). According to the 2020 EU Commissions country report in the European semester, France has sustained its efforts on reforms to unlock productivity gains in the economy.[181] Yet, it is difficult to fully rate the influence of trade unions on public policies and reforms programs. The French public health and care system in front of the Covid-19 – and its impact on the mitigation of the propagation of the virus with economic and social consequences – faces difficulties.

5.3 Policy reform debates and demands as regards the EU Council Presidency

French trade unions take part to the European Semester since its launch in 2011 and they remain active with this regard. However, involvement of trade unions in the European Semester by the French government has weak influence[182] on the outcome of the National Reform Program (NRP) (with a simple annexation of trade unions' positions) or the Country Specific Recommendations (voted by the Council).

No preparatory work is ongoing and no consultation with French social partners has been launched within the realm of the out coming French Presidency of the EU Council (1st semester 2022). The EU presidency will intervene in an electoral period in France with the Presidential elections that should take place on May 2022 – therefore limiting the ability to move forward on EU initiatives – at least for legislative initiatives.

[180] Ibid.

[181] European Commission 2020: 2020 European Semester: Country Report – France, English

[182] CFDT does not agree with the assertion of a weakening of trade unions' involvement/consultation within the European Semester framework. Trade unions are consulted, even if their opinion is seldom taken into account. The fact that during 2020 cycle of the European Semester the NRP was significantly changed is linked to the Covid crisis circumstances. Moreover, the NPR changes/modifications were related to elements that unions disagreed with.

The last French Presidency was key to secure the revision of the EU Directive on EWC. Although it is unlikely that this scenario will re-occur due to the current political context in France, however, recent reforms in France (especially the French Labour Law Reform in 2016 – a wave of Orders in 2017 – and more recently a new wave of Orders in 2020 in front of the COVID-19 crisis) have led to further deterioration of the right of information and consultation of workers – especially by limiting the mandate and the means of employee's representative bodies and workers' representatives at the workplace.

Without clear indication nor discussion on the work program of the EU French Presidency and the trio French-Czech-Swedish Presidencies, it is too soon for French trade unions to assess any positive elements to advance trade union demands.

6. Czech Republic

6.1 Key features of industrial relations and social dialogue

The current system of industrial relations and social dialogue in the Czech Republic has emerged after the "Velvet Revolution" of 1989. Basic legal provisions of social dialogue and industrial relations are embedded in Act No 23/1991, Charter of Fundamental Rights and Freedoms, which is part of the constitution of the Czech Republic, that provides in Art. 27 for coalition freedom, the right to associate and unionise.

The legal regulation on trade unions, employer organisations and collective bargaining is provided by several laws, namely Act No 262/2006 (Labour Code) and Act No 2/1991, on collective bargaining. The collective bargaining act has been substantially amended as of 1 January 2007 in connection with adoption of the new labour code and which continues to regulate the collective bargaining process at the company and higher (sectoral) levels, the issue of settlement of collective disputes and extension of higher-level collective agreements. Whereas from 1990 to 2013, the establishment and practice of trade union organisations and associations was provided for by Act No. 83/1990 on association of citizens, the new civil code (Act No. 89/2012) today regulates the legal position of employers' and employee associations.[183]

Industrial relations in the Czech Republic are dominated by relatively few representative national organisations that are also represented in the national tripartite Council for Economic and Social Agreement (*Rada hospodářské a sociální dohody,* RHSD[184]) that was established in 1990.

The condition for participation of social partners in the RHSD is their representativeness, as indicated by the number of workers employed by their members. Employers' organisations must have associate companies with 400,000 employees. Two employer organisations are qualified accordingly as representative: The Confederation of Industry of the Czech Republic (*Svaz průmyslu a dopravy ČR, SP ČR*) and the Confederation of Employer and Entrepreneur Associations of the Czech Republic (*Konfederace zaměstnavatelských a podnikatelských svazů České republiky*, KZPS ČR).

Trade unions are required to have 150,000 members in order to be recognised. This threshold is also met by two trade union organisations: The Czech-Moravian Confederation of Trade Unions (*Českomoravská konfederace odborových svazů*, ČMKOS) and the Association of Autonomous Trade Unions of the Czech Republic (*Asociace samostatných odborů České republiky,* ASO ČR).

By far the largest trade union confederation is ČMKOS. ČMKOS is the Czech successor of the Czech and Slovak union confederation, ČS KOS, which was founded in shortly after the revolution of 1989 out of strike committees from November 1989. The ROH, the union confederation in the communist period, was dissolved at the founding congress of ČS KOS, and the majority of its members joined ČS KOS, although the new union confederation broke with ROH in terms of policy and organisation. In

[183] See: Eurofound 2018: Living and Working in the Czech Republic: Working life in the Czech Republic, https://www.eurofound.europa.eu/country/czech-republic#actors-and-institutions.

[184] See the website of the Council (also a summary section in English language available): https://www.tripartita.cz/introduction/.

1993, Czechoslovakia split into two separate states, the Czech Republic and the Slovak Republic, and ČS KOS split into a Czech organisation, ČMKOS, and a Slovak organisation, KOZ SR.

The second largest confederation (however with only around ¼ of membership is ASO ČR, which was founded in 1995 when the agricultural and food workers union (OSPZV) broke away from ČMKOS because it wanted the confederation to take stronger action against the then government's policies in favour of reducing subsidies to agriculture. Together with two much smaller unions it formed ASO. Other unions have joined ASO since then.

Relevant other trade unions that are not represented in the national tripartite Council are KUK, a confederation of unions founded in 1990, which covers some workers in the cultural sector and the OS ČMS, which is close to the communist party; and KOK, a Christian union confederation. It should be emphasised that there is no independent verification of these figures and they are no longer current. There are also several independent unions, which are not part of the larger confederations, including a number in transport, such as the train drivers' union FS ČR, the ceramics union OS SKBP, unions in the media and a police union NOS PČR.

ČMKOS, has 30 separate affiliated member unions, divided broadly on an industry basis. The largest are the metalworkers' union, OS KOVO, the health workers union OSZSP, the government employee's union OSSOO and the teachers' union, ČMOS PŠ.[185]

Unions have lost members sharply in recent years and the organisation rate is estimated at around 7%.[186] Until very recently the decline in membership appeared to be continuing. However, growing labour shortages appear to have led to a growth in union membership.[187] In particular ČMKOS has successfully run recruitment campaigns, including the "End cheap labour" (*Konec levné práce*) campaign, which according to ČMKOS resulted in 27,000 new members over two years.[188]

Apart from the campaign for ending low pay, the Czech trade unions and in particular ČMKOS have been quite successful with campaigns demanding better working conditions. Examples here are the partial reimbursement for the initial three days of illness, the increase in statutory annual leave from four to five weeks (which in fact is already applied in the majority of companies) and – most controversially – the reduction of working hours from 40 to 37.5 hours per week.

There are no official figures on the proportion of union members who are women. However, ČMKOS calculates that women make up 48% of its membership.[189]

---

[185] See Eurofound 2018: Living and Working in the Czech Republic: Working life in the Czech Republic, https://www.eurofound.europa.eu/country/czech-republic#actors-and-institutions. The article presents also figures of individual trade union membership that however are estimates as there are no official figures.

[186] Figures from: ETUI, Eurofound. Data on trade union membership and collective bargaining coverage are taken from "Collective bargaining in Europe: towards an endgame". Edited by Torsten Müller, Kurt Vandaele and Jeremy Waddington, ETUI, Brussels. (data for 2016/2017.

[187] Czech Republic: Latest working life developments – Q1 2018, https://www.eurofound.europa.eu/publications/article/2018/czech-republic-latest-working-life-developments-q1-2018.

[188] See https://www.blesk.cz/clanek/zpravy-live-zpravy/494324/centraly-odborum-pribyva-clenu-pocet-dorovnava-ubytek-odboraru.html (Accessed 12.02. 2020).

[189] See: ETUC Annual Gender Equality Survey 2019, 12th edition, by Lionel Fulton and Cinzia Sechi, ETUC, 2019.

Information, consultation and participation workers' rights at company level

The main structure for representing employees at the workplace is the local trade union grouping, which only needs three individuals to set it up. This was the only structure available until 2001, but since then it has been possible to set up a works council or representatives concerned with health and safety. For this to happen, at least one third of the workforce must ask for such a body. Under the revised labour code, which was passed in 2006 and came into effect at the start of 2007, works councils or health and safety representatives could only be established if there was no trade union in the company, and they had to be dissolved if a trade union organisation was subsequently set up and signed a collective agreement. However, in March 2008 the constitutional court ruled that this legislation was unconstitutional. It is now possible for a company to have both a union and a works council or health and safety representatives. However, in practice, very few works councils have been set up and the dominant structure remains the local union organisation.

There are differences between the tasks and rights of the employee representatives at the workplace, depending on whether they are part of a union organisation or a works council, and these are set out in the Labour Code.[190] While only trade unions at company level have the right to collective bargaining, there are also differences in the areas of information, consultation and where the agreement of employee representatives is necessary to make changes.

Both the company-level union organisation(s) and the works council have the right, as representatives of the employees, to be informed on the economic and financial position of the company and its probable development, the company's activities and their impact on the environment, and planned changes in the company's structure, status and business activities.

Both bodies also have the right to be informed and consulted on the probable economic development of the company, working conditions issues, structural changes, rationalisation or organisational measures, measures affecting employment (particularly collective redundancies), likely future employment developments, the transfer of the company to another owner, health and safety topics, measures to ensure equal treatment of women and men, details of permanent employment, which would be of interest to existing temporary employees, and issues linked to the establishment of a European Works Council.

Where there are fewer than 10 employees, the representatives do not have the right to information on the company's economic situation or its activities and their environmental impact. Their consultation rights are also limited, covering just transfers, health and safety and the establishment of a European Works Council.

In case of collective redundancies, there are specific rules on consultation. The union and works council must be informed and consulted in advance, with the intention of reaching an agreement aimed at avoiding redundancies, if possible, and, if not, at mitigating their adverse impact on employees.

[190] The following information is based on: L. Fulton (2020) National Industrial Relations, an update. Labour Research Department and ETUI (online publication). Online publication available at http://www.worker-participation.eu/National-Industrial-Relations.

The union and the works council are also involved in drawing up the written schedule for taking leave, which, as the Labour Code states, "*is only released with the prior consent of the trade union organisation and the works council*".

Trade unions at company level gain from additional information and consultation rights. For example, trade union organisations have a legal right to information on developments in wages and salaries including the average level of pay and its composition for various occupational categories in the company. The union should also be given details of the appointment of new employees.

As regards consultation, the Czech legislation states that trade unions at company level must be consulted on the following issues:

- the company's economic situation;
- workload and the pace of work;
- changes in work organisation;
- systems of employee pay and appraisal;
- training;
- measures relating to childcare, care of disabled persons, improvements in occupational hygiene and measures relating to employees' social and cultural needs; and
- other measures which "relate to a larger number of employees".

The trade union must also be consulted about a number of other concerns. These include the collective regulation of working hours, such as night working or working on normal rest days; the date on which employees are to be paid, unless this is set out in the collective agreement; the arrangements under which employees compensate their employer for damage they have caused or money they have lost; and compensation for those suffering from an occupational disease.

As regards the obligation of reaching an agreement between management and labour, there are only two issues which must be agreed with the trade union, where it is present in the workplace. These are:

- the use of cultural and social funds of the company;
- changes to the company's work rules or work regulations. These work regulations describe the duties of the employees, setting out the details of the provisions of the labour code and other regulations which apply. They can only be modified with the prior written consent of the union active in the company.

The level of pay during periods of short time working can be either fixed through ab agreement with the union or through unilateral internal regulations by the management.

As noted in an interview and written statement by the legal expert of ČMKOS, the legal implementation of the EU Directive 2002/14 is regarded as generally good. However, it was also stated that the trade union would like to see that European regulation *"more and deeply stresses the obligation of the state to promote social dialogue, to introduce rules and penalties (sanctions) for breaches of employers'*

obligation and would emphasize the active approach of states to creating a good condition for social dialogue".[191]

Workers board-level participation

Whereas in state-owned companies, irrespective of size, one third of the supervisory board are employees of the company, elected by the workforce, the situation in privately owned companies has been the issue of recent changes and legal reforms: Until January 2014, employees in privately owned public limited companies (a.s.) had the right to elect one third of the members of the supervisory board, provided there were at least 50 employees. However, the Business Corporations Act (90/2012), adopted in March 2012, removed this right, and as a result employee representation on supervisory boards of privately-owned companies was only possible on a voluntary basis.

In January 2017 however, the Business Corporations Act was amended to reinstate obligatory employee representation on supervisory boards, although only for companies with more than 500 employees. Employee representatives continue to make up a third of the total, with the remaining two-thirds elected by the general meeting. It remains possible for smaller companies to have employee representation or for the proportion of employee representatives to be higher than a third (although not more than a half). However, this depends on a voluntary decision by the company. Furthermore, while the legislation on employee participation clearly applies to Czech companies with both a supervisory and management board (the standard form), it is uncertain whether and how it applies to the growing number of Czech companies with a single-tier (monistic) governance system, which have no supervisory board.
Companies had two years to adopt their structures to accommodate the 2017 amendments, so in many companies the changes have only recently started to take effect.

6.2 Current and future challenges of workers' information, consultation and participation

Before the COVID-19, the Czech economy maintained robust real growth for six consecutive years.[192] Key determinants were growth of household consumption, driven by wage and salary growth and a very low unemployment rate. With unemployment rates around 2% in 2018 and 2019 the shortage of labour has been regarded as the main barrier to further growth in production. According to a report of the EU Commission published in 2019, there was a shortage of around 340,000 low and medium skilled workers across all sectors in that year.[193] This figure is quite dramatic, given a total labour force of 5.4 million.

In government forecasts published in May 2020, the COVID-19 impact is expected to result in a slump in GDP by 7.6% and an increase in unemployment to 4% in 2020.[194]

Despite the positive and stable macro-economic indicators before 2020, the Czech labour market and economy was characterised by serious structural weaknesses, such as the low employment rate of women, deficits of the vocational education and training system or a high vulnerability and risk of job losses resulting from digitalisation. According to assessments of the EU Commission, Czechia is

[191] Interview carried out in June 2020.

[192] Ministry of Finance of the Czech Republic: Survey of Macroeconomic Forecasts – January 2020.

[193] European Commission (2019a), *Labour market and wage developments in Europe, Annual review 2019*, Publications Office of the European Union, Luxembourg (https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8257&furtherPubs=yes).

[194] Ministry of Finance of the Czech Republic: Survey of Macroeconomic Forecasts – May 2020.

amongst those countries in the EU that are likely to be heavily affected by technological change and digitalisation (see textbox below).

The Czech Republic has one of the highest shares of industrial production among EU countries, contributing a share of more than 30% to the GDP. Czech enterprises are highly integrated in value chains but due to the productivity gap, focus mainly on low value-added activities. Czechia had the highest volumes of regional value chain trade in the EU in 2014, based on the strong bilateral links with Germany.[195] Nonetheless, Czechia is positioned more downstream in the global production chain, as a large part of the economic activity is based on compiling and assembling processes. In 2016, the share of domestic value added in the total exports amounted to 62%, one of the lowest figures in the EU. In the car industry, the share was even lower at 46%, compared to 76% in Germany. A recent analysis showed that 9 out of 10 most important economic sectors by export volume are placed on the parts of the value curve with low value added.[196] Nonetheless, export composition has evolved in the last three decades, moving from metal products to machinery and electric products.

Czechia likely to be more affected by technological change and digitalisation than other EU countries

"Available research suggests that between 40% and 70% (depending on the methodology used) of the current jobs in the country may be at risk of being fully or partly automated in the next decades. The share is more pronounced in the automotive industry, in particular for jobs such as production workers or machine operators. The high potential for automation is in part related to the high importance of manufacturing in the economy (23.1% of GDP in 2018, 8.5 percentage points above the EU average). The automotive industry alone accounts for up to 10% of GDP and total employment when including all indirect suppliers. According to a 2018 study by the Czech government, in the short-term, the current AI technologies could substitute 50% of the work skills demands in 11% of professions. Over 30 years, automation could replace over 50% of skills in the vast majority of current professions, accounting for around 3.4 million employees."

Source: EU Commission 2020: Commission Staff Working Document – Country Report Czech Republic 2020, accompanying the 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, COM (2020) 150. SWD (2020) 502 final, Brussels, 26.2.2020, p. 38.

Though industrial policy and qualification and training challenges related to digitalisation and automation have been addressed by the Czech Government in consultation with the social partners quite early by national initiatives such as on "Industry 4.0" (*Průmysl 4.0*[197]) or the Work 4.0 (*Práce 4.0*) action plan,[198] there certainly is the need for further and concrete action in particular also at company and sector level.

As regards the transition towards a greener economy and decarbonisation, Czechia is also facing huge challenges.

As a transit country with a high share of manufacturing in GDP, Czechia is currently witnessing some of the highest greenhouse gas emissions per capita in the EU. This is mostly due to a significant reliance

[195] Stöllinger, R., Hanzl-Weiss, D., Leitner, S., and Stehrer, R. 2018: Global and Regional Value Chains: How Important, How Different? Vienna Institute for International Economic Studies Research Report 427.

[196] Deloitte 2019: Made in the world – an analysis of the Czech foreign trade and its positon in global value chains.

[197] https://www.prumysl-4.cz/

[198] https://www.mpsv.cz/web/cz/prace-4.0

on coal and a less than optimal level of energy efficiency. Coal production is a particularly important economic activity in three regions, which will need to undergo a socially-fair transition in a cost-efficient manner. According to the country's recently unveiled National Investment Plan, the costs of a full transition away from the use of fossil fuels by 2050 are expected to reach €25 billion (12% of GDP at 2018 prices).

Czechia is also one of the most energy-intensive countries in the EU and the use of renewable energy is below EU average. Furthermore, both indicators have remained quite static during the last years, indicating only low ambition to change. The public support scheme for renewable energy was abolished in 2014 and a comprehensive legal and institutional framework for supporting renewable energy is still pending.[199]

As regards just transition policies, the Czech government has not set a final date for phasing out coal production. The Czech coal commission is required to analyse options regarding an exit from coal production and propose recommendations to the government by September 2020. This date is important for Moravskoslezsko and Severozápad, which are among the 6 largest coal-mining regions in the EU. The transition process is expected to affect over 21,000 direct and 19,000 indirect jobs in the country, most of them in the two regions mentioned above. While both regions still strongly depend on the mining sector, they are at various stages of transition to a zero-emission economy. They are supported by a specific government resolution called the Strategic Framework for Economic Restructuring (RESTART) which outlines a broad variety of measures to be prepared for accompanying the transition. Given the challenges and needs, local commitment and a coordinated action at regional and national level are key to achieve structural change and carbon neutrality.

Against the fact that the coal-mining and heavy industry regions are also located in structurally weak regions with below average GDP creation per inhabitant (e.g. the Karlovarký region, the social challenges posed by and effective and just transition according to the EU Semester Country Reprot on the Czech Republic will require a diversification of the regional economies, creating new business opportunities and upskilling and reskilling of workers.[200]

6.3 Policy *reform debates and demands as regards the Czech EU Presidency*

As highlighted by a representative of ČMKOS in the context of this study, the main expectation as regards the Czech EU Council Presidency in the second half of 2022 is that the activities of trade unions are fully respected and workers participation rights, including board-level participation will be strengthened. Furthermore, there is a need to improve the law concerning the breaches of the right to workers' participation.

[199] European Commission 2020: Commission Staff Working Document – Country Report Czech Republic 2020, accompanying the 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, COM(2020) 150. SWD(2020) 502 final, Brussels, 26.2.2020, p. 46.

[200] European Commission 2020: Commission Staff Working Document – Country Report Czech Republic 2020, accompanying the 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, COM(2020) 150. SWD(2020) 502 final, Brussels, 26.2.2020, p. 64.

Further expectations and demands are stronger initiatives to reduce the gender employment gap, strenghen workers involvement in the digital transition process at the company level and shaping a just green transition process with a strong social component.

European Economic
and Social Committee

Rue Belliard/Belliardstraat 99
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

Published by: "Visits and Publications" Unit
EESC-2020-92-EN
www.eesc.europa.eu

Print
QE-02-20-818-EN-C
ISBN 978-92-830-5038-4
doi:10.2864/999090

Online
QE-02-20-818-EN-N
ISBN 978-92-830-5037-7
doi:10.2864/338155

EN