



Resolution

Strengthening worker involvement: minimum standards for information, consultation and participation in Europe

Adopted at the Executive Committee on 28 April 2011

Background

1. The present global economic and financial crisis has brought to the forefront the issues of corporate governance and crisis management in the European Union.
2. The financial crisis has become a general economic crisis with a huge increase in unemployment in Europe and with a wave of restructuring, relocation and cost cutting by corporations around the world. Workers in Europe and elsewhere are now paying the price for the excesses of investors and financial markets.
3. The corporate governance model of the EU, which is based largely on the Anglo-American model with its emphasis on shareholder value, has failed not only in the financial sector, but also generally in controlling risks and in promoting a sustainable long term perspective in corporate decision-making. The policy changes made so far have not adequately addressed these real problems and have not introduced the new structural elements needed for a sustainable framework for company policies and operations.
4. The most important concern with EU company law, in particular with its soft law regulation of corporate governance, has been that, within this framework, company models other than the Anglo-American shareholder value are regarded as restrictions of the internal market, since they complicate restructuring and movement of corporations within the EU. Shareholder value and independent directors are the slogans of our time, whereas employee representatives on the board and worker participation tend to be seen as oddities and are regarded as obstacles to a well-functioning internal market.
5. The economic crisis creates important momentum for re-establishing and strengthening worker involvement in different forms: information, consultation and participation in the company. One of the underlying reasons for the present crisis is that the labour law system has failed to act as a countervailing power to restrict increase in economic inequality and union decline. Strengthening the power of

workers by giving them capabilities for making their voice heard might help rebalance the system.

6. Worker involvement is important for many reasons, including to:

- Strengthen democracy, enable dispute resolutions and a social dialogue at the workplace;
- Give a stronger voice to those with a long-term interest in the company;
- Ensure that information on what is going on in the company (at different sites and on the shop floor) reaches the management and board;
- Act as a whistleblower vis-à-vis the authorities to report unethical behaviour or corruption;
- Check excessive levels of top executive pay;
- Guarantee local and national representation in boards, since more and more shareholders are based in foreign jurisdictions and lack detailed knowledge of national traditions and institutions.

Furthermore, research shows that worker participation is good for productivity and well-being of workers and that a well functioning participation system can create a win-win situation.

Legal context

7. Employee influence is now a fundamental right under the Treaty on the Functioning of the European Union (TFEU), however, this right has to be realised in practice through various forms of worker involvement (in the sense of information, consultation and representation at different levels of the company). TFEU articles 152 (on *dialogue between the social partners*) and 153.1-e and f (the Union shall support and complement the activities of the Member States in the following fields: *the information and consultation of workers; representation and collective defence of the interests of workers and employers, including codetermination*) provide a starting point for ETUC demands.
8. Within the EU, workers and their representatives have a fundamental right to information and consultation. Board level participation rights can be regarded as a method of providing workers with information, and also create consultation opportunities. These participation rights can ensure and implement the fundamental right to information and consultation. This constitutes an obligation for the EU to respect and promote board level employee representation and similar rights at a national level and not to undermine them through action or legislative measures.

9. There are four ways in which the EU regulates the right to information and consultation:
 - i. It is a fundamental right under the EU Charter of fundamental rights (article 27).
 - ii. It is regulated for certain typical situations where information and consultation has been regarded as important (Directives on collective dismissals, Transfers of undertakings, Health and safety etc).
 - iii. It is regulated in a general framework Directive 2002/14/EC which confirms its status as a part of the European social model. Information “means transmission by the employer to the employees’ representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it”. Consultation “means the exchange of views and establishment of dialogue between the employees’ representatives and the employer”.
 - iv. It is regulated for certain types of EU-level cross-border situations (European works councils, SE- and SCE-companies, cross-border mergers (Directive 2005/56/EC), take-over bids).

European minimum standards for worker involvement

10. The ETUC is convinced of the need to make full use of and improve the instruments providing rights to information, consultation and participation. As a starting point, the ETUC calls for strong European minimum standards for worker involvement to strengthen workers’ rights to information and consultation in the EU and to ensure that the EU respects and promotes different forms of board level representation in Member States where such systems exist and in European legal entities such as the SE, SCE and proposed SPE. It is vital that such minimum standards prevent the registration and location of the seat of companies solely or mainly with the intention of avoiding worker participation.
11. In order for cross-border information, consultation and other participation rights to function properly, the legal framework at EU level has to be improved. One important and urgent improvement in this area is that all the legal forms of company entities at the EU level (SE, SCE and proposed SPE) must be subject to binding rules and regulations on information and consultation with employee representatives regarding cross-border issues and on worker participation in company boards. Companies that have operations in several countries should be covered by the regulations that entail the strongest rights for worker participation. When EU regulations are designed and applied, great consideration must be paid to different national traditions regarding worker involvement. The following criteria should be applied:
 - Existing rights should not be undermined (‘before and after principle’).
 - Anti-regression clause: European standards can never be an argument to lower national or European rights. The EU regulatory framework must respect and support national regulations and practices in this area.

- Basic standards must be designed in a manner that rules on participation will apply to companies that grow above important thresholds.
 - The goal must be to achieve as much influence for workers as possible.
 - The right to have negotiations on employee involvement and the possibility for the social partners to draw up their own negotiated solutions should exist, as well as the right to better provisions in collective agreements. These rights should apply in all cases where European company law (European legal entity, cross-border mergers, take-overs, etc.) is at stake.
12. A legislative general framework instrument should be developed that would achieve better coherence in the rules on worker participation for SE- and SCE-companies and also solve some of the legislative problems relating to the proposal for an SPE Statute. The objective of such an instrument would be both to enhance participation (and thereby promote the dialogue between management and labour) and to promote the functioning of the internal market, more specifically to implement the freedom of establishment (TFEU Article 49).
 13. An important aspect is to guarantee the existing or established best practice when companies from different jurisdictions merge together or when the restructuring processes of existing entities result in the establishment of a European legal entity. Criteria for assessing this must be laid down as well as triggers for renegotiation in the case of structural changes of the entity (e.g. activation of shelf SEs, large increase in the number of employees etc). The registration of a European legal entity should not be possible if the issue of worker participation has not been resolved. These rules should apply regardless of where the company/legal entity is established or functioning. As soon as it takes on a European legal form the requirements should apply. The SE-directive and SCE-directive offer a good starting point for this general framework instrument. It should be a flexible instrument while ensuring at the same time substantial binding minimum standards with essential procedural requirements and arrangements.
 14. The majority of EU Member States have some form of board level employee representation system at national level. The systems are different and the thresholds (numbers of employees) for their application show remarkable variations. While respecting the diversity at national level it should be emphasized that board level participation is a common means of making sure that worker representatives get adequate information on a timely basis. It is an important means for increasing trust and cooperation.
 15. To enable board representation, employees and trade unions should have the right to demand participation in the highest decision making bodies in companies with a European form. In order to ensure that this right covers a substantial number of European companies, the minimum threshold for the application of this right should be quite low, for example all companies with at least 25 employees and operations in two or more countries should be covered.