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Editorial

It's time to rebuild workers' participation rights

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With a view to the upcoming European elections and the prospect of a new Commission, the ETUC's and ETUI's newly published annual Benchmarking Working Europe takes stock of Social Europe – and concludes that we are halfway through a lost decade. With respect to workers participation, the assessment is mixed: on the one hand, many promising and innovative developments can be seen in practice. On the other hand, European legislative initiatives have failed to keep pace with – let alone drive – this process.

The emerging European architecture of participation rights is being steadily dismantled. What was once a growing consensus about the importance of the workers' voice has become the primary object of deregulation: whether it be the employment law reforms enacted in the wake of the crisis, the European Commission's reheated deregulation agenda, or the missed opportunities in company law, the past five years have seen a rollback in the various kinds of forward-looking legislation previously designed to increase citizens' engagement in the organisation of their working lives.

A hitherto shared European conviction that employees' voice matters is being crowded out from several sides. Firstly, crisis-induced changes in labour law and collective bargaining systems have weakened employee representation, particularly in the event of collective redundancies. Secondly, the Fitness Check and the REFIT process – the most recent incarnations of the European Commission's longstanding preoccupation with deregulation for deregulation's sake – threaten to dangerously undermine employees' rights to information and consultation, particularly in smaller companies.

This is only one among several reasons why we have taken a closer look at the state of employee representation structures in small and medium-sized enterprises (SME) across the EU. The empirical evidence shows that, while SMEs employ between half and two thirds of the total working population of the EU, institutionalised forms of worker participation are not widespread in such workplaces. Taken on its own, this representation gap in SMEs is already worrying enough; but if the European Commission follows through with its intention to curtail the rights of employee representatives in SMEs, where compliance and enforcement of existing rights is already extremely weak, then the impact on the majority of the European workforce will be

tremendous. What justification can there possibly be for steps that are tantamount to a claim that workers in smaller companies deserve weaker rights?

In cases where such already disadvantaged SMEs are combined into MNCs, the problems of these smaller firms are compounded: information and consultation is inadequate at both the local and the cross-border level. That this dilemma should emerge at a time when multinationals' internal decision-making and strategy definition is taking place in a constantly shifting and unpredictable landscape of local, national, divisional, European, and global processes raises the stakes even further. It is thus time for the EU to make its information and consultation legislation more coherent, flexible and responsive to the realities of today's cross-border economy.

Turning to transnational information and consultation rights, in this year's analysis for the first time, SE Works Councils (SEWCs) are systematically integrated into the ETUI's longstanding analysis of EWCs. Until recently, under the glare of the Europeanisation of board-level employee representation in the European Company (SE), little attention was paid to the cross-border information and consultation processes foreseen in SE agreements. The analysis confirms that, despite their very different starting conditions, EWCs and SEWCs should be considered analogous institutions for the purposes of transnational information and consultation.

Furthermore, the monitoring of agreements signed over the years shows that as much effort is today being expended on renegotiation as on the negotiation of first-time EWC and SEWC agreements. That trade unions and employee representatives should expend such effort on the renegotiation of agreements is evidence of the usefulness of these institutions as well as of the impact exerted by the slow – but still incomplete – improvements in the legislative references. There is indeed – certain noble phrases in the Recast EWC Directive notwithstanding – still a long way to go until EWCs and SEWCs enjoy adequate access to justice and to the law.

Despite some changes in legislation, the coverage of board-level employee participation remains fairly widespread, although rights or coverage in this area have been curtailed in several countries (an exception being France where, on the contrary, some progress has been made). At the same time, the European Company (SE) and the application of the cross-border mergers Directive have opened up new arenas for cross-border cooperation and coordination amongst employee representatives: the resulting internationalisation of board-level representation offers new opportunities to develop this form of workers' participation into a genuinely European instrument. Indeed, the application of the cross-border mergers Directive must be monitored carefully, to assist trade unions in optimally supporting their representatives on these boards as well as on the boards of SEs.

Finally, the potential contribution of a stakeholder orientation in corporate governance has been left woefully underdeveloped, as a review of recent company law and

sustainability performance indicators shows. In the light of the recognition that the financial crisis was largely caused by a misguided reliance on shareholder value, the European Commission has missed the opportunity to strengthen the development of an alternative inclusion of stakeholder interests as a guarantor of long-term stability and social and environmental sustainability.

In the light of the challenges facing the European Union, its workers and its companies, it is clearly time to move forwards rather than backwards and to create a socially responsible and robust social dimension to the single market, one that is able to engage the interest, as well as the active commitment, of its citizens and its workers.

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