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**Labour Administration and Inspection Programme
LAB/ADMIN**

**A comparative overview of terms and notions on
employee participation**

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International Labour Organization – Geneva

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Preface

Workers' participation, employee involvement, information and consultation are topics of relevance for labour administrators. Procedures for information and consultation of employees and their representatives exist everywhere. They can be of a different nature and reflect, inevitably, the labour administration and industrial relations systems within which they are applied. There are countries where informal rules may be agreed between the social partners and others with legislative frameworks within which employee participation forms are developed. There is also another group of countries where the two approaches co-exist.

Presently, the increasing globalization of capital, product and labour markets means that the various forms of employee participation would need adaptation and changes to the various challenges. With the assistance of Professor Gianni Arrigo of the University of Bari, we have prepared this overview on the terms and notions related to employee participation. It provides a comparative overview on the law and practice in the various countries that the reader may find useful when dealing with the subject of information and consultation.

Over the years, the ILO has devoted considerable attention to studying the idea and practice of employee participation in different regions of the world. In fact, several studies and various international, regional and national discussions on the subject have demonstrated that a wide diversity of notions, rules, institutions and practices exist. In this regard, such diversity makes it nearly impossible to reach an international consensus on the term, of "employee participation".

In the following pages, the reader will find a series of different notions, models and practices that apply to "employee participation". Although the listings are not strictly alphabetically ordered, this document can be used as a *glossary*. It provides substantive entries and also cross-references between various regulations, rules, practices and notions in different countries.

Conceived as an education tool, this storehouse of practical definitions also provides practitioners and scholars with advice and suggestions that may be taken into account in their day-to-day work. Legal specialists, government officials, workers and employers will find recognised and accepted notions and practices on employee participation. All in all, this comparative overview aims to contribute to the overall development of a sound labour administration system including an industrial relations one.

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Introduction

1. The administration of labour: the role of employee participation

Within the wide meaning of the “administration of labour”, the application of measures to ensure an effective functioning of models of information and consultation at the workplace is of paramount importance. In addition to the various forms of health and safety committees (which will be addressed in a separate publication), there is a large variety of models dealing with “workers’ participation” or “employee involvement”. It is a component of the role that employees play when participating in the determination and application of employment and working conditions, including safety measures. This, in line with those general measures that should be taken in Member States to ensure appropriate representation and consideration of the “system of labour administration” in the bodies and/or machinery in which decisions are taken, and measures of implementation are devised with respect to labour policies.

In itself, the subject of employee or workers’ participation in the enterprises’ decisions has for many years been of interest to the ILO in the production of regulatory provisions and the analysis of application experiences. This interest is demonstrated by the various Conventions and Recommendations adopted by the ILO on the subject of participation¹, and the numerous studies and reports it has published².

This comparative overview³ of terms and notions related to employee participation takes these into account. It is intended to provide a wide-ranging and rational overview of the different systems of workers’ participation in decision-making in enterprises

¹ See paragraphs 7 and 12. For an analysis of the Conventions and Recommendations on workers’ collective rights and their incidence in the various industrial relations contexts, see A. BRONSTEIN, *En aval, des normes internationales du travail: le rôle de l’OIT dans l’élaboration et la révision de la législation du travail*, in J.C. JAVILLIER, B. GERNIGON (éd.), *Les normes internationales du travail: un patrimoine pour l’avenir: Mélanges en l’honneur de Nicolas Valticos*, Geneva, ILO, 2004, 219-249; G. CASALE, *Globalisation, Labour Law and Industrial Relations: Some Reflections*, *Bulletin for Comparative Labour Relations*, 55; G. CASALE, J. TENKORANG, *Public service labour relations: A comparative overview*. Paper No. 17, International Labour Office, Geneva, August 2008; A. PANKERT, *Social Concertation in Austria: What Does It Consist of and Why Does It Still Work after 30 Years?*, *Labour and Society*, 12, 3, 1987; J. SCHREGLE, *Forms of Participation in Management*, *Industrial Relations*, 1970, 9, p. 117-122. Id., *Workers’ Participation in Decisions within Undertakings*, *International Labour Review*, Vol. 113, 1976, 1; and H. VILLASMIL PRIETO, *Relaciones Laborales en Tiempo Presente*, Caracas, Universidad Católica Andrés Bello, 2007.

² The ILO has dedicated seminars and conferences of worldwide relevance to the issue of workers’ participation since the second half of the 1960s, including Geneva (1967) and Belgrade (1969). It has also published the first comparative study on the subject. See, in particular, ILO, *Participación de los trabajadores en las decisiones que se adoptan en las empresas*, Documentos de una reunión técnica, Ginebra 20-29 de noviembre de 1967, Serie Relaciones de Trabajo, num. 33 (Geneva, 1969).

³ When preparing this comparative overview of terms and notions on employee participation, the authors refer to and use data and definitions published in works by the ILO, the EU agencies, and many other sources. In particular, see R. BLANPAIN (ed.), *International Encyclopaedia for Labour Law and Industrial Relations*; Kluwer, Deventer, Netherlands (large number of monographs covering many countries).

(understood in the widest sense of the term, i.e. as producers of goods and services, of a public or private nature, to which employed persons lend their services). This comparative overview also seeks to provide useful considerations to give readers a better understanding of a subject that is notable for its conceptual and regulatory complexity, especially in these recent times, characterized by the economic and financial crisis.

2. Notions of workers' participation, industrial democracy and economic democracy: elements of continuity and discontinuity. Origins and early developments of the idea of participation.

In the various national systems of industrial relations considered in this study, the term “workers’ participation” does not have a single, unambiguous meaning nor do the related notions of industrial democracy and economic democracy, concepts with which “workers’ participation” shares some principles and elements. Indeed, the three notions are often used as synonyms or, more precisely, as alternative terms for a non-unitary and diverse set of workers’ rights originating in law or in agreements, or in both. The opinion that participation “represents a technically indeterminate category of multiple meanings”⁴ is widely held. But in fact, the meaning of “participation”, like that of economic or industrial democracy, varies considerably from one country to another.

The actual definition of “workers’ participation” includes diverse notions and disciplines. These correspond to the different degrees of “producers’ cooperation” that acquire significance in any given system of labour administration, including industrial relations. Whatever the source (law and/or contract), participation seems in most countries to be based on a distinction of roles and powers between employers and employees, each with their own responsibilities. This is true even when it gives rise to more direct involvement of workers (and/or their representatives) in company decisions.

The forms and models of participation are conditioned by diverse factors such as: the system in place for labour administration, the industrial relations system, models of workers’ representation, the (public or private) nature of the employment relationship, the organizational dimension of enterprises and markets and the relationship between legislative and contractual sources. The functional diversity of representation and bargaining systems in different countries is a result of diverse trade unions’ traditions and practices, of collective action at the level of individual firms, industrial sectors and of the

⁴ M. D’ANTONA, *Partecipazione dei lavoratori alla gestione delle imprese*, in Enciclopedia giuridica Treccani, Roma 1990. For a reconstruction of labour law issues connected with workers’ participation at the international level, see also; R. BLANPAIN, *Representation of employees at plant and enterprise level*, Dordrecht, Martinus Nijhoff, 1994; T. KOCHAN, *Worker Participation and American Unions: Threat or Opportunity?*, with H.P. Katz and N. Mower, Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 1984; T. KOCHAN, T.H. KATZ, R. MCKERSIE. *The Transformation of American Industrial Relations*. New York, NY: Basic Books, 1986; M. Weiss, *Trade Unions, Workers' Participation and Collective Bargaining in Germany and the EU*, in: J. G. Getman, R. Marshall (ed.), *The Future of Labor Unions, Organized Labor in the 21st Century*, 2004, p. 201 ff; *Id*, *The European Community's Approach to Workers' Participation: Recent Developments*, in: A. C. Neal (ed.), *Social Policy*, 2004, 39; J. HYMAN, B. MASON, *Managing Employee Involvement and Participation*, London: Sage, 1995; G. STRAUSS, *Workers participation in management: An international perspective*, in *Research in Organisational Behavior*, Vol. 4, 1982, BM. Staw and LL. Cummings (Eds). London: JAI Press; M. WEISS, M. SEWERYNSKI, *Handbook on employee involvement in Europe*, The Hague, Kluwer Law International, 2004, For commercial and company law aspects of participation, see M.J. BONELL, *La partecipazione dei lavoratori alla gestione delle imprese* Enciclopedia Giuridica Treccani, Roma 1990. (See Table 1)

more general economic policy. Significant differences also remain in a region like the European Union, in spite of the noticeable convergence of national legal systems deriving from community directives concerning employees' information and consultation.

“Workers’ participation” is therefore, a wide and complex category that includes regulatory concepts and techniques that can be numerous and mutually diverse. Through these, workers – mainly through their collective representatives – seek to influence certain decisions made by the enterprises employing them and may also share in some of the economic and financial consequences of these decisions. Another interpretation, which focuses on more general social aspects, looks at workers’ participation as concerning the “possibility” and experiences, as well as the organs and procedures that are intended to “modify or improve their employment relationship and conditions and, in many cases, also their socio-economic conditions in the society”. In the latter and much wider meaning, participation also includes collective bargaining (particularly at the enterprise level), understood as an instrument that can condition, sometimes decisively, the enterprise’s decisions and functions⁵.

However, this “all-inclusive” notion of participation, which also encompasses collective bargaining, does not meet with wide consensus among scholars. While acknowledging that bargaining and participatory methods have various points of contact, and often interact, many labour administration and industrial relations specialists underscore the clear separation between, and functional autonomy of, collective bargaining and participation. From this perspective, collective bargaining – as a methodology regulating social dynamics – is different from participation, especially as it is based on a distinction between the parties’ interests and mutual freedom of action, and therefore on the freedom of one party to resort to forms of pressure or collective conflict to oppose or influence the decisions and choices of the other. This element is extraneous and foreign to the participatory method, where the influence or conditioning of the choices of one party is always based on a “programme” of mutual cooperation in the context of which the parties act “in a spirit of cooperation” (to use a term adopted by European Community Directive 94/45 on European Works Councils (EWC), subsequently incorporated in other directives concerning employees’ involvement).

But we should not underestimate the fact that in some countries participation and collective bargaining share a number of organizational and procedural elements. One example is involvement: as we know, in systems that adopt single-channel models of worker representation, there is no distinction between parties holding information and consultation rights and those entitled to engage in negotiations.

But even in double-channel systems of representation, links exist between collective bargaining and participation. In such systems, trade unions, which are the sole holders of collective bargaining power, exert a notable influence in elections for bodies representing workers in the enterprise. In so doing, however, they observe a clear distinction with the roles and functions of worker representatives in the enterprise, who are the sole holders of information, consultation and co-determination rights (*infra*, § 7). In a number of national

⁵ See K.F. WALKER, *Workers’ participation in management. Problems, practices and prospects*. International Institute for Labor Studies, Bulletin 12, 1975, 9, ss. “Workers’ participation in management occurs when those below the top of an enterprise hierarchy take part in the managerial functions of the enterprise”, specifying that “it follows from the neutral definition of participation as taking part in managerial functions that workers’ participation in management is not restricted to special institutions commonly thought of as participative, such as works councils and similar bodies ... [it] may take the form of activities such as restrictive practice, strikes and other unilateral actions by workers whereby they take part in the exercise of authority and influence the managerial decisions and functions in the enterprise”. Along similar lines, BAGLIONI G., *Democrazia impossibile? Il cammino e i problemi della partecipazione nell’impresa*, Il Mulino, Bologna, 1995.

labour administration systems, it is collective bargaining that creates and governs forms of employee involvement and remuneration systems where workers participate in the profits or risks of the undertaking.

The notions of “workers’ participation”, “economic democracy” and “industrial democracy” – sometimes used indiscriminately and inappropriately as synonyms – are different today from those elaborated in several industrialized countries at the end of the 19th century⁶. Originally characterized in terms of value, as reform objectives (or elements of reform programmes) of a socialist or labour stamp, they have gradually cut free from these roots⁷ and become integrated in labour administration and industrial relations systems, distinguishing themselves at a functional (“participatory industrial relations”) and/or structural (the “participatory sub-system” of industrial relations) level.

The idea of involving workers in decisions concerning the life of the enterprise was applied in various ways in the more advanced social doctrines of the 19th century. However, it was only in the years following the First World War that the idea of participation took concrete form in instruments which, in view of their legal significance and scope of application, touch on the collective sphere of workers’ rights. Apart from collective bargaining and cooperative forms of work organization, workers’ participation took on autonomous organizational and legal forms thanks to the establishment in various European countries, through legislative provisions and/or collective agreements, of workers’ representative bodies such as works councils or committees representing both workers and employers.

It is useful here to mention the United Kingdom’s committees, in which the Whitley Commission played a role in creating, and which were established in municipal companies in 1918. Also worthy of note are the laws on works councils issued in Austria (1919), Germany, Czechoslovakia (1920) and Russia (with a decree of 23 April 1917 recognizing some forms of factory committees).

In the 1920s, workers’ participation was a more current idea and objective in a limited number of European countries, such as Austria and Germany. In the German trade union experience of the 1920s, the democratization of economic relations through workers’ participation looked set to ensure the completion of political democracy. This had remained as a formal statement in the Weimar Constitution, to the effect that “the ideal of socialism cannot take concrete form unless the economy is managed and directed democratically. The essence of democracy lies in participation”⁸. This proposal goes well beyond any limits created by the mingling of, and contradictions between class conflict and cooperation between capital and labour, or between the value of the term “democracy”

⁶ To see participation in the framework of the three major “perspectives” of labour emancipation (“antagonist”, “evolutionist” and “integrationist”) delineated by 19th century political-social thinking, see A. ACCORNERO, *La partecipazione come prospettiva emancipatoria del nuovo secolo?*, in *L’impresa al plurale*, n.3/4, 1999, Milano, p. 31.

⁷ See Sidney and Beatrice WEBB, *The History of Trade Unionism*, new ed. (1920; London: Longman, 1950); A. FLANDERS, H.A. CLEGG (eds.), *The System of Industrial Relations in Great Britain: its History, Law and Institutions*, (Oxford: Basil Blackwell, 1954), 337-38; E.H. HUNT, *British Labour History, 1815-1914* (London: Weidenfeld and Nicolson, 1981).

⁸ F. NAPHTALI, *Wirtschaftsdemokratie. Ihr Wesen, Weg und Ziel* (1928); on Naphtali’s “Economic Democracy”, project for the Adgb (German trade union confederation) congress of 1928, see W. LUTHARDT (Hg.), *Sozialdemokratische Arbeiterbewegung und Weimarer Republik. Materialien zur gesellschaftlichen Entwicklung 1927-1933*, Bd. 2, Frankfurt. M. 1978; G.E. RUSCONI, *La crisi di Weimar*, Einaud, Torino 1977, p. 176; see also G. CASALE, *European Works Councils and Industrial Relations in Europe: East-West Comparison* ILO, Budapest, 1999.

and the experiences of the “socialist republics” of the inter-war period. Its merit is that it helped define (not just theoretically) an organized counter-power to oppose the dominant position of entrepreneurs in individual enterprises and in the economy as a whole and to participate in the exercise of power.

However, the aspirations of the trade union movements of a number of countries, and the opening up of some national governments to institutional forms of workers’ participation other than collective bargaining, were already losing their impetus and vigour in the second half of the 1920s. The idea of participation was set aside, where it remained until the end of the Second World War. It was only then that workers’ participation once again began to occupy a prominent position in the trade union debate and in the labour administration agenda of several countries, with the establishment or re-establishment (in countries that had been oppressed by totalitarian regimes) of enterprise committees or work councils, through legislative or contractual provisions.

For example, it was in the early post-war years that the issue of workers participation was widely debated in the then Federal German Republic. The issue first took institutional form in the 1951 law establishing the system of equal representation of workers in the supervisory councils of major enterprises in the coal and steel sectors (*Montanmitbestimmungsgesetz*). In subsequent years, which coincided with the period of reconstruction and development in various sectors of the economy, several ILO Member States – including some developing countries – took a new interest in workers’ participation.

At the international level, workers participation became a major topic in the 1960s, much later than “collective bargaining”. The latter – as said above – was generally well understood as a concept before World War II. During the late 1940s and early 1950s, it started spreading not only in Europe but also in other parts of the world. The notion of workers’ participation made headway in some countries in Asia, Africa and Latin America. The political leaderships of such countries saw it as a labour-management form of co-operation. In fact, in the interests of national economic development, governments expected workers’ participation to overcome the traditional antagonism in the employee-employer relationship, replacing it with a form of cooperation or partnership.

In other parts of the world, for example in the United States, workers’ participation expanded through the introduction of new individual employment relationships which were characterized as “human relations”, a sort of a pre-figure to what it is understood today to be “employee involvement”. Likewise, in European countries, through works councils, trade unions’ committees or similar bodies, workers’ participation supported the general trend towards a growing voice for workers in enterprise decision-making. Currently, one national system of workers’ participation, which attracts the most attention, is the co-management system of Germany. In the past, especially in the former communist bloc, the workers’ self-management system in Yugoslavia attracted a lot of interest as well.

The above-mentioned developments had a growing influence on the ILO action and agenda (*see* paragraphs 6-7).

3. Economic democracy and industrial democracy

The notion and idea of “economic democracy” became historically relevant against a background of critical evaluation of the notion of democracy – as it is known and established in the Constitutional charters of the modern age – linked to the schema of political representation. Against the weakness or inadequacy of a purely formal model of democracy (like the merely formal proclamation of the equality of citizens before the law –

the corollary of equal participation in the exercise of popular sovereignty), the need for a “substantive democracy”⁹ was brought to bear. Starting from this radical criticism of the elements of formal democracy, the economic democracy programme aims to underscore that democracy cannot be divided from the economic structure in which it exists.

The wider concept (and ambitious programme) of “economic democracy” is not infrequently juxtaposed with the notion of industrial democracy¹⁰. Especially in the Anglo-Saxon experience, this notion starts from a non-organic set of theoretical foundations and includes a variety of mechanisms. These range from mechanisms typical of the defence of labour, dating from the early days of the workers’ movement (such as representation in factories, resistance funds, mutual aid associations, etc. which – as forms of “social organization” – concern associative democracy); or those intended to influence the “industrial process” itself through collective conflict and the valorisation of the bargaining method, which tends to absorb and, within itself, resolve the participatory aspects; and on to (the elaboration of) forms of workers’ participation in the governing bodies of commercial enterprises, with a view to “democratizing” employment relations within companies and “changing society” – mechanisms, which go beyond the negotiating method.

The term “industrial democracy” is fairly ample. According to one well-established body of opinion, it is correct to speak of industrial democracy only with reference to the formation and construction of powers that counter-balance those of management. For example, in the British experience this term embraces different concepts developed over several decades: from the theories of Sidney and Beatrice Webb, to the Trade Union Congress report of 1974, to the Bullock Report¹¹ (which remained incomplete after the conservative government led by Mrs. Thatcher came to power). The Bullock report most notably proposed workers’ participation in the boards of companies with more than 2000 employees, under a “2X + Y” formula indicating the employees (appointed by the unions) and an equal number of shareholders’ representatives (2X), who could co-opt people from outside the company (Y).

Until recently, this juxtaposition of economic and industrial democracy met with consensus – at least in theory –, owing to a sort of misunderstanding or change in the terminology. This, however, enables us to appreciate the complexity of the “theory” and “practice” of democracy in the workplace, in the economy and in society as a whole (industrial democracy, economic democracy and political democracy). These forms of expressing democracy seem to be linked by relations of continuity and causality: “where industrial democracy decides on the purposes and allocation of production in an entire industry, these decisions will necessarily influence (and be influenced by) national economic policy as a whole, which must necessarily engage with both production and

⁹ G. ARRIGO, *Il Diritto del lavoro dell’Unione Europea*, Volume II, Giuffrè, Milan 2001, p. 324.

¹⁰ In *The Rise and Fall of Economic Justice*, Oxford, Oxford University Press, 1985, C.B. MACPHERSON made the following distinction between *industrial democracy* and *economic democracy*: while the former “mainly concerns decisions regarding production (working conditions, production methods and purposes and allocation of production)”, the latter “mainly concerns the distribution of social assets throughout society”; this expression “should not be understood only as the distribution of earnings, but rather, and above all, as the distribution of powers and opportunities in the economic sphere”.

¹¹ Report of the Commission on Industrial Democracy, London, HMSO, 1977; O. KAHN FREUND, *Industrial Democracy*. *Industrial Law Journal* 1977, 6 (1): 65-84, P. DAVIES and Lord WEDDERBURN of CHARLTON, *The Land of Industrial Democracy*, *Industrial Law Journal*, 1977, 6(1):68-89.

distribution. Here, industrial democracy must agree with economic democracy and also with political democracy”¹².

A closer link operates in the other direction: economic democracy concerns the fair distribution, not just of the gross national product, but also of other social assets, including the possibility to enter well-paid and fulfilling jobs. One of the aims of economic democracy seems therefore to coincide with some of the objectives of industrial democracy. Continuity between economic and industrial democracy also consists in the fact that any participation in the economy of the enterprise requires a certain degree of participation in management decisions. The numerous proposals, legislative and otherwise, on economic and/or financial participation (not without the risk of confusion of roles, functions and spheres of participation and negotiation, and sometimes also of effectiveness) discussed in various countries place the emphasis on this aspect.

The formula of economic democracy, as manifested in the theoretical evolution and experience of some European national systems, in effect synthesizes the essential terms of democracy, labour and the enterprise. This formula essentially poses two questions: a) whether and in what form economic forces are present and active in the structures of the democratic system, and whether there are disparities or distortions between legal provisions (including those of Constitutional relevance) and actual circumstances; and b) whether the principles and rules of democracy are exercised and effective in the encounter between entrepreneurial initiative and organized labour.

4. Workers’ participation and producers’ cooperation. Interest of workers and enterprises.

Workers’ participation has been applied in very different ways and contexts throughout the world, with the law or collective bargaining playing a role of varying degrees of incisiveness in governing workers’ rights.

In Europe, workers’ participation in management extended in various ways during the third quarter of the twentieth century, and in the last quarter the business enterprise in Europe evolved into a pattern of organization that may best be designated as “the participatory enterprise.” This evolution involves changes in conceptual models of the enterprise and a continued effort to resolve certain practical problems that appear to be inherent to participation. Unlike classical models of organization, the participatory enterprise is a coalition of conflicting and cooperative interests. Experience shows that participation does not remove, but changes the character of human relations and interaction.

In the European Union context, elementary forms of workers’ participation, understood as information and consultation procedures of employees, when certain decisions are taken by the enterprise (such as those concerning collective redundancies, transfers of undertakings and workers’ health and safety protection), spread throughout the European Union (EU) member states from the mid-1970s. While this was in part thanks to a series of legislative provisions issued by the EU institutions, it should however be noted that in many European countries, the idea, culture and practice of employee participation came into being and matured before – and independently of – such provisions.

Indeed, we can say that it was the affirmation and consolidation of participatory models in various European countries that influenced the EU’s legislative output. Forms of

¹² C.B. MACPHERSON, *op. cit.*; see also, H. CLEGG, *Trade Unionism under Collective Bargaining*, Oxford, Blackwell, 1976.

workers participation, some of them complex and structured, in the decisions of companies and commercial undertakings can be found in some European countries well before the 1970s. The result of effectiveness of laws and/or agreements depends on the degree of evolution and stability of the labour administration and industrial relations system and of the strength and representativeness of the social partners.

Irrespective of the degree of evolution and stability of the labour administration and industrial relations systems, the various models of workers' participation do however have one common feature. They are conceived not as "stand-alone" elements but as parts of a complex system of collective relations in the enterprise. Starting from a minimum core of information rights for workers and/or their representatives in matters most directly concerning them (such as workplace health and safety and the protection of employment and working conditions in crisis or restructuring conditions), their aim is to influence the most crucial management decisions.

We need only observe that, without acting as substitutes for models of collective relations based on the conflict/negotiation combination, the forms of participation tested in various countries are an additional resource for trade unions in addressing the difficulties they often encounter in "acquisitive" collective bargaining. In this instance, the meaning constitutes bargaining designed to improve on previous regulatory provisions and to counter enterprises' tendency to adopt forms of employee involvement understood solely or mainly as human-resource management techniques. At the same time, participation is considered as being functional to the economic system's need for competitiveness, since it is a useful tool for enterprises to reduce disputes and, with the prior consent of workers and their representatives, achieve the adaptive and flexible technical-organizational conditions necessary to compete or even simply survive in today's market.

Cooperation by employees in the company's production process and performance is considered important because it enables organizational systems that need the active contribution of all those interested in their continuous improvement to function smoothly. This goes beyond mere consensus or "social peace". Cooperation is vital to obtain that flexibility which is the pre-condition for the enterprise's "re-adjustment" and competitiveness. In this respect it is a "collective asset": one that is common to both enterprise and workers.

In some countries and in certain sectors, management has sought to obtain this cooperation through a direct relationship with workers ("direct participation"¹³), sometimes bypassing their representatives. However, in the last two decades, many companies have considered it impractical to isolate the unions, which remain strong enough, in such an eventuality, to be fairly obstructive. Thus, an openness to participatory "dynamics" or "practices", which goes by different names and is organized in different ways, is becoming more relevant for enterprises in a crisis situation. This goes beyond any intention – sometimes successful – on their part to "de-unionize" or "individualize" relations with employees. An alliance with unions and workers is also considered particularly advantageous to companies during periods of profound restructuring. At such times they are particularly vulnerable and in need of social legitimization or even support with respect to the public institutions they are asking to provide financial support and the "excessive" workers who have to bear the cost of the re-adjustment.

¹³ Participation can be *direct* or *indirect*, and *passive* or *active*: it depends on the way it is built into an organization. *Direct participation* involves the employees themselves, whereas *indirect participation* takes place through intermediary employee representative bodies, such as works councils or trade unions. On this point, see above, footnotes 1, 3.

5. Economic and financial participation

A further variation of the concept of participation is that of economic and financial participation. The idea of workers' participation in the economy (and more specifically the enterprise economy) was re-launched in several countries in the early 1980s against the background of the debate on the "share economy"¹⁴. This revisited a project dating from the 1920s-30s (and subsequently re-appearing in various countries in the 1950s and '60s) and is based on the reformist parties and unions' need to redefine their political mindset with respect to the classic models of economic planning and the incipient success of neo-liberalist theories and programmes.

Difficulties in expanding (but sometimes of asserting) what might be called the "classic" experiences of industrial democracy, derived from or supported by both contractual and legislative sources, undoubtedly contribute to the rebirth of the idea of workers' participation in the economy. The need thus arises to extend the notion of democracy to the economic sphere¹⁵, as affirmed on several occasions in the 1990s by the international union movement.

The cultural roots and foundations of this project are therefore progressive; what varies is the extent and sphere of reference of economic participation. For some¹⁶, economic democracy can be structured effectively in the economic macro-system. Others¹⁷ would prefer a pathway free from "political" implications – a goal that would be achieved by matching economic democracy with a more democratic management of individual enterprises (bordering on self-government), without paying heed to its macro-economic implications and effects.

In regard to economic participation in particular, we should remember that in many countries the capital reallocation processes induced by privatization policies and globalization open up new prospects for employee participation in the capital and governance of the enterprise: on the one hand, the transformation of the ownership and governance structure with the diffusion of shareholdings; on the other hand, the growing importance of "human capital" in companies' value creation. These are the factors driving towards overcoming the traditional "subjective" division between capital and labour from the point of view of responsibility for guiding the enterprise and related sources of revenue, such as profits for capital, or employment income for labour.

The allocation of workers' savings is also developing along these lines. This applies most notably to social insurance savings, which are tending to shift from strongly public

¹⁴ We need only note here the contributions of M.L. WEITZMAN, *The Share Economy: Conquering Stagflation*, 1984, Harvard University Press, Cambridge, MA; J.E. MEADE, *Agathopia: The Economics of Partnership*, Aberdeen. The David Hume Institute. 1989; and P. SANTI, *Economia della partecipazione e relazioni industriali*, *Giornale di Diritto del lavoro e di Relazioni Industriali*, 43/1989. For a critical reconstruction, see M. CARRIERI, 1991, *title cit.*, p.552. From a different perspective see: O. ERMIDA URIARTE, *El protagonismo de los consejos de salarios en el sistema laboral uruguayo* in *Derecho Laboral*, Enero-Marzo 2008, FUC, Montevideo; H. VILLASMIL PRIETO, *Relaciones Laborales en Tiempo Presente*, *title cit.*

¹⁵ Which is conceptually linked to the programme of "Economic Democracy", F. NAPHTALI, *cit.*

¹⁶ J.E. MEADE, 1989, *title cit.*

¹⁷ R.A. DAHL, *A Preface to Economic Democracy*, University of California Press, Berkeley, 1986.

intermediation – through the public debt – and a pay-as-you-go pension system¹⁸ to forms based more closely on the stock market, especially from a long-term perspective.

These factors have created a framework in which employees' shareholdings have acquired a "physiological" association in the functioning of the market economy, not so much in terms of redistribution (of wages) but rather of creating an intrinsic value for the enterprise's functions. It is no coincidence that the most significant employee shareholding experiences have developed in the Anglo-Saxon countries, where the growth in employees' participation in companies' capital has been encouraged through specific incentive policies. In the most market-oriented models, characterized by the prevalence of public companies and "institutionalized" forms of managing workers' savings, employee shareholding has played a growing role in pursuing company growth strategies that are consistent with the enhancement of human resources in terms both of employment and of increasing workers' overall income.

6. The notion of workers' participation in the ILO language

The term "workers' participation", as used by the ILO, usually refers to the enterprise level¹⁹. On a closer look, formal ILO language prefers the more precise and restrictive wording "workers' participation in decisions within undertakings" to "workers' participation". For the ILO, then, the linking of participation to decision-making is important because it excludes, for example, schemes of workers' participation (involvement) in the results of the enterprise, such as the various forms of profit sharing. In other words, the expression "workers' participation" is understood by the ILO as "workers' participation in decision-making at the enterprise level". It can be seen from the text of the various international standards that workers' participation encompasses collective bargaining. Although the term workers' participation or its equivalent has different meanings in different countries, it is still rarely used in its widest possible sense in the law and practice of the majority of countries. The existence of such a range of meanings should encourage scholars and practitioners to further develop the notion with a view to achieving international consensus on the actual meaning of the term "workers' participation". From all the studies and research carried out so far, one major conclusion can be drawn: in the majority of countries we see a common trend for workers and their representatives to become increasingly associated with decision-making at the enterprise level.

It is the form, the way in which such an association of workers and their representatives is achieved, which varies substantially from one country to another. The debate is still open; nevertheless we may advance some hypotheses concerning recent trends in this area. For example, a form of cultural change on the part of trade unions and workers' representatives has been taking place. Indeed, there is a greater awareness of the

¹⁸ A. OJEDA AVILES (ed.), *La Seguridad Social en el Siglo XXI*, (Murcia, Ediciones Laborum, 2008).

¹⁹ In the ILO language, the involvement of workers' organizations with policy making at the macro-level (that is to say, the branches of economic activity that affect the national economy as a whole) is usually called "consultation and cooperation", not "workers' participation". In fact, the title of the ILO Recommendation No. 113 on Consultation and Cooperation between Public Authorities and Employers' and Workers' Organizations at the Industrial and National Levels tells us exactly how the ILO uses this terminology. In addition, tripartite or bipartite consultation and cooperation in social and economic policy issues are integral elements of the ILO tripartite philosophy and structure. See also G. CASALE, *Workers' Participation and the ILO Position. Some Reflections*, in M. Weiss, M. Sewerinsky, *Handbook on Employee Involvement in Europe*, Kluwer, The Hague, 2005.

internationalization of company strategies and more information on labour relations and working conditions, as well as new arrangements across countries. This is creating a new mentality on participation, which cuts across the ILO countries.

In some countries, networks of workers' representatives have been created, a development which may bolster coordination and joint action. There is also a growing tendency in some countries and regions to establish group-level representative bodies, which shows a trend toward centralization of company-level labour relations. This could better enable workers' representatives to gather information and understand company strategy and thus eventually render their participation in decision-making more meaningful. These changes will probably be most significant in countries where workers' participation is already well advanced.

In this regard, the international instruments provide a framework within which workers' participation might be taken forward while also providing a source to regulate procedures in this delicate area.

The studies and research conducted on workers' participation show that it has been applied in fairly diverse ways in the various ILO member countries, through legislative provisions and/or collective contracts. A comparative analysis shows that the activation of participatory processes is more effective and significant in systems (whether national or "regional", such as the European Union's) that adopt ad hoc legislative provisions, which are supported and made more effective by appropriate support measures in the political-institutional sphere. Such measures not infrequently implement agreements reached by the social partners through consultation.

Regulating forms of workers' participation in the management of enterprises by legislative means has an important stabilizing function because it places information, consultation and negotiating procedures on an objective and generally obligatory footing. In a large number of economic sectors, such procedures are, not infrequently, already established through collective bargaining. For this type of enterprise, new forms of representation that can satisfy and adequately safeguard the interests of workers in the sphere of the enterprise's activity are generally adopted alongside the traditional ones.

7. International Labour Standards dealing with workers' participation

Recommendation No. 94 (1952) on Cooperation at the Level of the Undertaking stresses the notion that appropriate steps should be taken to promote consultation and cooperation between employers and workers at the enterprise level on matters of mutual concern. These matters, however, should not fall within the scope of issues to be handled using collective bargaining machinery, or any other machinery designed to determine the terms and conditions of employment (paragraph 1). The Recommendation makes a clear distinction between the role of collective bargaining and that of consultation. The text emphasizes that consultation and cooperation should be facilitated within the enterprise by encouraging voluntary agreements between the parties, or by promoting laws and regulations regarding the establishment of consultation and cooperation bodies. These laws or regulations should also determine the scope, functions, structure and methods of operation for such bodies, as appropriate to national conditions.

Fifteen years after the adoption of Recommendation No. 94, it became evident that additional standards were called for to promote communication at the enterprise level. The ILO, therefore, took the decision in 1967 to adopt Recommendation No. 129 on Communications within the Undertaking. This Recommendation is composed of fifteen paragraphs and is divided into two main parts: the first deals with general considerations,

while the second is concerned with more specific elements related to the “communications policy” that should be implemented within the enterprise.

In the spirit of Recommendation No. 129, each Member State should bring the provisions of the Recommendation to the attention of persons, organizations and authorities that might be concerned with establishing policies regarding labour-management communications at the enterprise level. Both workers and management recognize the importance of maintaining a climate of mutual understanding and confidence within the enterprise, since this boosts its efficiency and the aspirations of workers. Such a climate should be promoted through the rapid dissemination and exchange of information relating to the various aspects of working life in the enterprise. Therefore, in consultation with workers’ representatives, management should take appropriate measures to apply an effective policy for communicating with them and the workers themselves (paragraph 2). However, an effective policy of communications should also ensure that information is provided and consultation takes place between the parties concerned before management takes decisions on issues of major interest for the workers. Furthermore, the disclosure of information should not cause damage to either party (paragraph 3).

Recommendation No. 129 also reiterates that the method of communication between management and employees should in no way diminish the principle of freedom of association. In other words, such communications policies should not cause prejudice to freely chosen workers’ representatives or their organizations, or curtail the functions of the workers’ representative bodies. This is important since, in practice, it is often difficult for workers’ representatives to enforce their right to receive information, especially for collective bargaining purposes. Faced with this reality, the Recommendation introduces a set of principles that should guide both employers’ and workers’ representative organizations in establishing, implementing and maintaining effective communication policies. For example, policies should be adapted to the nature of the enterprise, taking into account its size and composition and the interests of its workforce. To fulfil this objective, communication systems in enterprises should be designed to ensure genuine and regular two-way communication. Such communication is especially important between the representatives of management and workers, including dialogue between trade union representatives and top management personnel, such as the head of the enterprise or the human resources director.

The most important aspect of communications policy is the selection of the appropriate methods for communicating and exchanging information. These may include the use of the following media: a) meetings for the purpose of exchanging views and information; b) media aimed at given groups of workers, such as supervisors’ bulletins and personnel policy manuals; c) more widely distributed media, such as publications (e.g. house journals and magazines, newsletters, information and induction leaflets), notice boards, annual or financial reports presented in a form understandable to all the workers, employee letters, exhibitions, plant visits, filmstrips, slides, radio or television; d) mechanisms that allow workers to submit suggestions and express their ideas on questions relating to the operation of the enterprise (paragraph 13).

In the practice of labour management relations, the issue of disclosure of information is gaining in importance. At the enterprise level, top management is usually reluctant to disclose information to workers, claiming that operational information is too delicate or too important. Nonetheless, management should, as far as possible, provide information on all matters of interest to workers in relation to the operation and future prospects of the enterprise, and to the present and future situation of the workers themselves. Such information should be addressed either to workers or their representatives – taking into account the nature of the information, in so far as its disclosure, as stated in the Recommendation, “will not cause damage to the parties” (paragraph 15).

The Recommendation examines in more detail the kind of information that management should be able to communicate to workers and their representatives, for example: information on general conditions of employment, including engagement, transfer and termination; job descriptions and the placement of particular jobs within the structure of the undertaking; training opportunities and prospects for advancement within the enterprise; general working conditions; occupational safety and health regulations and instruction on the prevention of accidents and occupational diseases; procedures for the examination of grievances, the rules and practices governing the operation of such procedures, and the conditions for recourse to them; personnel welfare services, including medical care, canteens, housing, leisure, savings and banking facilities, etc.; social security or social assistance schemes within the enterprise; the regulations of national social security schemes to which the workers are subject by virtue of their employment in the enterprise; the general situation of the enterprise and prospects or plans for its future development; the explanation of decisions which are likely to have a direct or indirect effect on the situation of workers in the enterprise; and methods of consultation, discussion and cooperation between management and its representatives and the workers and their representatives (paragraph 15).

Finally, information provided to employees should make express reference to any issues that are the subject of a collective agreement concluded at a level beyond that of the enterprise.

As mentioned above, workers' participation is also addressed in Recommendation No. 130 of 1967 on the Examination of Grievances. This deals with a special category of labour disputes, that is to say grievances of one or several workers against specific aspects of their employment conditions or labour relations. According to paragraph 1 of the Recommendation No.130, this international standard may be implemented through national laws, regulations, collective agreements, work rules, arbitration awards or any other method consistent with national practice, as appropriate. The Recommendation states that any worker should have the right to submit a grievance without suffering prejudicial consequences, and to have it examined according to appropriate procedures. Furthermore, workers should be able to submit such grievances either individually or jointly with other workers. The grounds for a grievance may be any measure or situation that concerns the employer-worker relationship or that is likely to affect the conditions of employment of one or more workers in the enterprise, if the situation appears to be contrary to the provisions of a collective agreement, individual employment contract, national laws or other rules.

In this regard, it should be noted that collective claims for changes to the terms and conditions of employment are outside the scope of Recommendation No. 130. Nonetheless, national law and practice may determine when a case is to be dealt with under grievance procedures, and when, instead, it is to be treated as a general complaint and handled through the collective bargaining process. When grievance procedures are established through collective agreements, the parties should be encouraged to promote settlement using those procedures and to abstain from any action, which would prevent them from functioning effectively.

As far as possible, grievances should be settled within the enterprise, using effective procedures that are adaptable to the conditions of the country, industry or area of economic activity, as well as to individual enterprises. The procedures should also provide the parties with every possible assurance of objectivity, while allowing them the freedom to choose any other legal method for dealing with a specific grievance. Therefore, the Recommendation does not limit a worker's right to apply directly to the competent labour authority, labour court or other judicial body with respect to a grievance, where such right is recognized under national laws and regulations (paragraph 2-9).

It might be useful, in this context, to highlight the various elements that form the basis of grievance procedures in any given enterprise (paragraph 10-16). These are:

- a) An attempt should be made initially to settle the grievance directly between the worker or group of workers and their immediate supervisor;
- b) Where an attempt at settlement has failed at the initial level, the worker should have the right to have the case considered at a higher level, depending on the nature of the grievance and structure of the enterprise;
- c) Grievance procedures should be so formulated and applied that there is a real possibility at each step for the dispute to be settled;
- d) Grievance procedures should be rapid and simple;
- e) Workers concerned in a grievance should have the right to take part directly in the grievance procedure. During the procedure, workers may be assisted or represented by a trade union representative or any other person of their choosing, in conformity with national law and practice;
- f) Employers should have the same right to be assisted or represented by an employers' organization or by any other person of their choosing;
- g) No co-worker who assists or represents an aggrieved worker during the examination of his or her grievance should suffer any prejudice on that account;
- h) Workers concerned in a grievance, as well as their representatives if they are co-workers in the same enterprise, should be allowed sufficient time off to participate in the grievance procedure, without loss of remuneration;
- i) If the parties consider it necessary, minutes of the proceedings should be drawn up by mutual agreement. Copies of the minutes should be made available to both parties to the dispute;
- j) The grievance procedure and practices governing it should be brought to the knowledge of the workers;
- k) Any worker who has submitted a grievance should be kept informed of the steps being taken under the procedure, and the action taken on the grievance.

These are the main elements that should be included in any system of grievance procedures. In practice, however, in some situations a grievance cannot be settled at the enterprise level, in spite of all the efforts made by both parties. In such cases, settlement should be possible through various other means, which may include procedures specified in collective agreements, voluntary conciliation and arbitration procedures jointly agreed by the parties, conciliation or arbitration services provided by public authorities, a labour court system or other judicial body or any other procedure that may be considered appropriate under national conditions. In short, workers should have every possibility to reach a final judgment concerning their grievances.

With Convention No. 135 and Recommendation No. 143, the ILO adopted international labour standards concerning the protection and facilities to be accorded to workers' representatives in the enterprise. These international instruments may be considered supplemental to the terms contained in ILO Convention No. 98 of 1949 on the right to organize Collective Bargaining in matters concerning workers' representatives.

Under Convention No. 135, workers' representatives are those recognized as such under national law or practice. Such persons may be trade union representatives or freely elected representatives of the workers of an enterprise. The specific types of workers' representatives entitled to protection and national law, collective agreements, other national regulations, or court decisions may specify facilities.

Convention No. 135 specifies the following types of protection and facilities to be provided to workers' representatives at the enterprise level: effective protection against any act prejudicial to them, including dismissal arising from their activities as representatives, union membership, or participation in union activities, insofar as their actions are in conformity with existing laws, collective agreements, or joint agreements (Art. 1); such facilities as may be appropriate for the prompt and efficient functioning of the representatives, in keeping with the characteristics of the industrial relations system of the country and the needs, size and capabilities of the enterprise, without impairing its efficient operation (Art. 2).

In the spirit of the Convention, appropriate measures should be taken to ensure that the existence of elected representatives outside trade union structures is not used to undermine the position of trade unions or their representatives, where both exist in an enterprise. Article 5 specifies that cooperation between trade unions and other types of representatives should be encouraged. In order to achieve such cooperation, any member State may apply the provisions of the Convention through national law, regulations, collective agreements, or in any other manner consistent with national practice. In addition, Recommendation No. 143 includes detailed provisions that may serve as a guide for countries in implementing the facilities and protective measures that workers' representatives need in order to carry out their activities in a free and independent manner. In particular, it provides that workers' representatives should be given time off as necessary to carry out their representative functions in the enterprise, without any loss of pay or other benefits. Provisions on employee participation can also be found in other international labour standards. For example, after the adoption of Recommendation No. 119 in 1963, significant developments in law and practice occurred in many countries regarding issues of employment termination. These developments were especially related to the economic difficulties and technological changes which many countries had begun to experience.

Two further instruments were therefore adopted in 1982: Convention No. 158 and Recommendation No. 166 on Termination of Employment.

"Termination of employment" is defined in these two international labour standards as termination at the initiative of the employer. The justification for termination should be based on a valid reason, connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service (Convention No. 158, Art. 4). Reasons that cannot be considered as valid for termination include temporary absence from work because of illness or injury. In this regard, national practice is required to determine a number of issues, including the definition of "temporary absence" from work, the extent to which medical certification shall be required and possible limitations on the application of the Convention.

The provisions of the Convention relating to the period of notice of termination, the procedure of appeal against termination, severance allowances and other income protection are fairly similar to those mentioned above. One new element in Convention No. 158 is that it includes supplementary provisions concerning termination of employment for economic, technological, structural or similar reasons in which employee participation plays an essential role. For example, Article 13 of the Convention states that when the employer contemplates termination for reasons of an economic, technological, structural or similar nature, the employer is required to take certain steps. The employer should: a) provide the workers' representatives concerned with relevant information in good time,

including the reasons for the contemplated termination, the number and categories of workers likely to be affected, and the period over which the terminations are intended to be carried out; and b) provide the workers' representatives concerned, in accordance with national law and practice and as early as possible, with an opportunity for consultation on measures to be taken to avert or minimize the terminations, and measures to mitigate the adverse effects of any termination on the workers concerned (e.g. help with finding alternative employment).

It should be noted that the employer is required by the Convention to notify the competent public authorities when it seriously contemplates the termination of workers' employment for economic, structural and technological reasons. This is important, especially in those areas where an enterprise will be severely affected. The public authorities should also receive all other relevant information, including a written statement of the reasons for the termination that includes the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out. Moreover, the employer should notify the competent public authority of the terminations before carrying them out, and the period of notice should be specified in national laws or regulations²⁰.

8. Information, consultation and participation in the area of health and safety at work. The ILO and European Union legislation

Health and safety belong to the central and classic topics of the information and consultation rights. After 1970, several countries started new initiatives in occupational health and safety underlining the participation of the employees. Some years later, ILO Convention No 155 (1981) laid down rules concerning occupational safety and health and the working environment, providing for effective arrangements at the level of the undertaking (be they regulated by law or collective agreements or even left to local/domestic practices) under which “ c) representatives of workers are given adequate information on measures taken by the employer to secure occupational safety and health and may consult their representative organizations about such information provided they do not disclose commercial secrets ” (Article 19). The same standard adds that under these arrangements workers or their representatives must be “ enabled to enquire into and are consulted by the employer, on all aspects of occupational safety and health associated with their work ”. For this purpose “ technical advisers may, by mutual agreement, be brought in from outside the undertaking ”. ILO Recommendation No. 164 supplementing Convention No. 155; Paragraph 12 clarifies that information and consultation rights on safety and health matters should be granted to a variety of participatory institutions: workers' safety delegates, workers' safety and health committees, joint safety and health committees and other workers' representatives. This standard also states important principles affecting the nature and the content of information/consultation. These practices should first of all enable the above-mentioned specialized forms of workers' representation “to contribute in the decision-making process at the level of the undertaking regarding matters of safety and health” (Article 12, c). These are not simply rights to know and to be heard: workers and their representatives should “a) be given adequate information on safety and health matters, enabled to examine factors affecting safety and health matters, and encouraged to propose measures on the subject”. They should also: “b) be consulted when major new safety and health measures are envisaged and before they are carried out and seek to obtain the support of the workers for such measures” and “c) in planning

²⁰ See G. CASALE, Dialogo Sociale e l'OIL: una visione d'insieme, in R. BLANPAIN and M. COLUCCI, L'Organizzazione Internazionale del Lavoro. Diritti fondamentali dei lavoratori e politiche sociali, Napoli, Jovene ed., 2007, p. 23-56.

alterations to work processes, work content or organizations of work, which may have safety or health implications for the workers”.

The principles under which “representatives of the workers should be informed and consulted in advance by the employer on projects, measures and decisions which are liable to have harmful consequences on the health of workers” [ILO Working Environment (Air Pollution, Noise and Vibration) Recommendation, 1997 (No. 156), par. 21] reflects the idea of an effective policy of communication which was already stated in general terms by Paragraph 3 of ILO Recommendation No. 129 (*See above*), which prescribes that “information is given and consultation takes place between the parties concerned before decisions on matters of major interest are taken by management”. And in order for these practices to be effective, “steps should be taken to train those concerned in the use of communication methods” (Paragraph 6).

The participative approach in the administration of health and safety is confirmed by the EU legislation. The Framework Directive 89/391/EEC, which introduced measures to encourage improvements in the safety and health of people working in EU Member States, offers a meaningful example in this respect. Article 10 provides an obligation for the employer to take appropriate measures so that workers and/or their representatives receive, in accordance with national law and/or practices, all necessary information concerning safety and health risks, protective and preventive measures. This information has to be provided in a suitable form for temporary workers and hired workers present in the establishment or enterprise. Additionally, workers with specific functions in protecting the safety and health of workers, or workers’ representatives with specific responsibility for the safety and health of workers must have access to risk assessment and protective measures, to reports on occupational accidents and illness suffered by workers and all information yielded by protective and preventive measures, inspection agencies and bodies responsible for safety and health.

In 1989, the question of workers’ participation was heavily discussed. In Article 11 of the framework Directive there was a compromise formulated which was the basis of the European health and safety law until today. This provision links consultation and participation. In fact employers are under the obligation to “consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work”. That presupposes the consultation of workers “in advance and in due time by the employer” and “the right of workers and/or their representatives to make proposals [and] balanced participation in accordance with national law and/or practices”. The objective of these rights is to cover all measures which may substantially affect health and safety, including the designation of employees required to implement certain measures and the planning and organization of adequate health and safety training throughout the employment relationship, upon hiring, job transfer, introduction of new working equipment and introduction of any new technology. Due to its *ratio* and content, the EC Directive goes beyond the simple logic of the right to information. The system is based on a genuine form of consultation, since it must take place in advance and in good time. In other words, not only prior to decisions being adopted by the employer but also soon enough for proposals and comments to be made about them. The formula “balanced participation” is open to various interpretations. The notion is broader than (or, at least, different from) that of consultation, but not to the extent of constituting a form of joint decision making, which would prevent employers from taking measures which had not been approved by the workers or their representatives. It seems quite clearly to be a form of participation going beyond mere consultation, but not necessarily as far as joint decision making, depending on national systems and practices. The concept embraces a range of multiple forms of employee involvement which vary considerably among EU Member States. In both the ILO and EC legislative texts, information seems to be a concept whereby management informs the employees’ representative body in writing or in a meeting. Consultation means that normally joint committees are set up in which employees’ representatives are not merely informed by management, but can also

comment and expect justification from management in the event of differing opinions. Certainly, these concepts differ from negotiation (when a contractually binding outcome is worked out in joint negotiating committees at company or inter-company level) and co-determination (where the employee has a right of veto and decisions require the agreement of both parties).

The effectiveness of information, consultation and participation rights need to take into account the following: a) first, the size of the undertaking. In small units trade unions and other forms of workers' representation are almost absent; small-sized establishments are also least likely to implement statutory requirements; b) secondly, where safety representatives are integrated into the formal trade union organization at the workplace, they are more likely to achieve the expected improvements in the working environment; c) thirdly, consultation and information arrangements in health and safety reflect the more conflictual or cooperative nature of the surrounding labour relations system; and in general, collaboration between management and labour favours the disclosing of information and consultation; d) fourthly, the role of managerial initiative; more than the existence of statutory rights, consultation and information are effective when there is the presence of a managerial culture which supports them, creating a cooperative climate. Legal backing is essential to guarantee full independence to worker representatives to act in this field, but then the success of information/consultation arrangements depends largely on the voluntary choice of both sides of industry; e) lastly it must be said that a precondition for successful worker representation in health and safety at the workplace is public awareness. It is fundamental for this specialized form of employee involvement that such a need is perceived and valued by people at work; there is empirical evidence that workers identify health and safety as one of the most significant concerns in their working life²¹.

9. The conceptual and regulatory rationalization in EU law vis-à-vis the notion of “employee involvement”

The complex and composite nature and structure of participation, the origins, foundation and purposes of which are diverse but always rooted in the history and experience of trade union movements and the development of national systems of labour administration and industrial relations, do not facilitate the task of identifying a priori the conceptual and regulatory scope of the system and method of participation. EU law provides help in this respect, thanks to the conceptual and regulatory rationalization effected by the Community lawmakers in the early years of the 21st century by supporting and safeguarding the involvement of employees. Under Directives 2001/86 and 2003/72, this “means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within an undertaking” (art. 2 (h) of both directives).

At a closer look, the Community notion of “employee involvement” is decidedly theological in nature, as we shall explain later. For the time being we shall focus on the internal structure of employee involvement, which the Community lawmakers, without prejudice to all other mechanisms intended for the same purpose, view as taking essentially two forms. These are: a) information and consultation procedures which the enterprise is required to activate, including at the request and initiative of the workers, through their representative bodies. Such procedures must be carried out before the undertaking or group of undertakings takes certain decisions, whether it is operating solely at the national level

²¹ M. BIAGI, *Consultation and information on health and safety*, in *Encyclopaedia of occupational health and safety*, ILO, Geneva, 1998, Ch. 21.

or at the trans-national level in the European Union; b) the participation of workers and/or their representatives in the establishment and functioning of the enterprise's administrative and supervisory organs. These two forms can be classified respectively as "disjunctive participation" and "integrative participation". Although schematic, the above breakdown reflects fairly accurately the different forms and meanings of participation shown in this comparative overview of terms and notions related to employee involvement.

It should also be noted that different from this notion of involvement is workers' economic and financial participation in the undertaking's risk or capital (see above), which has not yet been regulated in EU law.

To safeguard employee involvement, the Community lawmakers have created or consolidated a regulatory framework that all the Member States, as well as trans-national enterprises operating within the Union, are legally bound to apply in cooperation with workers' organizations. The European right to employee involvement consists of minimum prescriptions from which national legal systems may deviate only in melius. It is a right which, with due respect for the diversity and specific nature of national contractual and union practices, offers workers the same minimum guarantees in all Member States. It builds on the role of collective bargaining both in adapting domestic provisions to the supra-national provisions and in applying the legislation as a whole. Considerable protection is provided specifically to employee involvement, irrespective of the "mechanisms" adopted for this purpose (i.e. information and consultation procedures or participation in the creation of company organs or their deliberations, or others still).

Equally significant is the definition technique adopted. In this respect, the European lawmakers have used a degree of caution. The definitions are not too analytical, to prevent conflicts of interpretation and application from arising with the various and fairly diverse national provisions and practices. Nor are they too generic (apart from the formula of referring to national traditions and contractual practices), this is to prevent forms and models that are not consistent with the nature and purposes of employee involvement from being included in that category. In the circumstances considered by Directives 2001/86 and 2003/72, these are to safeguard employees' acquired rights as regards involvement, in cases where a European Undertaking or European Cooperative Undertaking is being established.²²

The EU lawmakers have therefore focused their provisions on the purposes of involvement and the goals it must achieve, where the EU legal system considers them to be deserving of protection. In following this path it has necessarily had to recognize the essential role of workers' representative bodies and abandon the neutral stance, criticized by many scholars, previously adopted in various EU directives. One effect of this "neutrality" was to abandon the acceptance of collective rights for subjects improperly described as workers' representatives and to consider information and consultation obligations as being satisfied with simple information provided directly to individual workers.

From the Community legislation on information, consultation and participation of employees, it is the active involvement that is protected and guaranteed. This emerges from the definitions of information and consultation contained in Directives 2001/86 and 2003/72 and also in Framework Directive 2002/14, according to which "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", and

²² See also the most recent EU Directive 2009/38, of 6th May 2009, "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)". In addition, see G. ARRIGO, G. CASALE, *Comment to Directive 2009/38* (LAB/ADMIN mimeo, forthcoming). (See Table 2)

“consultation means the exchange of views and establishment of dialogue between the employees’ representatives and the employer”. According to Directives 2001/86 and 2003/72, on the other hand, participation “means the influence of the body representative of the employees and/or the employees’ representatives in the affairs of a company by way of: the right to elect or appoint some of the members of the company’s supervisory or administrative organ, or the right to recommend and/or oppose the appointment of some or all of the members of the company’s supervisory or administrative organ”²³.

We might add that the active involvement of employees’ representatives can be seen clearly from the information-consultation procedures described as being designed to “achieve an agreement”, such as those which must be performed in the case of collective redundancies²⁴. Similarly, with reference to forms of participation in the strict sense, only those models of employee participation in the establishment of company organs, in legal systems that envisage forms of employee participation in companies’ supervisory or administrative organs, which guarantee an “influence of the body representative of the employees and/or the employees’ representatives in the affairs of a company” would be included in the category of “involvement”. An influence that, in the view of the EU lawmakers, would be achieved either through direct participation by workers’ representatives in the company organs, in the proportion to which they are entitled, or through indirect participation, through the right of employees’ representatives “to recommend and/or oppose the appointment of some or all of the members of the company’s supervisory or administrative organ”.

The Community legislation shows us two essential qualifying criteria for employee involvement (or participation, in the wider sense of the term): a) that participation (or involvement) is a wide notion that includes, in particular, information-consultation procedures and the participation of employees in the company’s organs; and b) that we can speak of involvement (and not of participation), irrespective of its form and the way it is expressed, when employees are in a position to “exercise an influence on decisions to be taken within an undertaking” or to exercise an (some) “influence [...] in the affairs of a company”. These criteria in turn indicate the nature or character, active or passive, of the participation or involvement. Therefore, bearing in mind the texts of the above-mentioned directives, forms and mechanisms of passive involvement such as the supply of information under arrangements (of place, time and instrumental) that “[do not] enable [the workers] to acquaint themselves with the subject matter and to examine it”; or the activation of consultation procedures totally detached from any exchange of opinions or actual dialogue between the parties, do not seem to be included in the European Union’s category of “employee involvement”.²⁵

²³ See J.L. MONEREO PEREZ, J.A. FERNANDEZ AVILES, M.D. GARCIA VALVERDE, J.A. MALDONADO MOLINA, *La Participación de los Trabajadores en las Sociedades Anonimas y Cooperativas Europeas*, Navarra, Ed. Aranzadi, 2007. (See Table 3)

²⁴ See: Dir. 98/59, whose Article 2(1) provides: “Where an employer is contemplating collective redundancies, he shall begin consultations with the worker representatives in good time with a view to reaching an agreement. Specifically, the employer is required to consider alternatives to dismissal”.

²⁵ See G. ARRIGO, G. BARBUCCI, *Comitati Aziendali Europei. Per una guida alle “buone prassi”*, Roma, Ediesse, 2007.

10. Relations between participation and collective bargaining

In addition to the points made at paragraph 2.1 above, the relationships between collective bargaining and participation are many, varied and variable. It is not always simple, therefore, especially in some national contexts, to identify the exact border between the spheres (or methods) of participation and the spheres (or methods) of bargaining.

A distinction certainly holds at the theoretical level. It assumes that participation arises and operates through the idea of cooperation between the parties to achieve what tend to be shared goals. Bargaining, on the other hand, is assumed, at least in principle, to involve a conflict (or structural antithesis) of interests. This distinction, however, appears to be contradicted by the recent development of collective bargaining in many countries and by actual experiences of participation, which make the material boundaries between their respective areas of autonomy uncertain.

There is no doubt, on the other hand, that the narrowing of the gap between the positions of the parties and the reconciliation of their interests that are achieved in collective contracts are, in principle, only temporary (but not always fixed) in duration. As is the related obligation to observe a “truce”, which may, moreover, be broken because of elements “extraneous” to the collective contract, even in systems organized under the *concertazione* (consultation and cooperation) model (such as “turbulence” in the political system and/or economic-monetary systems).

A clearer distinction between bargaining and participation emerges from an analysis of some national experiences, in which a “specialization” of the activities connected with each can be noted. Even when it is set in a tripartite social dialogue or *concertazione* framework²⁶, or when it generates varying degrees of cooperation between workers and enterprise which in effect involves a temporary limitation of the conflict, bargaining does not in principle tolerate a total and *a priori* abstention from this instrument. This is true even when it is the bargaining itself (rather than the law) that envisages limits, in the form of “proceduralization”, to the exercise of collective self-protection or to freedom of enterprise. Viewed from this perspective, participation and bargaining appear as open systems that communicate not just with each other but also with other systems, such as the political-institutional and economic systems, and not only in the context of the procedures and/or fora of social partner consultation and cooperation.

This distinction is confirmed, at least in the legislative texts, by the German system. Here, legislative provisions, as described earlier, regulate employee participation, without collective bargaining playing a part. Workers’ participation in company organs occurs under procedures and in contexts clearly distinct and different from those of involvement through co-determination. In co-determination, information and consultation procedures, although leading in some cases to company-level agreements, have autonomous spheres of application with respect to those typical of collective bargaining. This fully respects the perfect dualism²⁷ that characterizes the German system of worker-employer relations, and which is expressed in the so-called “double-channel” model of worker representation.

²⁶ L. BELLARDI, *Concertazione e Contrattazione*, Cacucci, Bari 1999, G. CASALE, *Experiences of tripartite relations in Central and Eastern European countries*, in *The International Journal of Comparative Labour Law and Industrial Relations*, vol. 16/2, 2000.

²⁷ W. DAEUBLER, *Das Grundrecht auf Mitbestimmung*, Frankfurt am Main, 1973; J. SCHREGLE, *Co-Determination in the Federal Republic of Germany*, in *International Labour Review*, Vol.117,

The path followed by the EU legislator in the above-mentioned directives differs in part from this model. A degree of interaction emerges in the Directives between collective bargaining and employee involvement rights, albeit with some precise functional boundaries between the negotiating sphere and that of involvement rights. This occurs in particular: a) in involvement in trans-national companies (under Directives 2001/86 and 2003/72), where collective bargaining is intended to select and regulate the forms of and arrangements for involvement, as described above (i.e., including both information and consultation procedures and procedures for workers' participation in company organs); and b) in collective redundancy procedures, where consultation with workers is intended to reach an agreement²⁸.

11. Holders of participation rights

The interactions between the bargaining and participatory methods which, as mentioned earlier, characterize some national systems of industrial relations and some procedural aspects of the EU directives do not make it easy to identify which subjects hold bargaining powers and which are entitled to exercise involvement rights. We can however state that in various national systems, and in the European Union's own legislative system, the holders of bargaining power and the holders of involvement rights are and remain formally distinct, even though there is no lack of *de facto* links between them.

National models of collective representation (in the workplace) and national systems of union organization and collective bargaining undoubtedly have an influence in identifying which actors are, respectively, holders of participation rights and holders of negotiating power. This task is more difficult in systems where the negotiating and participatory methods have developed on the basis of the single-channel model of union representation, because there is no *a priori* division and distinction between holders of negotiating powers and subjects exercising the rights of information, consultation and participation. In other words, the same actors can, theoretically, be at one and the same time representatives of workers in the workplace, holders of information, consultation and participation rights and negotiating parties.

Conversely, in double-channel representation systems, involvement rights are exercised by representatives elected by all the workers in the workplace ("internal" representation), while negotiating activity is in general performed by the trade unions ("external" representation), sometimes with the participation of their workplace branches.

In single-channel models, enterprise-level employee representation is entrusted (almost) exclusively to bodies or levels deriving directly from the external trade unions or at any rate closely connected with them²⁹. Consequently, the workers' union

No. 1, 1978; M. WEISS, *Labour Law and Industrial Relations in the Federal Republic of Germany*, Kluwer, Deventer, 1987.

²⁸ Under Directive 98/59, on the protection of workers in cases of collective redundancies, the employer must "begin consultations with the worker representatives in good time with a view to reaching an agreement". And under Directive 98/50, on the protection of workers in the event of transfers of undertakings, the transferor and transferee "shall consult the representatives of his employees in good time on [such] measures in relation to his employees with a view to reaching an agreement".

²⁹ In France and Belgium mixed organs are also envisaged. These include the *chef d'entreprise*, in some cases flanked, as in Belgium, by trade union representatives. See A. LYON-CAEN, *Le nouveau code du travail*, Paris, Dalloz-Sirey, 2008; J.C. JAVILLIER, *Droit du travail*, Paris, Librairie générale de droit et de jurisprudence, 1978; P. HUMBLET, M. RIGAUX, *Aperçu du droit du travail belge*, Bruxelles, Bruylant, 2004.

representatives exercise both general contractual functions and participatory negotiating functions.

In the double-channel model, workers' general representation in the enterprise is entrusted to a single body elected by all the workers; the unions are guaranteed autonomous forms of presence in the enterprise, mainly or exclusively to protect their members. Legal provisions generally govern the employee representation bodies; this favours, at least in principle, a high degree of institutionalization and ensures that democratic rules are formally respected. This applies in particular to rules concerning the active and passive electorate and electoral procedures, based on proportional criteria for the allocation of seats.

In some national systems, in addition to these unitary representative bodies, the law also envisages additional forms of, and actors in, employee representation. This is the case, for example, in joint stock companies, where workers have the right to elect representatives to the company's supervisory or administrative organs; these workers must also take on obligations that go beyond their mandate: obligations to the company rather than to the workers.

This form of general and unitary employee representation at the company level is found in several countries (especially in the European Union) and from perspectives peculiar to EU law. This distinction of functions (participatory and contractual) is more evident in systems where forms of workers' participation in the strict sense are practiced, i.e. through the presence of workers' representatives in boards and/or supervisory bodies in joint stock companies.

The double-channel model is also the one preferred by EU lawmakers. Preferred in *de facto* terms rather than formally because, since the Treaty does not give the Community specific competences on "the right of association" (art. 137.6, TEC), the EU lawmakers can only provide for the rights of workers' representatives' in the wider sense, i.e. encompassing the diverse national forms of organization to which they must necessarily refer. Respect for the diversity of the forms and models of company-level worker representation is also guaranteed by the fact that the provisions issued thus far only envisage information and consultation rights for workers' representatives, and exclude any reference to trade unions or the conduct of bargaining activity.

The function of the unitary bodies elected by the workers as a whole is sometimes perceived as running counter to that of union representatives in the narrow sense (external representation). This contraposition, however, is tempered – firstly by the formal distinction of powers and functions between the two forms of representation, and secondly by the fact that the members of works councils are generally trade union members. In any case, what might be called the "corporate" profiles of the unitary workplace representative bodies do not prevent communication –sometimes very close– between the two forms of workers' representation: "internal" and "external". A number of factors play a part in this evolution. First, the right of trade unions to develop autonomous forms of workplace representation not only to protect their members but also as an instrument for communication and for formulating the unions' strategies and as a vehicle for more general claims. And second, the acquisition of greater authoritativeness by workers' general and unitary representative bodies, thanks above all to the right, granted to the "most representative" unions, to exert an influence (which varies from one country to another) on the establishment and functioning of the elected bodies³⁰.

³⁰ Particularly in Belgium, France and Spain.

12. “Weak” or “strong” participation. Continuity and discontinuity between the diverse forms of participation/involvement

Diverse notions and disciplines play a role in defining “employee participation”, corresponding to the different degrees of “producers’ cooperation” which the collective actors intend to promote in any given system of industrial relations. Whatever the source (law and/or agreement), participation seems in most countries to be based on a distinction of roles and powers between entrepreneurs and workers, each with distinct responsibilities, even when this gives rise to forms of more direct involvement of employees (and/or their representatives) in the company’s decisions.

The forms and models of participation are clearly influenced by various factors, such as the national system of labour administration, the industrial relations scenario, models of workers’ representation the public or private nature of the employment relationship, the size and organizational dimension of undertakings and markets and the relationship between law and collective agreements. The functional diversity of the contractual representation systems in different countries is, as we have mentioned, the result of different traditions and practices in the unions and in collective action at the level of the individual undertaking, industrial sector and economic policy as a whole.

When looking at the industrialized market economy countries, one could find various forms and/or models of employee participation (information and consultation rights, participation in the company organs, economic and financial participation). They continue to exhibit differences that, while they may well be significant, are also subject to a degree of progressive, reciprocal assimilation, which has two fundamental causes. These are: a) the harmonization, through directives, of the social legislation of the EU Member States, in the formation, application and implementation of which the social partners collaborate at both the European and national levels; and b) the “spontaneous” convergence of systems as a result of the creation of the single market, including the common economic and monetary policy through the creation of a single currency.

For more than 30 years, regulatory harmonization has affected some elements of workers’ participation, such as information and consultation rights for employee representatives in cases of collective redundancies and transfers of undertakings, with sole respect to the undertaking’s national sphere of activity. In the last 20 years such a harmonization it has also been extended to content, involving crucial employee participation matters such as the protection of workers’ health and safety, which draws on many ILO principles.

From a European viewpoint, the regulatory harmonization of some elements of employee participation included in the notion of “employee involvement”, has finally been crowned by the recognition, in the Charter of Nice, of workers’ right to be informed and consulted in a timely manner “in the cases and under the conditions provided for by Community law and national laws and practices”. Information and consultation rights must, therefore, be guaranteed for workers through their representatives, on a series of decisions by the company in order to establish a dialogue that is useful to both sides. These rights will therefore serve the purpose of reaching agreement on certain issues (such as the consequences of collective redundancies or a transfer of enterprise), with the involvement or support, where appropriate, of the national and/or local public authorities³¹. In this regard, the role of labour administration is of a paramount importance.

³¹ In these matters, EU law has been positively influenced by ILO provisions: see, for example, Recommendation no. 119, which recommends that “Positive steps should be taken by all parties

The features included in employee involvement are linked not just to the organizational level but also to the functional one, including in the somewhat diverse dimension of the exercise of rights. One example is the linkage between the European Works Councils' rights of information and consultation and those of enterprise-level employee representatives on common issues, such as collective redundancies. Other forms of linkage between the different forms of participation derive from the powers granted to employee representatives, the structure of participation rights and the role played by collective bargaining. The continuity or, conversely, discontinuity between the various forms of participation might derive not just from their source (law and/or collective agreement). They may also derive from the aims and organizational forms of employee participation. In addition, they may result from the different relationships between participation, employee representation and collective bargaining. These considerations would then bring us to discuss herewith the classification – in terms of strength or weakness – of the different participatory (or involvement) models of employees.

Forms of *weak* participation are those consisting in rights of information, sometimes preceding consultation procedures, recognized by law and/or by collective agreements. In most countries, information and consultation procedures are not linked and sequential. In some, however, they are functionally linked, and may give rise to forms of “joint examination” and to negotiating activities for the purpose of drawing up collective contracts. These will be different, in terms of both cause and subject matter, from traditional negotiations, since they are drafted into the joint management (and/or co-determination) of matters specific to the enterprise. Examples of such matters are: a company crisis or reorganization, restructuring, or reconversion processes that may give rise to cuts in the workforce or a transfer of enterprise.

These forms of so-called *weak* participation express two convergent trends. These are: a) a tendency for negotiation to be transformed into a set of relations – which is to varying degrees stable and organized – between management and workers. This occurs particularly in market crisis situations which require a high degree of “dialogue” and “social consensus” in company decisions (a trend that is more evident today during an economic and financial crisis situation; b) a tendency for participation to take the form of a prelude to negotiating and sometimes contractual activities between management and workers' enterprise-level bodies (in single-channel systems of representation). This applies when the issue at stake is to reconcile in a non-conflict manner (and preferably out-of-court, by envisaging arbitration fora, including at company-level) conflicts of interests between management and workers following decisions by the enterprise that would have negative social consequences.

Viewed from this perspective, participation and negotiation give rise to a stable social dialogue that may also involve the public authorities (as envisaged, for example, by the EU law on collective redundancies). This applies not just to the traditional mediation and reconciliation of conflicts and collective disputes but more specifically to the management and administration of problems connected with the labour market, vocational re-training,

concerned to avert or minimise as far as possible reductions of the work force by the adoption of appropriate measures, without prejudice to the efficient operation of the undertaking, establishment or service” (art. 12). Additionally, “when a reduction of the work force is contemplated, consultation with workers' representatives should take place as early as possible on all appropriate questions” (art. 13.1). And that “the questions on which consultation should take place might include measures to avoid the reduction of the work force, restriction of overtime, training and retraining, transfers between departments, spreading termination of employment over a certain period, measures for minimising the effects of the reduction on the workers concerned, and the selection of workers to be affected by the reduction” (art. 13.2). And lastly that “if a proposed reduction of the work force is on such a scale as to have a significant bearing on the manpower situation of a given area or branch of economic activity, the employer should notify the competent public authorities in advance of any such reduction” (art. 14).

etc. In this respect, some participatory procedures act as a prelude to negotiation and tend to favour a “specialization” of representation and negotiating functions. Bargaining, on the other hand, produces participatory fora that in turn produce further effects on contractual relations, making them not only more stable but also more complex. This is the case, for example, with the extension of the Social Dialogue to other subjects, whether public, such as those engaged in re-employment, training and social assistance activities for workers affected by collective redundancies, or private, such as employment agencies, NGOs, etc.

Forms of *strong* participation correspond mainly to rights of co-determination or closer and more stable forms of cooperation by enterprise-level workers’ representative bodies in the company’s decision-making processes or in decisions that can only take effect (generally as a result of legislative provisions) subject to prior information and consultation with, or the consensus of, workers’ representatives.

In this respect, the model of participation considered most complete is the German one. This is expressed: a) at enterprise level (in forms of co-determination), where employers are obliged not just to consult but also to co-decide with the Work Council on some issues (Betriebsrat), under the Work Constitution Act (Betriebsverfassungsgesetz); b) at the level of joint stock companies (unternehmerische Mitbestimmung).

In this system of shared decision-making, the participatory functions may be exhausted in “a-contractual” or “pre-contractual” negotiating procedures. Alternatively, they may give rise to true “company agreements” (Betriebsvereinbarungen) when, for example, “joint decisions” or “arbitration in the internal arbitration forum” (Einigungsstelle, literally place of “unification”) is implemented. But these agreements are distinguished – in terms of cause and object, as well as of parties to the agreement – by the economic and regulatory collective contract (Tarifvertrag), which the “external” trade union (Gewerkschaft) enters into with companies and their associations.

From the above, we cannot, therefore, establish an abstract ranking of the forms of participation in terms of strength and power. Rather, we would need to take multiple factors into account, such as a) the different legal nature and diverse rationale and purposes of the various forms of participation; b) the position of these in the sphere of relations – within the enterprise – among the management, the workers and their representatives; and c) the diverse nature and role of the holders of participation rights. This leads the reflection back to the general themes set forth earlier in the existence of a network or continuum between the procedures and institutes of participation and between participation and negotiation, and more specifically: i) of the role played by participatory bodies in industrial relations systems; and ii) of the structure and functions of workers’ representation and collective bargaining.

13. Concluding remarks

Returning to some of the considerations made earlier, we can say that employee participation does not have an unequivocal “political-cultural weight” in various legal systems. Indeed, “workers’ participation is essential not just as a matter of social rights but as an instrument for promoting the smooth running and success of the enterprise through promoting stable relationships between managers and employees in the workplace”³².

While it is certain that participation fosters “social consensus” it is also true that, as the Social Charter recalls, it “helps to strengthen the competitiveness of enterprises and the

³² European Commission, in the Memorandum on the European company (1988).

economy as a whole, as well as the creation of jobs [...] and from this perspective, is a necessary condition for lasting economic development” (point 5 of Preamble).

To paraphrase the German Constitutional Court³³, we can state that the characteristics of participation as a “social relations bond” (Sozialbindung) and as an occupational and economic resource for the enterprise “serve to strengthen the market economy politically and serve the good of the community”. One early, and important, application of this approach was Directive 94/45³⁴ and other provisions in the European Company Statute. These represent progress in European economic and social integration where they make it possible to provide support at the social level in the irreversible evolution of companies towards internationalization, through mechanisms for trans-national dialogue by the social partners.

A second order of observations concerns the relationship between participation and collective bargaining. As diverse as the forms of participation may be, “evaluations of employee participation in enterprises’ decision-making processes cannot be separated from those on the function and scope of collective bargaining. In both cases, workers seek to exert an influence on the conditions in which they work and produce. Both are born from workers’ awareness of the particular situation in which they find themselves; both have developed through workers’ conscious intention to reduce the disadvantages connected with their state of dependency”³⁵. For these reasons, the existence and smooth functioning of participation, with its repercussions, is of considerable importance to collective bargaining by workers’ representatives. Similarly, the concrete objectives and achievements of negotiating policy are by no means irrelevant to the smooth functioning of participatory mechanisms.

However, participation can in no case replace collective bargaining. As it can be seen from some national models of industrial relations, certain limitations on collective bargaining can be overcome with the help of participatory mechanisms. This relationship, which can be described as symbiotic (i.e., a “close relationship with reciprocal influence”), between participation and negotiation is also present in various national industrial relations systems. We know that in some countries workers’ information and consultation procedures on strategic or economic decisions and on the social consequences of those decisions are not always adequately safeguarded. We also know that employee involvement often serves to endorse – while being unable to influence – employers’ decisions. Many observers therefore feel that there is a need for information and consultation procedures to be put in place which in effect makes it possible to anticipate companies’ decisions by adopting a true policy of prior and continuing dialogue and follow-up on strategic decisions. Such a policy should include decisions concerning employment (training, reconversion, requalification, etc) as well as those designed to

³³ Constitutional Court (*Bundesverfassungsgericht*) ruling of 1 March 1979.

³⁴ “The functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, take-overs, joint ventures and, consequently, a transnationalization of undertakings and groups of undertakings; whereas, if economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees that are affected by their decisions” (Directive 94/45, point 8 of the preamble).

³⁵ S. SIMITIS, 1979, comment on the *Bundesverfassungsgericht* ruling (*supra*) in *Giornale di Diritto del lavoro e di Relazioni Industriali*, 1979, p. 584 ff. (the passages cited are on pages 587 and 596).

strengthen employment security³⁶. In this regard, an efficient labour administration system can only be beneficial to both workers and employers when implementing labour policies at the various levels of the economy.

14. A comparative overview of terms and notions on employee participation

³⁶ In this respect (and with reference to the EU), the Commission has since its “employment strategy” underlined: the priority importance of workers’ adaptability in undertakings, even more than in the labour market; the need for investment in innovation and research, and in training by companies; and the negotiating role of the social partners in processes of innovation and work organisation (European Commission, “Partnership for a new organization of work” Green Paper, 1997). (See Table 4)

AUSTRALIA (Representative Employee Participation)

Australian representative employee participation (REP) has been historically focused upon trade unionism. Non-union forms of employee representation are less institutionalized than in other industrialized countries, and no legislation exists for works councils. Joint consultative committees (JCCs) are the nearest Australian equivalent to works councils, and the most common form of REP apart from unions. JCCs differ from statutory works councils in that they are usually the product of unilateral management initiative or of union–management agreement. They also vary considerably in terms of composition, jurisdiction, powers and organizational level of operation. They commonly include up to 50 per cent managers, as well as employee representatives. The latter are sometimes appointed by management, sometimes by unions or a combination of the two, and seem to be less commonly elected directly by employees. JCCs usually have an advisory role to management, are often restricted in their jurisdiction to a narrow range of issues, and often have specific briefs for a limited period of time (task forces). From 1990 to 1995 the proportion of workplaces with 20 or more employees that had standing JCCs more than doubled, from 14 to 33 per cent. They are much more common in public sectors, large and unionized workplaces. In comparison with European-style works councils, JCCs suffer a number of limitations as a form of genuine employee representation or voice. To the extent that they rely on management discretion in their formation, structure and powers, their limitations are thus clear. Where they rely on agreement with unions their viability, as a general representative approach as employee voice, is also severely constrained by the declining level of union coverage and the fact that a majority of employees and workplaces are not unionized. The available evidence from case studies as well as surveys, suggests that Australian JCCs are almost exclusively advisory, rather than enjoying substantial co-decision-making powers. The inclusion of management representatives on JCCs also potentially limits their independence as an expression of employee voice.

Survey data regarding the effectiveness of JCCs is largely positive in terms of achieving management objectives, notably in improved efficiency, communication and the facilitation of organizational change. However, this data should be treated with great caution. On the one hand, whilst managers are usually less represented than non-managers on JCCs they may nevertheless take an active role in structuring the discussion and the recommendations which are made. Little can also be said concerning whether the discussion is simply information sharing on the part of management or whether it involves meaningful consultation. Thus, it is questionable whether employees are empowered, simply through their ability to discuss a number of issues relevant to the core of the business and the operational functions of their organization. On the other hand, HR managers are the usual survey source of data concerning the effectiveness of JCCs. Although Australian union delegates largely evaluated the quality of information provided by management to JCCs positively, surveys based on employee views of the effectiveness of JCCs may produce quite different results.

AUSTRALIA (Worker Involvement in Occupational Health and Safety Regulation)

The Commonwealth Constitution does not give the Commonwealth a general power to legislate for Occupational Health and Safety (OHS), hence there are ten OHS statutes (six state Acts, two territory Acts, a Commonwealth Act covering Commonwealth employees, and a Commonwealth Act covering the maritime industry). There are also specialist OHS statutes covering the mining industry in some states. Finally, in 1985 the federal government legislated for the formation of the National Occupational Health and Safety Commission (NOHSC). NOHSC was abolished in 2005 and replaced by the Australian Safety and Compensation Council (ASCC). The ASSC's functions will include the declaration of national standards and/or codes of practice relating to occupational health and safety and workers' compensation matters under the Standards Act. Unlike the former NOHSC which was established by an Act of Parliament, the new ASSC was established administratively, with functions and powers determined by the government of the day. However, it has statutory powers to declare national standards and codes of practice. ASSC is a tripartite body, with members currently represented in the federal, state and territory governments, the Australian Chamber of Commerce and Industry, and the Australian Council of Trade Unions. ASSC standards and codes need to be adopted by state and territory governments before they have any legal force. All of the Australian OHS statutes make provision for worker representation in OHS matters, principally through the institutions of health and safety representatives and committees. But once again, the provisions vary markedly between the jurisdictions. In all jurisdictions except the Northern Territory, the OHS statutes make provision for workers elected as health and safety representatives. In Victoria, South Australia, the Commonwealth and the ACT, the powers given to representatives are quite broad, and include rights to training, inspection, consultation, information and similar issues. They include the power to issue a provisional improvement notice (a default notice in South Australia), and the right to order that work should cease (though the provisions vary between the jurisdictions). Western Australia, Queensland and Tasmania give much weaker consultative powers to representatives. The Tasmanian and Northern Territory statutes codify the common law right of a worker to refuse to perform dangerous work. Each of the statutes provides for health and safety committees, comprised of employer and employee representatives. In the Northern Territory, all consultation takes place through health and safety committees. Until the 2000 law, in New South Wales, worker participation was solely through health and safety committees, although members were given some rights (for example to inspection and information) resembling those given to health and safety representatives. The OHS Act 2000 imposed upon employers a duty to consult with its employees and to enable employees to contribute to the making of decisions affecting their OHS. Consultation can take place through health and safety representatives or committees, or through any other arrangement agreed to by employers and employees. If on request by one of the employer's employees, at least one health and safety representative must be elected by the employees. The provisions appear to be much weaker than the provisions for health and safety representatives in Victoria. There has been very little empirical research done into the operation of the health and safety representative provisions. What data there is suggests that the introduction of representatives has caused major changes in OHS attitudes and practices. They work best when the OHS legislation gives them a significant role, and when management adopts a positive attitude to OHS and gives representatives enough time to perform their duties. A further factor in the success of the representative provisions is union support.

An overview of the Australian OHS legislation demonstrates its lack of uniformity. Even if the analysis is limited to the statute book, the differences in wording of the statutory standards, the differences in sanctions (particularly levels of fines, and use of infringement notices) and the variation in health and safety representative provisions is a matter of great concern. The lack of uniformity is even greater if the analysis extends, as it should, to inspection and enforcement

practices. There is an urgent need for OHS regulators in the various jurisdictions to develop uniform enforcement policies and strategies. A second noteworthy point is the need for OHS regulators to pay greater attention to work relationships outside the traditional employment relationship. With the dramatic changes that are taking place in the Australian labour market, mirroring changes taking place elsewhere in the world, regulators need to develop standards, guidance material, inspection programs and enforcement strategies that accommodate subcontracting, labour hire, home-based work and franchise arrangements. Particularly important is the need to think more flexibly about health and safety representatives. Currently the provisions are limited to employees, and exclude sub-contractors and the like. European developments in relation to regional health and safety representatives should be examined. Third, one notable omission from most of the Australian OHS statutes when compared with their European counterparts is the absence of requirements to promote the use of multi-disciplinary health services by employers. Some of the Australian statutes have mild provisions obliging employers to employ or engage the services of OHS experts in order to discharge their obligations, but there is no systematic attempt to require employers to engage OHS experts. The most successful provision appears to be the Queensland provision requiring an employer to appoint a workplace health and safety officer when there are 30 or more workers normally employed at a prescribed workplace; or, if there are fewer than 30 workers, the employer thinks that it is necessary.

AUSTRALIA (Employee Share Ownership Schemes)

Employee share ownership (ESO) schemes have operated in Australia since at least the 1950s, despite only having been specially targeted in federal legislation since 1974. There is no mandated form for ESO schemes in Australia. This is consistent with a broad history of government reluctance to interfere with internal business management issues by formally mandating systems of employee involvement. The only public regulation that applies directly to ESO schemes is of a concessional nature in the area of tax liability, and the procedural requirements of corporate law. The notion of employees owning shares in the company for which they work has enjoyed bipartisan (if not always sustained) support in Australia for nearly 30 years. A tax concession regime was introduced in 1995 by the then Labour Government, while the Coalition Government came to office in 1996 with a policy of doubling the concession offered by that regime. Encouraging ESO programs remains part of the Government Programme; while in February 2004, the Minister for Employment and Workplace Relations, Kevin Andrews, announced a target of doubling the ESO schemes in workplaces from 5.5 per cent of employees to 11 per cent by 2009. As ESO schemes involve transactions relating to the distribution of corporate equity, the general starting points for their legal regulation are the related provisions of the *Corporations Act 2001* and, for publicly listed companies, the rules of the Australian Stock Exchange (ASX). A small number of ASX listing rules particularly address the regulation of ‘employee incentive schemes’, but only with regard to providing exceptions for the issues of shares under such schemes from share issue and acquisition requirements, if certain prerequisites are met (often shareholder approval). In terms of targeted regulation, however, there are two key sources of note: facilitative regulation through the Australian Securities and Investments Commission (‘ASIC’) Class Order 184 and its Policy Statement 49, and taxation concessions under Division 13A of the *Income Tax Assessment Act 1936*. It is also important to note some other legal influences and, for completeness, to consider the work of the Federal Government’s promotional ESO Development Unit. General rules of corporate law relating to the issuing of share capital are clearly relevant sources of legal regulation of ESO schemes. Consider, for example, the general application of directors’ duties in ensuring that a decision by directors to issue shares is taken in good faith and in the best interests of the company; and the s 260A ESO scheme exemption in the *Corporations Act 2001* from restrictions on a company financially assisting a person to

acquire its shares. The Australian Securities and Investments Commission (ASIC) is the relevant regulatory agency in terms of the application of corporate law to ESO schemes, and it is granted wide powers of investigation and regulatory enforcement under the *Australian Securities and Investments Commission Act 2001*. It also balances investor protection and financial market facilitation roles, and it is in this context that the primary corporate law source of ESO scheme regulation is the conditional relief from the disclosure and licensing provisions of the *Corporations Act* provided by ASIC. These provisions are consolidated in a Class Order (03/184). The underlying concern of ASIC in this area is balancing the promotion of employee-employer long-term benefit with ensuring both adequate protection of employees and that the purpose of the offer of shares is participation not fundraising. The Policy Statement (PS 49) provided by ASIC states that there are three key conditions that must be met for this conditional relief to be granted (in addition to other conditions regulating the use of a trust structure): a) The aim of an ESO offer is not to be one of fundraising [PS 49.32] – this policy is given effect by a limit of 5 per cent on the number of shares that can be issued under an employee share scheme; b) There must be mutual interdependence [PS 49.37] – the nature of the employee-employer relationship, rather than the coverage of the ESO scheme, will be considered on a case-by-case basis; and c) There must be adequate disclosure [PS 49.41] – the shares must be listed (or soon to be listed) on an approved stock exchange, and the offer document must include the rules of the plan [PS 49.46].

The Role of Law and Regulation could be resumed as follow: Firstly, the law can support organizational innovation, by giving employees confidence that there is some sort of governmental oversight of a new process or system, and that it is not simply a ‘managerial whim’. From this perspective, stronger government backing and monitoring of ESO schemes might result in ESO growth. Secondly, much of the Australian policy debate on ESO scheme regulation focuses on the tax concession regime, and demonstrates some of the dilemmas of using tax concessions as a regulatory instrument. It is sometimes argued with regard to such measures that they may narrow the tax base for doubtful public policy advantage. Tax concessions may also only benefit those already inclined to saving, particularly if employee ownership is largely dominated by higher income earners.

AUSTRALIA (Employee Involvement Programmes)

The employee involvement (EI) programmes in Australia have varied over the last decades. The early experiments with involvement occurred in the early 1970s and were initiated by management in response to labour market shortages. Attention was principally given to job restructuring and joint consultation, though these initiatives failed to attract the support of unions. This wave of interest ended when the labour markets loosened in the latter part of the 1970s. The second wave of interest commenced in the early 1980s. Involvement schemes were initiated by unions, they were more issue based and were associated with the redistribution of power in the workplace. Union interest in involvement schemes was a response to the deteriorating economic conditions and coincided with the federal election of a pro-Labor government. The federal government provided funds for best practice demonstration projects, which involved providing organizations with the funds to establish involvement programmes, with the hope that this would provide encouragement for other organizations to follow. The federal government also passed legislation that promoted involvement in a range of issues, including occupational health and safety and affirmative action. The early moves to enterprise bargaining also facilitated interest in involvement programmes, as unions and employees were encouraged to take part in the bargaining process. The third wave of interest in EI commenced in the mid-1990s and is significantly different from the two earlier waves. Involvement programmes are regarded as a tool that can improve organizational performance. The forms of involvement are more individualistic and generally do not include any sharing of decision-

making power within organizations. Further, the Workplace Relations Act of 1996 (which established the current system of enterprise bargaining) removed all requirements for EI in the bargaining process. Case studies and researches evidence the critical role played by management in the Australian experience of EI: indeed, most EI schemes are initiated by management. Further, critics argue that Australian management usually opts for schemes that do not threaten managerial prerogative. According to some opinions Australian management supports only low levels of EI in decision-making while retaining control over strategic decisions. According to others, management remains largely concerned with authority and jurisdiction, not with increasing the extent of employee influence at the workplace. Finally, it can be argued that while typical schemes provide an outlet for employees and a sense of identification with the organization, they rarely place restrictions on managerial prerogative.

AUSTRALIA (Participation at Industry Level)

The Committee of Review into Australian Industrial Relations Law and Systems proposed, in its 1985 Report, the establishment of industry consultative councils linked to the processes of conciliation and arbitration. In the words of the Committee: 'Councils might be the expression of a non-statutory informal but structured process whereby the parties within an industry are encouraged to come together to discuss industrial relations issues affecting the industry. Members of the Commission, through the existing panel system, would be available to act as Chairmen. The legislation could provide that members of the Commission should encourage the formation of such bodies in industries where they believed that they would contribute to the prevention of industrial disputes. The Act could also require members of the Commission, within the panel system, to act as Chairmen of such bodies at the request of the parties. As a further encouragement, it could be provided that the office of the Industrial Registrar would provide secretariat services for industry councils of this kind. It would be a feature of such arrangements that agreements reached and decisions taken would need to be processed through the formal processes of the Commission. The formal processes of dispute resolution by conciliation and arbitration would not be affected by the existence of such industry consultative councils. Under Sec. 198 of the Industrial Relations Act 1996 in the state of New South Wales the industrial commission of that state may establish an industrial committee to operate in relation to the whole or part of any industry or occupation. Such a committee comprises a designated member of the commission who acts as chairperson and an equal number of representatives of both employers and employees. The industry committees exercise the functions of the commission in respect of the industry for which it is constituted. In Queensland the Industrial Relations Act 1999 provides for the establishment of the President's Advisory Committee and the Industrial Relations Advisory Committee. In very recent times there has been a call for the establishment of a works council in industries of a certain size. This suggestion takes as its model existing schemes in Europe and Japan. However, in the words of the leading textbook in the area, 'the sentiments are admirable - but whether a works council system would ever get off the ground in Australia, in the face of likely opposition from employers and quite possibly unions as well, may be quite another matter'.

In the late 1990s there emerged a trend among some employers for a cooperative approach to wage negotiations at the industry level. In a large part, this was a response to union campaigns to create framework agreements as a means of returning to industry-wide bargaining. Campaign 2000 was launched by the metal industry unions in 1999 and a high-profile employer, Email Ltd, was the first to agree. The Email agreement covers 30 factories in five states and includes a commitment from management to consult the union over the use of contractors. Other large employers in the manufacturing industry have entered similar framework agreements and a co-operative approach to negotiations has been displayed in the

transport industry and in building and construction. There seems to be a growing awareness amongst employers that framework agreements offer a simplified process for negotiation.

AUSTRIA (Employee Representation)

Austria has a long tradition of employee representation in the workplace that dates back to the creation of works councils under legislation passed in 1919. In public companies the works council was able to delegate two of its members to the company's administrative board, where they enjoyed the same rights and duties as other board members. In 1934 a law was passed to establish works assemblies in enterprises. These were meant to deal with matters of common interest in the company and not issues that were on the collective bargaining agenda. Today the system of employee representation in Austria is regulated under a Labour Code that first came into force in 1974. Under that measure workers have the right to representation of up to a third of the members of the supervisory boards of public limited-liability companies and all the country's companies that employ 300 or more workers. This law covers a wide range of institutions, including stock corporations, limited-liability companies, mutual insurance associations, savings banks, cooperative societies and private foundations. It is estimated that there are 1,500 companies in Austria that now have supervisory boards on which worker directors sit. Under Austria's 1974 Works Constitution Act a company's works council may delegate one member to the supervisory board for every two members who are elected by the representatives of the employers. Workers are not entitled to more than a third of the seats on the supervisory board nor on the company's committees. The supervisory board must consist of at least three shareholders' representatives. Its total size may range between 7 and 20 shareholder representatives. The worker members of the supervisory board must be taken from the elected members of the company's central or single works council and they enjoy full voting rights. Trade union representatives cannot be delegated to join the supervisory board although they can be elected into a company's works council. The worker directors must be protected from discrimination or restrictions and they must also be granted paid time-off from their jobs in order to perform their supervisory board duties. An adequate balance between blue and white-collar workers must be established among the employee representatives on the supervisory board. No restrictions cover the rights to co-determination or decision-making by the employee representatives. They have unlimited voting rights on issues of economic importance. But the employee representatives, like the rest of the supervisory board, are obliged by the law to perform their duties with the interest of the company as a whole in mind. This means they need to take into account the views of shareholders and the general public as well as the employees when making decisions. On the other hand, this does not prevent them from defending the interests of employees. This can lead to potential conflict of opinion between those of the worker director's duties towards the company and those to employees when it comes to the need to maintain commercial confidentiality. However, employee representatives are allowed to pass-on a limited amount of company information to the works council as long as this is covered by the rights to information and disclosure laid down under the 1974 Act, that is deemed necessary to represent employees' interests. Annual works assemblies are held in firms as well. The works councils are dominated by the trade unions and they act as intermediaries between the employer and employees. In Austria those bodies are not only highly effective in the dissemination of information and consultation by the enterprise but they are also involved in a range of workplace issues such as the day to day business of the firm, cases of individual dismissal and changes in working practices. A special feature of the Austrian system is the obligatory list of business transactions which may be submitted for approval by the management board or managing director only after the consent of the supervisory board has been obtained, e.g. acquisitions, sales and closure of plants, investment, the start and discontinuation of lines of business and types of production or the definition of the general principles governing business policies. Austria has a highly developed system of

industrial relations based on the concept of social partnership. It retains strong trade unions and employer associations as well as effective works councils in all enterprises employing five or more workers.

AUSTRIA (Works Council)

Works council is the main employee representative body within the establishment. In particular, it exercises the workforce's consultation and co-determination rights, which to that extent can (loosely) be described as the works council's rights. The council is elected by the workforce (essentially all employees within the establishment aged 18 and over, with the exception of executive staff), by direct secret ballot following the principles of personal and equal suffrage. The election is conducted by an electoral board appointed by the works meeting, and this board is also responsible for overseeing all election procedures, announcing the results and making them known to the employer. Since in Austria works constitution law differentiates between white-collar workers and manual workers, it provides for the election of separate category-based works councils (*Gruppenbetriebsräte*) in establishments where there are five or more employees belonging to each of the two categories, that is a manual workers' works council (*Arbeiterbetriebsrat*) and a white-collar workers' works council (*Angestelltenbetriebsrat*), although the two employee categories can decide, each by a qualified majority, to form a combined works council (*gemeinsamer Betriebsrat*). Matters which jointly concern both categories are dealt with by a works council combined committee (*Betriebsausschuss*) composed of all the members of both category-based councils. If an establishment in which a works council has been elected forms part of a multi-establishment company and a council has been elected in at least one of the company's other establishments, a company works council (*Zentralbetriebsrat*) must be formed, elected by and from the members of the individual works councils, whose votes are weighted according to the size of the establishment workforce they each represent. This company works council is responsible for matters affecting the employees of more than one of the company's individual establishments, and in particular is empowered (and required) to exercise their consultation and co-determination rights at company level. In corporate groups (under Austrian law, a group is deemed to exist if two or more legally independent companies are grouped under joint management for business purposes) with (company) works councils in more than one member company, a groups works council (*Konzernvertretung*) may be established provided this is agreed by two thirds of the company works councils which together represent more than half of all the employees within the group. This group works council is responsible for dealing with matters which affect the interests of employees in at least two member companies; in particular, it can also conclude works agreements (see below) with the group management on matters whose regulation is referred to by individual establishment or company-level works councils within the group.

Works council members: Although theoretically 25 per cent of the works council members may be outside union officials, in practice they are normally all employees. The office is honorary and therefore attracts no payment. However, members of all works councils are guaranteed as much time off work, without loss of pay, as is needed to perform the duties of their office, and in large establishments one or more works council members (depending on the size of the workforce) must be given full-time release from work without loss of pay. Council members are also entitled to be released from work (with or without pay) for educational and training purposes. Overall, the law stipulates that an employee may not suffer any disadvantage as a result of holding office as a works council member, and this principle applies equally to pay-related aspects, promotion prospects and transfers. In addition, council members may not be dismissed, either with or without notice, unless the prior consent of the court has been obtained. Correspondingly, however, the law stipulates that works council members may not

be granted special privileges as a result of holding office; the intention here is to prevent any possibility of their being “bought” by the management. And the legislators have also made them subject to a special duty of confidentiality.

Rights and responsibilities of the works council: The works council is responsible for exercising certain consultation and co-determination rights which are conferred on the workforce within an establishment: 1) information, consultation and participation rights (*Beratungs-, Informations- und Interventionsrechte*); 2) rights to co-determination in social matters; 3) special consultation rights in staff matters; and 4) special consultation rights in economic matters.

Information, consultation and participation rights: The employer is required to hold regular discussions with the works council and keep it informed on matters which are important for the workforce. Consultation meetings must take place at quarterly or (at the council's request) monthly intervals, and the council may invite Chamber of Labour or union representatives to attend. The council itself may demand information on all matters of interest to employees, and the employer is also obliged to inform it of any kind of computerized collection and processing of personal data on employees and, if the council so requests, furnish it with details of the software used. In addition, the council is entitled to present complaints to the employer on all matters of concern to employees and to request appropriate measures or demand the correction of shortcomings (general right of intervention). It is also entitled and required to monitor the employer's observance of rules laid down under labour law, social security law and employee protection law, on the basis of rights such as its right to participate in the implementation of the law on employee protection (for example, in the appointment of safety officers, safety experts and works doctors).

Co-determination rights in social matters: The works council must participate in the regulation of all social matters within the establishment (as described in more detail in the works agreement entry): for some it possesses a right of “parity” co-decision-making, and for others it can call on a mediation and arbitration board (*Schlichtungsstelle*) if agreement cannot be reached with the employer. This board, composed of equal numbers of representatives from both sides with a judge as neutral president and set up by the competent labour and social security court, has the task of attempting to establish agreement between the parties on the matter in question and, if this is unsuccessful, deciding the case itself. For other social matters, the works council has the right to regulate them in conjunction with the employer, with normative effect. The *works agreement* is an important instrument of all these forms of co-determination in social matters. Where the council has a full right of co-decision-making, the employer cannot take any action until a works agreement has been concluded with it to that effect. In other words, the council can prevent any planned measures from being implemented by its simple refusal to conclude the agreement (right of veto). This type of agreement is called a *mandatory works agreement*. In contrast to this, the council's right as regard to certain other matters to call on a mediation and arbitration board as described above (where no works agreement is concluded and the board's decision takes its place) simply enables the council to push through the regulation of the matter concerned. This second type of agreement has therefore become known as an *imposable works agreement*. For all other social matters, where the legislators have delegated to the parties at establishment level the option of regulation, a third type is called an *optional works agreement*. Matters which are dependent on the conclusion of a mandatory works agreement include the introduction of a disciplinary procedure and the installation of systems for monitoring employees which intrude on human dignity; those falling within the scope of an imposable works agreement include the distribution of working hours over the individual days of the week, and the introduction of computerized systems for the collection, processing and transmission of personal data on employees (an area which is especially subject to extensive co-determination rights); and those on which optional works agreements may be concluded include the adjustment of working

conditions to human needs, the introduction of company welfare facilities (*Wohlfahrtseinrichtungen*), the temporary reduction of working hours and the introduction of an occupational pension scheme. It should be stressed that the permitted scope of formal works agreements is restricted to the matters specified by law. Other matters connected with the employment relationship are assumed to be regulated by collective agreement. However, pay-related issues, in particular, are excluded and any works agreements on the subject are invalid. The reason for this restriction is the precedence of the regulatory powers of the parties to collective agreements: in principle, rates of pay are established at associational level by the unions and employers' organizations. In practice, works agreements are also concluded on pay-related issues; their content, if the individual employer and individual employee comply with it, can become part of the contract of employment and therefore binding. Such an agreement is referred to (albeit incorrectly from the legal point of view) as an *informal works agreement*.

Special consultation rights in staff matters: When an employer intends to recruit new employees, the works council must be provided with specific information on the planned recruitment, they can demand to be consulted on the matter and must be notified of each resultant engagement of an employee. The employer must also inform the council of any intended promotion of an employee and, if it so requests, consult the council on the matter. The council must likewise be informed of any intended "long-term" transfer and has the right to object if it entails less favourable terms and conditions of employment for the employee concerned. In order to implement such a transfer despite the council's objection, the employer must refer the matter to the court, which is required to grant its consent if the transfer is justified on objective grounds. The employer is also obliged to inform the works council of every intended dismissal (see protection against dismissal), on pain of it being deemed null and void; the council has the right to challenge in the courts any dismissals to which it has lodged an objection.

Special consultation rights in economic matters: Every employer must provide the works council with regular information on the firm's economic and financial situation, including its business trend, inflow of orders and turnover, and, if the council so requests, consult it on that situation. Where the company concerned forms part of a corporate group, the employer must also provide information on any measures planned by the controlling company (such as reorganization programmes and structural changes) which affect employees. In large companies the employer must give the council a copy of the annual report (and the group annual report where appropriate) and, if the council so requests, explain and clarify the content. In addition, the employer must inform the works council of any projected change to the establishment that implies far-reaching consequences. If the change entails serious disadvantages for a significant proportion of the workforce, the council can demand the conclusion of a social plan (redundancy programme) in the form of an imposable works agreement, providing for measures to prevent, eliminate or mitigate these disadvantages.

On the basis of the EU Directive 94/45, Austrian law has also included provisions on the formation of European Works Councils (*EU-Betriebsräte*). (See Table 4)

AUSTRIA (Co-determination)

From the legal point of view the term "codetermination" may be used either in the narrow or in the broad sense. In the narrow sense, it refers only to those special consultation rights conferring on the workforce (or the works council) a full right of co-decision-making. Such an extensive right exists only exceptionally, in relation to the introduction of disciplinary procedures, general questionnaires covering facts which go beyond basic data for staff records, monitoring systems which intrude on human dignity and payment by results systems. The employer may take these measures only if the works council has given its consent by

concluding a works agreement to that effect (mandatory works agreement). In the broader sense, co-determination is understood as generally encompassing all consultation and co-determination rights (*Mitwirkungs- und Mitbestimmungsrechte*) possessed by the workforce. This applies in particular to consultation and co-determination in social, staff and economic matters and to the representation of employees' rights on the supervisory board (*Aufsichtsrat*) of every joint-stock company (see works agreement, works constitution). The system of co-determination provided for by the Labour Constitution Act (*Arbeitsverfassungsgesetz*, 1997), is well developed and enables the workforce to exert effective influence on company decisions having direct (or at least indirect) implications for employment conditions. Any further development of the system seems unlikely for the time being, however. There may perhaps be more flexible rules on the organization of the workforce with regard to the complex corporate structures emerging in sectors such as the railways and postal and telecommunications services, and this is bound to have its effects on the pattern of co-determination. But the latter will not be the subject of any major changes.

Co-determination at establishment level is a cornerstone of the entire system of social partnership. Its importance lies in the fact that it safeguards the system “from below” against spontaneous conflicts. Co-operation within the social partnership system at sectoral and national level depends on the assurance that its agreements can also be put into practice at establishment level. Co-determination contributes to this in two respects. First, it ensures co-operation between management and the representation of employees' interests at establishment level. Most employers (especially in large industrial companies) fully appreciate the works council's function of guaranteeing industrial peace and co-operation. Second, co-determination ensures the co-operation between works council and union which is a precondition of their collaboration in the system of social partnership. This is based mainly on the obligation on the works council to co-operate with management, which is in accordance with the principles of social partnership, and on the complementary division of functions between works councils and unions, which gives precedence to the union on two fronts: in the organization of industrial disputes, owing to the peace obligation imposed on the works council, and in the collective regulation of pay, since rates of pay are excluded from the permitted scope of works agreements. Despite the practice of concluding informal works agreements on pay, the latter do not enjoy the special legal protection provided for formal works agreements and collective agreements and therefore pose no threat to the union's competence in regard to pay. They do, however, perform a “pressure release” function in allowing limited scope for the collective adjustment of pay to conditions in a particular establishment. Because of the incorporation of works councils into the trade union structure, co-determination also contributes indirectly to the continued existence of the union as an organization, since in their activities within the establishment (*e.g.* in recruiting members) the unions are backed by the works council's privileged position as the statutory form of interest representation.

AUSTRIA (Employee Representation on the Supervisory Board)

The Austrian legislators have also made provision for a form of co-determination which is related to the company rather than the establishment: seats on the supervisory board (*Aufsichtsrat*) of every joint-stock company (*i.e.* private or public limited company) must include, in addition to the shareholders' representatives, employee representatives (all of whom must be employees) with voting rights. The co-determination model concerned is not one of “parity” but only “one-third parity”: one employee representative for every two shareholders' representatives (with an extra employee representative if the number is uneven). The right to appoint these board-level employee representatives (*Entsendungsrecht*) lies with the company works council; special rules are laid down on the composition of the supervisory board of a group's controlling company. The office of employee representative on the supervisory board is

honorary. Although these representatives in principle have the same rights and obligations as other board members, differences exist on individual aspects: for example, a report on the company's affairs can be demanded at any time from the management board by two employee representatives (but not two shareholders' representatives). It should also be noted that the appointment of members of the management board, which is one of the supervisory board's most important functions, requires the majority vote not only of all supervisory board members but also of all shareholders ("double majority"). This is intended to ensure that the management board members enjoy the trust of the capital-owning side. Ultimately, therefore, the model is one of below-parity co-determination, merely intended to include employee interests in company decision-making processes. Hence, the right to take strategic business decisions remains in the hands of the owners of capital.

(See Table 3)

AUTONOMOUS GROUPS

Autonomous groups are teams that determine work tasks, carry out the work tasks and discipline members who do not meet performance standards. They serve to replace, in part, the typical manager-employee structure and have the largest degree of involvement.

BELGIUM (Works Council)

As in other European countries, the works council system is highly developed in Belgium by law. They were introduced in Belgium by the Organization of the Economy Act of September 20, 1948, with the aim of fostering employer/employee co-operation. Works councils are established in enterprises (defined as "technical work/production units") employing 100 employees or more; this is restricted to the private sector, but covers both profit-making and non-profit-making enterprises. The works council is not a joint body in the strict sense. Both parties (employer and employees) are represented, but not necessarily in equal numbers. Only the number of employees' representatives is expressly specified. All that is stipulated regarding the number of employer's representatives is that it may not exceed the number of employees' representatives, so it may be smaller. The employer's representatives must be appointed from among the enterprise's senior executives. Their term of office is four years, provided they do not lose their (stated) senior executive post.

Elections are organized to form the works council, but only as regards the employees' representatives: employers are free to choose their own representatives themselves. Elections for the employees' representatives are based on lists of candidates. In the case of blue-collar and white-collar workers (excluding "kaderleden/cadres", *i.e.* professional and managerial staff), lists of candidates may be submitted only by representative unions. In practice, this means that only the Belgian General Federation of Labour, the Federation of Liberal Trade Unions of Belgium and the Confederation of Christian Trade Unions are eligible to nominate candidates, which amounts to a monopoly by the traditional unions. The industrial and horizontal unions affiliated to these three major "umbrella" organizations can also submit lists. The employer must publicly display the lists put forward even if the number of candidates on each does not exceed the number of seats on the works council that may be allotted to that union. If there are sufficient numbers of them employed in the enterprise, separate lists are used for blue-collar workers and white-collar workers respectively. This distinction between the two categories is then maintained as regards the composition of the works council. If there is a sufficient number of young workers employed in the enterprise (defined here as employees under the age of 25), seats on the council are reserved for the young workers' representative(s). And when an enterprise employs at least fifteen employees classed as professional and managerial staff, a separate electoral body is formed for them. This important innovation was introduced by the Social Recovery Act of 1985. Senior executives are excluded from the elections. They can neither stand as candidates nor take part in the voting.

The works council's responsibilities mainly fall under the heading of information and consultation. It has decision-making powers on only a few matters.

Worker representation does not exist on the executive boards of Belgian private companies: the system of corporate governance is based on a single administrative board that is either elected or appointed exclusively by the company's shareholders. Belgium does have employee representation in some parts of its public sector, most notably in the state railway company

where 3 out of 23 members of its administrative board are nominated by the trade union and elected by the workforce. (See Table 4)

BELGIUM (Workplace Health and Safety Committee)

Employers are under a legal obligation to establish one or more committees in enterprises normally employing an average of 50 workers. It is a bipartite body composed of representatives of the employer and of the employees. The employees' representatives are elected at the same time as the employees' representatives on the works council, following the same procedure and formalities, in the four-yearly elections known as "social elections". The rules concerning the employer's representatives differ somewhat from those applicable in the case of the works council. The head (or an assistant) of the enterprise's health and safety service is an ex officio member of the committee, as an independent expert. This person assumes the office of secretary. The employer's representatives must be chosen from among the managerial staff. In order to preserve their independence, industrial doctors may not act either as employer's representatives or as employees' representatives, but they attend the meetings of the committee in a consultative capacity. Lastly, members of the committee can request the presence of experts. The responsibilities of these committees have been laid down by Royal Decree. They were given the task of "investigating and proposing all ways and means of actively contributing to everything undertaken to ensure that work is performed in the best possible conditions of health and safety." In fulfilling this task, the committee acts primarily in an advisory capacity. In addition, it is empowered to promote and monitor health and safety in the workplace. These responsibilities entail certain obligations on the part of the employer. Such obligations include providing the committee with the information it needs in order to be able to give informed advice. Provisions are also laid down on how employers are required to give effect to the committee's advice. In general, employers must pursue an active policy of prevention; and they must inform and consult the committee in connection with this policy, and give it full co-operation. The responsibilities of the workplace health and safety committee are fairly precisely defined. It is primarily an advisory body; the employer has to indicate to the committee the action to be taken in response to its advice. The fact that the employer cannot simply ignore this advice lends it significance. However, with the exception of certain matters which are subject to its prior approval, the committee has no decision-making powers. In accordance with Collective Agreement No. 39, in cases where new technologies are to be introduced there must be consultation with the workplace health and safety committee. As well as the committees at enterprise level, there are committees at district level and a Supreme Council for Health and Safety in the Workplace at national level.

BRAZIL (Joint Committee)

Brazilian labour law does not recognize joint committees and their functions. All problems originating from a collective bargain dispute are treated by distinct sections of the government. Initially, mediation or even arbitration can be attempted by the Ministry of Labour and Employment. If a solution is not obtained at that time, the social partners, or even one of them, are entitled to go before a Labour Court, in order to receive a normative sentence that will substitute for the collective contract which the parties could not achieve.

BRAZIL (Committee for Prevention and Protection at Work)

The existence of a specific service with orientation on health and safety at work is the content of Chapter V of the Code of Labour Law (CLL). This is necessary in every establishment with 20 or more workers, in order to prevent work accidents and occupational diseases. This service

is known, under Ministry of Labour and Employment provisions, as a committee called the Internal Commission for Accidents Prevention (CIPA) and is constituted from representatives from both the employer and workers, in every establishment of an enterprise (CLL, Articles 162-165). This Commission, present at any establishment with 20 or more workers, is composed of employers and workers' representatives. The members in charge of employer representation and their substitutes are designated by the entrepreneur and they do not benefit from job stability. The employer has the right to choose the chairman from the representatives and he has a mandate of one year. On the other hand, the employee representatives and their substitutes are elected in a secret ballot in each plant where there is a Commission. Employees are only entitled to be a vice-president but all of them have job stability similar to that of a trade union's director. This means the representative cannot be dismissed, except when he gives a serious just cause and the Labour Court authorizes it after the due legal process. The term of this representation is also for one year; a representative can be re-elected only once and job stability is extended to another year, after this term. It is an essential task to promote security and health protection for the workers and this must be done by a policy to prevent accidents and occupational diseases. This can be done by acting as an adviser with the enterprise, promoting specific training programmes for workers and testing the workplace and work conditions.

The way to achieve this is by an educational programme, both inside and outside the undertaking, regarding the importance of protection and the use of protective devices against accidents and the circumstances that can cause a disease because of the activities carried out at the workplace. Everything that could contribute to employee fatigue must be prevented by actions. At least this constitutes the Commission's proposal for the detection of any hazards that could endanger health and safety, educate workers to prevent them, detect jobs which are not suitable for human beings, consider the causes and try to eliminate them.

If an accident results in the injury or death of an employee, the Commission is entitled to investigate the fact and its causes, to inspect the place and devices and propose the actions considered necessary to prevent another similar occurrence. Instructions are issued in order to give information to all employees at the plant and are transmitted to other establishments, as experience gained and transmitted, with the intention of preventing repetition. The Ministry of Labour and Employment obliges the Commission to meet once a month. Minutes are taken and approved at the next meeting. Any other meeting can be held whenever necessary and are mainly due to the occurrence of accidents.

BULLOCK REPORT (see: UNITED KINGDOM-Industrial Democracy)

CANADA (Joint Health and Safety Committee)

In the Canadian legislation, occupational health and safety committees are mentioned under slightly varying names. We have used the name Joint Health and Safety Committee (JHSC) to reflect its composition; the committee may also be known as the industrial health and safety committee, joint work site health and safety committee, occupational health committee, workplace safety and health committee, or health and safety committee. A JHSC is a forum for bringing the internal responsibility system into practice. The committee consists of labour and management representatives who meet on a regular basis to deal with health and safety issues. The advantage of a joint committee is that the in-depth practical knowledge of specific tasks (labour) is brought together with the larger overview of company policies, and procedures (management). Another significant benefit is the enhancement of cooperation among all parts of the work force toward solving health and safety problems. In smaller companies with less than a specified number of employees, a health and safety representative is generally required. Consult health and safety legislation applicable to your workplace for details. Employers are responsible for establishing workplace health and safety committees. Most Canadian health and safety legislation set guidelines for organizing the committee, the structure of the committee, meeting frequency, and the roles and responsibilities of committee members. Employers establish terms of reference applicable to the formation, structure and functioning of the committee. Such terms of reference must ensure: 1) compliance with the OHS legislation; 2) effectiveness of the committee in meeting workplace specific needs; 3) widest possible employee involvement.

Activities of the JHSC include: a) participate in development and implementation of programs to protect the employees safety and health; b) deal with employee complaints and suggestions concerning safety and health; c) ensure the maintenance and monitoring of injury and work hazard records; d) monitor and follow-up hazard reports and recommend action; e) set up and promote programs to improve employee training and education; f) participate in all safety and health inquiries and investigations; g) consult with professional and technical experts; h) participate in resolving workplace refusals and work stoppages; i) make recommendations to management for accident prevention and safety program activities, and l) monitor effectiveness of safety programs and procedures. A JHSC or the appointment of representatives is either mandatory or subject to ministerial decision in all Canadian jurisdictions. Certain types of workplaces may be exempt from this requirement, depending on the size of work force, industry, accident record, or some combination of these factors.

CANADA (Sector Councils)

Sector councils are organizations within a defined area of economic activity that are led by a partnership of representatives from business, labour, education, other professional groups, and government. They work to identify and address current and anticipated human resource and skills & learning challenges and to implement long-term, human resources planning and development strategies for their respective sectors. The objectives of sector councils are to: a)

define and anticipate skills requirements; b) promote lifelong learning in the workplace; c) facilitate mobility and labour market transitions; d) help workers get the skills and knowledge needed to drive innovation, and e) to sustain a competitive advantage in the changing economy, and encourage the private sector to take ownership and invest in solutions that address skills challenges. Sector councils represent: traditional industries such as steel and textiles; emerging industries like environment and biotechnology; and non-industry specific groups such as the Canadian Apprenticeship Forum. *Background:* In the 1980's, through separate initiatives with Human Resources and Social Development Canada (HRDC), three sector councils were formed: Canadian Steel Trades and Employment Council (CSTEC), Electrical and Electronic Manufacturers Association of Canada (EEMAC), and Canadian Automotive Repair and Service (CARS). In 1989, national sectoral human resource planning formally began with the Labour Force Development Strategy (LFDS). This Strategy funded the development of sector councils as a means to address the human resource needs of sectors, which were identified through sector studies - forward-looking industry analyses that examine how changes in business and technology relate to human resource issues in specific sectors of the Canadian economy. In 1992, the Sectoral Partnerships Initiative (SPI) was launched. It expanded the LFDS to include funding for additional sectoral activities, such as national occupational standards and skills upgrading. Throughout the 1990s other sectoral activities were introduced, such as sectoral youth internships, science and technology internships, career information initiatives, essential skills and skills enabling activities.

Sectoral partnerships are a useful method of meeting emerging skills requirements, addressing skills and labour shortages, and building essential skills in the workplace as a foundation for continuous learning. Sector councils play an important role in engaging industry to help bridge the gap between its needs and the learning system. Sector councils have a proven track record of making workplace learning happen. Sector councils are positioned as key instruments in delivering on the Government's broad Innovation and Learning Agenda. This has been underlined in a number of policy statements.

Sector councils are established in different industry sectors and are positioned to respond to diverse skills challenges. However, councils are all committed to achieving a number of core outcomes, including: a) Better understanding of labour market trends and issues in Canadian industry sectors; b) Consensus, commitment and effective cooperation among key sectoral players on workplace skills issues; c) Improved collaboration with the learning system to ensure that skills development is responsive to industry needs; d) Better human resources planning and development within sectors; e) Enhanced employee retention and advancement, across industry sectors; f) Effective and efficient labour markets within industry sectors; g) Increased productivity of sector workforce.

CENTRAL MANAGEMENT

According to EU Directive 94/45, means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking.

CENTRAL MANAGEMENT OF THE ENTERPRISE

Central management of the enterprise is a description of the decision-making function in an enterprise; it is not a formal body in corporate law. For example, in the Directive n. 94/45, of 22 September 1994, on European Works Councils (as amended by Dir. No. 2009/38, of 6th May 2009) central management denotes 'the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling

undertaking.’ However, the assumption of a centralized management may not be entirely accurate in the case of employment and industrial relations matters. For example, personnel policy decisions within multinational corporations cover different types of decisions, which tend to be taken at different levels. This has encouraged EU regulations to use the terms ‘appropriate’ or ‘relevant’ level of management instead. For example, Council Directive No. 2002/14, establishing a framework for informing and consulting employees in the European Community stipulates that, ‘Consultation shall take place... at the relevant level of management and representation, depending on the subject under discussion.’ Article 5 provides that ‘Member States may entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees’.

CHILE (Participation in Enterprise Management)

Chilean legislation prescribes two cases of workers' participation in management on account of those being workers and neither owners, co-owners nor shareholders. In both cases, participation takes place at the board of directors. They are the case of the State Bank and the case of the Copper Corporation (a state enterprise dedicated to copper exploitation and commercialization; the enormous proceeds from copper industry are of utmost importance to Chilean economy). As to the first, the Minister of Labour is entitled to appoint one member of the board of directors after having heard the union leaders' option. Such appointment has been in practice since 1988. Prior to that year, participation was ruled by the 'General Bank Law' dating from 1960 according to which the workers of all Chilean banks had the right to elect one titular member and his substitute, of the respective bank's directorate. After the military Coup of 1973, these directors ceased to be elected by the workers and were instead appointed by the Labour Minister. As already mentioned above, since 1988, such participation has been maintained only with respect to the State Bank; it was, however, cancelled in all remaining banks of out country. As to the second enterprise, the Copper Corporation, its directorate comprises one representative of the Copper Workers' Confederation and another one of the National Association of Copper Supervisors. Both are appointed by the President of the Republic from a list of five candidates submitted to him by each organization. Until September 1973, workers' participation in enterprise (commonly) was expressed under various types of participation schemes related to decision-making, especially through co-management modalities. One member of the enterprise directorate represented the workers, thus giving rise to a minority representation on behalf of the workers. Between September 1970 and September 1973, co-management parity existed. By 11 September 1973, the date of the military Coup, the Chilean State owned the majority of shares in 420 enterprises which formed the so-called 'social area' of the national economy. In 230 of these enterprises, a bipartite codetermination model had been established following the 'basic participation norms' elaborated in 1971 by a commission formed by representatives of Chile's Unitarian Trade Union (Central Unica de Trabajadores - CUTCH and of the government). In each of these enterprises, the participative system had to be established after the adoption of internal rules for participation, approved at an assembly by all workers of the respective enterprise and proposed by a provisional bipartite committee. The administration council had the power to take decisions. It was integrated by five government representatives, five workers' representatives and presided over by a person designated by government to administrate the enterprise. Other participation bodies were: the workers' co-ordination committee, production committees, assemblies at the level of production units, and the workers' enterprise assembly. Special relevance was given to the production committees; they were in charge of advising the chief of the correspondent production unit and of supervising the application of all enterprise plans at production unit level. Participation norms had different levels of application, depending on the participation history of each enterprise and on the procedures used for its incorporation to the social area;

preexistent state enterprises; new state enterprises; old private enterprises which had been bought or expropriated; previous presence of intervention processes (in case of legal or illegal collective labour conflicts) or requisition (preventive or punitive) in case of interests' conflicts. In practice, this participation experience formed part of political confrontation and conflict of that historical era, and contributed to make them more acute. So, it is not easy to evaluate the results. Some of its most severe critics find that the experience should have included all of the economy and not only the so called 'social sector', for which it would have been recommendable to eliminate or reduce significantly the sector of private property; whereas others find that participation should have had a different sign: workers' property, self-management or co-determination modalities.

CO-DETERMINATION

Co-determination is a structure of decision-making within the enterprise whereby employees and their representatives exert influence on decisions, often at a senior level and at a relatively early stage of formulation. Co-determination may operate in parallel to, and complement, other industrial relations mechanisms of employee representation and influence. It does not substitute for other mechanisms of employee influence on management decision-making, such as collective bargaining. Co-determination is rooted in the industrial relations traditions of a number of EU Member States. For example, in Germany there are two distinct levels of co-determination: at establishment level via the works council, and at enterprise level, on the supervisory board of companies. In Austria, works councils have the right to negotiate a 'social plan' in the event of decisions involving restructuring, which may lead to job losses. In Denmark, employees have the right to elect a third of members of the company board, and through this mechanism they exercise a powerful voice in votes on matters that can have a major impact on the workforce. Elements of co-determination feature in a number of EU directives, requiring employees and their representatives to be informed in advance of decisions that will affect their interests, and impose procedures for their consultation, and other forms of participation in the decision-making process. The most general illustration of this approach at establishment or undertaking level is Council Directive No. 2002/14 establishing a framework for informing employees and consulting with them in the European Community. Although not allowing for employees or their representatives to determine the decision, the Directive imposes a requirement on management to consult 'with a view to reaching an agreement on decisions within the scope of the employer's powers'. At company level, Council Directive 2001/86 supplementing the European company Statute prescribes employee involvement in European companies (*Societas Europea*) in the form of information and consultation of employees and, in some cases, board-level participation.

COLLECTIVE BARGAINING AND EMPLOYEE INVOLVEMENT

In listing the forms of participation, some authors include unions and collective bargaining. For them, collective bargaining represents an effective form of "representative participation". Furthermore, there are many processes and problems involved in collective bargaining that affect other forms of representative participation as well. So is possible to learn from experiences with collective bargaining. One possible argument for ignoring collective bargaining is that bargaining is openly adversarial or distributive while other forms of participation are presumably integrative or cooperative. But this argument is not persuading. Representative participation involves a great deal of bargaining as various experiences of works councils illustrate. Indeed, most of such participation involves what we could call "mixed motives". It is part integrative and part distributive. The *NUMMI* case involved bargaining both between union and management but also between union factions and

presumably between Japanese and Americans in management. Similarly, *SATURN* can be understood as involving endless bargaining between union and management at Spring Hill and their counterparts nationwide. Although representative participation clearly involves a good deal of bargaining; there have been few, if any, studies of dynamics of the bargaining process involved, the ups and down in relationships as the parties either resolve or fail to resolve their problems over time. Research of this sort requires close observation and careful analysis of the pressure faced by the various interested parties.

COLLECTIVE BARGAINING AND EMPLOYEE INVOLVEMENT (EU Legislation)

Considering that the central role of collective bargaining between organizations of workers and employers and their organizations in industrial relations in the Member States is recognized by the EU in Article 28 of the Charter of Fundamental Rights of the European Union of December 2000 ('Right of Collective Bargaining and Action') and in Article 12 of the Community Charter of the Fundamental Social Rights of Workers of 1989. 'The Right to Bargain Collectively' was also declared a fundamental right in the European Social Charter of the Council of Europe (1961, Article 6). The interpretation by the European Court of Human Rights in Strasbourg of the right to freedom of association in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms has extended some protection also to collective bargaining (*Wilson and the National Union of Journalists; Palmer, Wyeth and the National Union of Rail, Maritime and Transport Workers; Doolan and others v. United Kingdom*, decided 2 July 2002). Just as collective bargaining receives legal support from the Member States, this array of European legal guarantees provides the background for the EU's recognition of the centrality of collective bargaining. The operation of collective bargaining in EU industrial relations is multi-faceted, as evident in the various functions attributed to collective agreements by EU Directives and the growing role of European collective agreements. At EU level, one specific process of collective bargaining takes place when negotiations develop 'in the shadow of the law.' This is exemplified by the European Works Councils 94/45 of 22 September 1994 (as amended by Directive No. 2009/38, of 6th May 2009). The EWC Directive is characterized by a strategy, which is apparently assuming greater prominence in the EU system: the delegation to the social partners, management and labour, of the competence to negotiate the relevant European labour standards. The EWC is to be negotiated by the central management of the multinational enterprise and the representatives of the workforce: they must negotiate 'in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees' (Article 6). However, the Directive structures the negotiating process by explicitly providing that, if agreement is not reached, minimum (subsidiary) requirements laid down in an Annex to the Directive will apply (Article 7(1)). In practice, therefore, the structure of negotiations between the parties is shaped by the subsidiary requirements.

COLLECTIVE BARGAINING (Right of Collective Bargaining, EU Legislation)

Article 28 of the Charter of Fundamental Rights of the European Union (2000), entitled 'Right of Collective Bargaining and Action', stipulates: "Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interests, to take collective action to defend their interests, including strike action". The right of collective bargaining enshrined in Article 28 stems from Article 6 of the European Social Charter (1961-1996) and Article 12 of the Community Charter of the Fundamental Social Rights of Workers (1989). Other international instruments also provide for this right, such as ILO Convention No. 98 of 1949 on the application of the principles of the right to

organize and to bargain collectively. In providing for a right of collective bargaining, the EU Charter may influence different constitutional texts and have a substantive impact on national legal systems without such rights at a constitutional level. Article 28 deals with the process of collective bargaining, its outcome, the collective agreement, the actors involved (workers, employers, their organizations) and the 'appropriate' levels. Article 28 describes the 'right of collective bargaining' as a completed process of two phases: 'to negotiate and conclude collective agreements': in short, all the steps from initiating negotiations to concluding the collective agreement, including the actual negotiations. The European Social Charter (1961, revised 1996) describes the content of the 'right to bargain collectively' (Article 6) by listing the obligations to be undertaken by states 'with a view to ensuring [its] effective exercise' including active promotion. These may be taken as indicators of the minimum expected of EU Member States. The phrase 'in accordance with Community law and national laws and practices' leaves some scope for national rules, subject to review by the European Court of Justice.

The right of collective bargaining, recognised by Article 28 of the Charter of Fundamental Rights of the European Union, finds a number of applications at EU level. Moreover, the EU Charter requires the institutions and bodies of the Union to respect all fundamental rights, including the right of collective bargaining. For instance, Articles 138 and 139 of the EC Treaty envisage a collective bargaining process at Community level, whose final result is a European collective agreement. In this framework, the obligations on 'the institutions and bodies of the Union' include promoting consultation, facilitating dialogue, ensuring support, and implementing agreements at the joint request of the signatory parties. It is especially to this process and outcome that the rights recognized by Article 28 must be applied at EU level, with the resulting obligations of the institutions and bodies of the Union. Collective bargaining and collective agreements have become important in Community labour law in light of the multiple functions they perform. First is the quasi-legislative function assumed by the social partners engaged in collective bargaining at EU level in the form of the social dialogue. This has led to collective agreements given legal effect in the form of directives. In the most recent case, the agreement on telework, the result is not to be embodied in a directive. This will highlight the central issue of its precise legal effect, an issue on which Article 28 may be engaged. Second, a general model emerging is that the collective agreement may have an important function in facilitating the implementation and application of Community labour law. This takes two forms: collective bargaining and collective agreements are allocated a role in the transposition of Community law into the national laws of the Member States; and they are also allocated a role in the flexibilization of Community law, allowing for its adaptation to the specific national context of industrial relations and employment practices in each Member State. Third, collective bargaining and collective agreements are recognised as reflecting fundamental social objectives and values, which are to be protected against competing objectives and values in Community law, in particular, those of competition law. The status of these competing objectives and values in the Treaty does not necessarily indicate which have priority. It may be that Article 28 of the EU Charter, referring to rights 'in accordance with Community law', may not confer absolute protection to collective bargaining and collective agreements. In deciding the hierarchy of values and objectives, however, the European Court of Justice may give more weight to the right of collective bargaining recognized in Article 28 in the absence of recognition of competing values (e.g. of competition) in the Charter of Fundamental Rights of the European Union. The guarantee in Article 28 of the fundamental right of collective bargaining and action may serve to reinforce all these multiple roles of collective agreements. In practice, they may be used to challenge obstacles placed by EU institutions or Member States in the path of the social partners when they are engaged in the process of collective bargaining or wish to secure respect for collective agreements 'in accordance with Community law'.

COLLECTIVE DISMISSALS (Information and Consultation in case of Collective Dismissals: EU Legislation)

The EC Directive relating to collective dismissals (Council Directive 75/129 of 1975 as amended and consolidated in Council Directive 98/59 of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies) provides the following definition of collective redundancies: ‘dismissals effected by an employer for one or more reasons not related to the individual workers concerned...’. The context for the introduction of the Collective Dismissals Directive was the economic difficulties following the oil crisis of 1973, which led to many closures and restructuring of enterprises. Hence, the Directive has come to be perceived as limited to dismissals of a particular kind: economic, redundancy or technical dismissals, reflected in various national implementing provisions. However, it is the underlying principle of the Collective Dismissals Directive that is significant: meaning dismissals are a collective issue, to be dealt with through collective information and consultation rights. Article 2(1) provides: ‘Where an employer is contemplating collective redundancies, he shall begin consultations with the worker representatives in good time with a view to reaching an agreement.’ Specifically, the employer is required to consider alternatives to dismissal. The consultation required ‘shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences.’ Amendments in 1992 (by Directive 92/56) added a reference to ‘recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.’ Another new requirement inserted by the 1992 amendments was that employers notify worker representatives of: ‘(v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefore upon the employer; (vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice’. The 1992 Amendment (Article 2(4)) also made clear that the obligations ‘shall apply, irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer’, and that ‘in considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the grounds that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies’. This has significant implications for transnational enterprises in particular since, if the reason the (national-level) employer produces for not having consulted is because of their own lack of information, this defence will not be taken into account. To be covered by the Directive, the number of such dismissals has to reach thresholds stipulated in Article 1(1)(a) of the Directive: ‘(i) either, over a period of 30 days: at least 10 in establishments normally employing more than 20 and less than 100 workers; at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers; at least 30 in establishments normally employing 300 workers or more; (ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question’. Termination of individual contracts can also be included in the relevant numbers (provided that there are at least five) when they take place contemporaneously with dismissals.

COLLECTIVE INDUSTRIAL RELATIONS (EU)

Collective industrial relations, between organizations of workers and employers at European level, take place alongside industrial relations at many other levels: establishment, company, local, regional, sectoral, national and international. Collective industrial relations overlap with other economic, social and political dimensions, such as employment policy, gender relations and governance. Over time, the relative importance of different levels and features of collective

industrial relations and their relation to other dimensions changes according to shifts in the economic, political and social context. The outcomes are reflected in different forms and degrees of interactive processes, such as tripartite concertation, social dialogue, collective bargaining, information, consultation and participation, industrial conflict, constitutional protection, legislative regulation, judicial intervention, and so on. An EU system of collective industrial relations implies a system, which, like the EU itself, is transnational. However, again like the EU, the Member State's presence in the institutions of the transnational system of collective industrial relations is crucial. An EU system of collective industrial relations, therefore, engages industrial relations at both the transnational and national levels. Furthermore, an EU system aims to articulate constructively both EU and national levels of industrial relations. There must be mutual adaptation of collective industrial relations at EU level and in national systems of industrial relations. For example, in one decision, the European Court of Justice stated that the EC's requirement for information and consultation, in the Directives on collective dismissals and transfers of undertakings, means that Member States must ensure that there are worker representatives in the enterprises to be informed and consulted (*Commission of the European Communities v. United Kingdom*), Cases C-382/92 and C-383/92, [1994] ECR. Thus, the components of collective industrial relations in the EU usually have a legal basis. Some elements, such as EU social dialogue and the European Employment Strategy, have such a base in the EC Treaty; others, such as the EU Charter of Fundamental Rights, have been integrated into the Treaty establishing a Constitution for Europe as of June 2004 and might eventually become legally binding; still others, such as European Works Councils, are incorporated in a directive. Finally, the Tripartite Social Summit is established by a Council Decision. Transnational coordination of collective bargaining and macroeconomic dialogue do not yet have a legal basis.

COMMUNICATIONS WITHIN UNDERTAKING (ILO Recommendation No. 129)

The ILO Recommendation No. 129, on Communications within the Undertaking (adopted in 1967), is composed of 15 paragraphs, subdivided into two main parts: the first part deals with general considerations, while the second is concerned with more specific elements related to the "communications policy" that should be implemented within the enterprise. In the spirit of Recommendation No. 129, each Member State should bring the provisions of the Recommendation to the attention of persons, organizations and authorities that might be concerned with the establishment of policies regarding labour-management communications at the enterprise level. Both workers and management recognize the importance of maintaining a climate of mutual understanding and confidence within the enterprise, since such a climate boosts the efficiency of the enterprise and the aspirations of workers. Such a climate should be promoted through the rapid dissemination and exchange of information relating to the various aspects of working life in the enterprise. Therefore, in consultation with workers' representatives, management should take appropriate measures to apply an effective policy for communicating with both workers and their representatives (paragraph 2). However, an effective policy of communications should also ensure that information is given and that consultation takes place between the parties concerned before management takes decisions on issues of major interest for the workers. Furthermore, the disclosure of information should not cause damage to either party (paragraph 3).

Recommendation No. 129 also reiterates that the method of communications between management and employees should in no way diminish the principle of freedom of association. In other words, such communication policies should not cause prejudice to freely chosen workers' representatives or their organizations, or curtail the functions of the workers' representative bodies. This is indeed important, since, in practice, it is often difficult for workers' representatives to enforce their right to receive information, especially for collective

bargaining purposes. Faced with this reality, the Recommendation introduces a set of principles that should guide both representative employers' and workers' organizations in establishing, implementing and maintaining effective communications policies. For example, communication policies should be adapted to the nature of the enterprise, taking into account its size composition and the interests of the workforce. To fulfil this objective, communication systems at enterprises should be designed to ensure genuine and regular two-way communication. This communication is especially important between the representatives of management and workers, including dialogue between trade union representatives and top management personnel, such as the head of the enterprise or the human resources director.

The most important aspect of the communication policy is the selection of appropriate methods of communication and information exchange. These may include use of the following media:

a) *meetings* for the purpose of exchanging views and information;

b) *media* aimed at giving groups of workers, such as supervisors' bulletins and personnel policy manuals;

c) *mass media*, such as publications (e.g. house journals and magazines, newsletters, information and induction leaflets), notice boards, annual or financial reports presented in a form understandable to all the workers, employee letters, exhibitions, plant visits, filmstrips, slides, radio or television:

d) *mechanisms* that allow workers to submit suggestions and to express their ideas on questions relating to the operation of the enterprise (paragraph 13).

In the practice of labour management relations, the issue of disclosure of information is taking on increasing importance. Indeed, top management at the enterprise level is usually reluctant to disclose information to workers, claiming that information related to the operations of the enterprise is too delicate or too important. Nonetheless, management should provide, to the extent possible, information on all matters of interest to the workers relating to the operation and future prospects of the enterprise, and to the present and future situation of the workers themselves. Such information should be addressed either to workers' representatives or to the workers themselves, taking into account the nature of such information, as the Recommendation states that "disclosure of the information will not cause damage to the parties" (paragraph 15).

The Recommendation examines in more detail the kind of information that management should be able to communicate to workers and their representatives, for example: information on general conditions of employment, including engagement, transfer and termination; job descriptions and the placement of particular jobs within the structure of the undertaking; possibilities of training and prospects for advancement within the enterprise; general working conditions; occupational safety and health regulations and instruction for the prevention of accidents and occupational diseases; procedures for the examination of grievances, the rules and practices governing their operation, and conditions for recourse to them; personnel welfare services, including medical care, canteens, housing, leisure, savings and banking facilities, etc.; social security or social assistance schemes within the enterprise; regulations of national social security schemes to which the workers are subject by virtue of their employment in the enterprise; the general situation of the enterprise and prospects or plans for its future development; the explanation of decisions which are likely to have a direct or indirect effect on the situation of workers in the enterprise; and methods of consultation, discussion and cooperation between management and its representatives and the workers and their representatives (paragraph 15).

Finally, in the case of issues that are the subject of a collective agreement concluded at a level beyond that of the enterprise, information provided to employees should make express reference to such issues.

CONSULTATION (EU Legislation)

According to Directive 94/45 on European Works Councils (as amended by Dir. No. 2009/38, of 6th May 2009), *consultation* means the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management. According to Dir. n. 2002/14 establishing a framework for informing and consulting employees in the European Community, consultation is a stage in the process of management of the enterprise in which those consulted can influence decision-making. In Dir. 2002/14, 'Consultation' is defined in Article 2(g) as 'the exchange of views and establishment of dialogue between the employee representatives and the employer.' Consultation is thus a stage in the process of management of the enterprise in which those consulted can influence decision-making. The conditions for consultation are further articulated in Article 4(4): "(a) while ensuring that the timing, method and content thereof are appropriate; (b) at the relevant level of management and representation, depending on the subject under discussion; (c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees' representatives are entitled to formulate; (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate; (e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c)". The requirement that management of the enterprise inform and consult employee representatives in making decisions covers a wide range of topics, defined in Article 4(2): "(a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation; (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment; (c) information and consultation on decisions likely to lead to substantial changes in work organization or in contractual relations". Article 1(2) of Directive 2002/14 states that the 'practical arrangements for information and consultation', must be such 'as to ensure their effectiveness'. Article 4(4) (a) stipulates that the quality of the consultation required is measured against a criterion of what is 'appropriate'. 'Appropriateness' and 'effectiveness' are the overriding criteria in EC law to assess the practical arrangements determined by Member States. The 'method' of consultation includes, for example, meetings, feedback and advice from experts. The reference in Article 4(4) (d) to 'meet the employer' is not limited to one meeting. Article 4(4) (c) provides for 'the opinion which the employees' representatives are entitled to formulate' on the basis of the information supplied by the employer. Article 4(4) (d) obliges employers to offer a 'reasoned response' to the comments of the employees' representative concerning the employer's proposals. If the employers' representatives propose alternative options, the employer needs to respond to them and justify any rejection of these options. The method of consultation envisaged by the directive thus opens room for a proactive approach by employees' representatives; not only to react to the employer's proposals, but to formulate their own. Article 4(3) describes their activity in terms of conducting an adequate study in preparation for consultation. Article 6(1) also provides that employee representatives may benefit from 'experts who assist them' in the process of information and consultation of decision-making in the enterprise.

CONSULTATION IN THE EU ENTERPRISE (Relevant Level)

Council Directive No. 2002/14 stipulates that consultation shall take place ‘at the relevant level of management and representation, depending on the subject under discussion’. As to the relevant level of management, Article 4(4) (e) states that consultation is ‘with a view to reaching an agreement on decisions within the scope of the employer’s powers referred to in paragraph 2(c).’ The question is whether this is the formal decision-maker (e.g. the employer ‘in contractual relations’ with the employees concerned) or the ‘real’ decision-maker (e.g. the employer whose ‘decisions are likely to lead to substantial changes in work organization’). If consultation is intended to influence decisions, it must be with the employer who makes the decision at the relevant level – for example, either the contractual employer or the employer in a parent company. The Directive refers not to the relevant ‘employer’, but to ‘the relevant level of management.’ As to the relevant level of employee (collective) representation, there is no reason to confine the obligation to one level of employees’ representatives. The impact of the decision may be felt at many levels, and practical arrangements should require information and consultation at these relevant levels. In any event, the relevant level of ‘representation’ does at least presuppose representation. This puts to rest any doubts about whether the Directive allows for consultation of individual employees.

CONSULTATION IN THE EU ENTERPRISE (Timing)

The timing of consultation in the enterprise is critical. Studies have confirmed the importance for employee representatives to have early access in the decision-making process and a predetermined decision-making procedure. Council Directive No. 2002/14, establishing a framework for informing employees and consulting with them in the European Community, stipulates: ‘Consultation shall take place [...] while ensuring that the timing [...] thereof [is] appropriate.’ Previous Directives required consultation to be ‘in good time’ (Article 2 of Council Directive 75/129 concerning collective dismissals; Article 7 of Council Directive 77/187 concerning employees’ rights in the event of the transfer of an undertaking) or specified ‘as soon as possible’ (Directive 94/45, concerning European Works Councils). What is ‘appropriate’ timing under Directive 2002/14 may vary according to circumstances, e.g. the nature of the decision and its impact, or the organization of employees’ representation. A crucial ambiguity remains: whether or not the process of information and consultation is to take place prior to a decision being made by the employer. The case of *Irmtraub Junk c. Wolfgang Kuhnel als Insolvenzverwalter ueber das Vermoegen der Firma AWO* (Case C-188/03, ECJ decision, 27 January 2005), concerning the process of information and consultation envisaged by the Collective Dismissals Directive 98/59, may clarify this question. The case concerned specifically the timing of information and consultation. The ECJ interpreted the Directive to mean that the employer is obliged to inform and consult before the employer gives notice of redundancy. Moreover, the ECJ held that the Directive obliges the employer to complete consultations before the decision is made. Again, by ‘decision’ is meant the date of the notice of termination of employment, not the date when the dismissals take effect. The ECJ’s judgment provides powerful support for the view that the language of Directive 2002/14 should be interpreted consistently with that of the 1975 Directive, so as to preclude management taking decisions, until the process of information and consultation is completed.

CONTROLLING UNDERTAKING (EU Legislation)

According to Directive 94/45 (as amended by Dir No. 2009/38, of 6th may 2009) and for its purposes, ‘controlling undertaking’ means an undertaking which can exercise a dominant influence over another undertaking (‘the controlled undertaking’) by virtue, for example, of ownership, financial participation or the rules which govern it. The ability to exercise a

dominant influence shall be presumed, without prejudice to proof the contrary, when, in relation to another undertaking directly or indirectly: (a) holds a majority of that undertaking's subscribed capital; or (b) controls a majority of the votes attached to that undertaking's issued share capital; or (c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body. For the purposes of paragraph 2 (*see above*), a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking. 4. Notwithstanding paragraphs 1 and 2, an undertaking shall not be deemed to be a 'controlling undertaking' with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3 (5) (a) or (c) of Council Regulation No 4064/89, of 21 December 1989 on the control of concentrations between undertakings (6). A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings. The law applicable in order to determine whether an undertaking is a 'controlling undertaking' shall be the law of the Member State which governs that undertaking. Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated. Where, in the case of a conflict of laws in the application of paragraph 2, two or more undertakings from a group satisfy one or more of the criteria laid down in that paragraph, the undertaking which satisfies the criterion laid down in point (c) thereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

COOPERATION AT THE LEVEL OF THE UNDERTAKING (ILO Recommendation No. 94)

The ILO Recommendation No. 94 on Cooperation at the Level of the Undertaking, adopted in 1952, stresses the notion that appropriate steps should be taken to promote consultation and cooperation between employers and workers at the level of the enterprise on matters of mutual concern. These matters, however, should not fall within the scope of matters to be handled using collective bargaining machinery, or any other machinery designed for the determination of the terms and conditions of employment (paragraph 1). The Recommendation makes a clear distinction between the role of collective bargaining and that of consultation. The text emphasizes that consultation and cooperation should be facilitated within the enterprise through the encouragement of voluntary agreements between the parties, or through the promotion of laws and regulations regarding the establishment of bodies for consultation and cooperation. These laws or regulations should also determine the scope, functions, structure and methods of operation for such bodies, as appropriate to national conditions.

COORDINATION OF EU COLLECTIVE BARGAINING

Coordination of European Collective Bargaining is the consequence of a political rationale resulting from European Monetary Union and aims to counter downwards pressure on wage costs. It parallels the coordinated national bargaining practised in some Member States where centralised national bargaining has been replaced by more decentralised systems of bargaining, but there is still a role for the national level. The process is sometimes called 'centrally coordinated decentralisation', or 'organised decentralisation'. The coordination bargaining reflects this Member State experience by attempting at EU level to coordinate national and sub-

national levels of collective bargaining. In 1999, ETUC set up a ‘committee for the coordination of collective bargaining’ in order to draw up guidelines on the coordination of collective bargaining, with three main objectives: a) To allow trade unions at European level to provide a general indication of wage bargaining developments in response to the European Commission’s broad economic policy guidelines and the European Central Bank (ECB) guidelines, and generally to influence the macroeconomic dialogue at European level; b) To avoid situations which may lead to social and wage ‘dumping’ and wage divergence in Europe; c) To coordinate wage claims in Europe, and especially in those countries, which form part of the Euro single currency area, and to encourage an ‘upward convergence’ of living standards in Europe.

The guidelines contain a formula for pay claims: a) nominal wage increases should at least exceed inflation, while maximising the proportion of productivity allocated to the rise in gross wages in order to secure a better balance between profits and wages; b) any remaining part of productivity should be used to fund other aspects in collective agreements, such as ‘qualitative aspects of work, where these are quantifiable and calculable in terms of cost.’

A major problem with the European trade unions’ policy of coordination of collective bargaining is that, so far, this is a wholly unilateral initiative. There is no evidence of an employer response to engage with such an exercise in wage, or any other form of coordination. As with the social dialogue, the question is how to stimulate an employer response with a view to developing an operational EU industrial relations system of coordinated bargaining.

CORPORATE CITIZENSHIP

Is concerned with treating the stakeholders of the firm ethically or in a socially responsible manner. The aim of social responsibility is to create higher and higher standards of living, while preserving the profitability of the corporation, for its stakeholders both within and outside the corporation.

CORPORATE GOVERNANCE

Corporate governance (CG) concerns the structure of rights and responsibilities among the parties with a stake in the firm. CG refers to a company’s mechanisms and control structures that may influence senior management decision-making. The issue of CG has two dimensions. It commonly focuses on the pattern of corporate ownership and the extent to which the shareholders, as the owners of the company, exercise power over management decision-making. CG is concerned with holding the balance between economic and social goals and between individual and communal goals. The CG framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as near as possible the interests of individuals, corporations and society. However, in the context of decision-making in the area of employment and industrial relations, the debate also reflects a concern with the representation of employees’ interests, who, as stakeholders, have a vested interest in the company’s activity, and specifically with the role of employee representatives, including trade unions. Yet the diversity of practices around the world nearly defies a common definition. In most comparisons studies contrast two dichotomous models of Anglo-American and Continental European corporate governance. They stylize the former in terms of financing through equity, dispersed ownership, active markets for corporate control, and flexible labour markets, and the latter in terms of long-term debt finance, ownership by large block-holders, weak markets for corporate control, and rigid labour markets. Yet this classification only partially fits Japan and other East Asian countries, the variations within Continental Europe, Eastern Europe, and multinational firms. Despite the

rich description found in this research literature, the challenge remains to conceptualize cross-national diversity and identify the key factors explaining these differences.

CORPORATE GOVERNANCE (Framework)

Corporate Governance (CG) is only part of the larger economic context in which firms operate that includes, for example, macroeconomic policies and the degree of competition in product and factor markets. The CG framework also depends on the legal, regulatory, and institutional environment. In addition, factors such as business ethics and corporate awareness of the environmental and societal interests of the communities in which a company operates can also have an impact on its reputation and its long-term success.

CORPORATE GOVERNANCE (“Good Corporate Governance”)

Internationalization has sparked policy debate over the transportability of best practices and has fuelled academic studies on the prospects of international convergence. The issue of the governance and accountability of corporations has recently come to the front following a wave of high profile corporate crisis and collapses. CG is about the accountability mechanisms that govern the relations among shareholders, the board of directors, senior management, the workers and other stakeholders (creditors, suppliers, local communities, etc.). Enron, WorldCom, Parmalat, to name but a few of the corporate scandals in the US and Europe, all have in common blatant failures in assuring the integrity of those accountability mechanisms. These crises have revised the international aspect of corporate governance as have the recent waves of cross-border mergers and acquisitions where companies can "choose" which system of national law their governance is regulated by. However, corporate governance also has to be seen within a wider context than that of the transatlantic capital markets. The role of the modern corporation (e.g. public listed corporations) is pivotal to the public debate about globalization and sustainable development. Until recently much of that debate has focussed on the external impact of corporate behaviour, for example on labour standards generally, or on the environment. By contrast insufficient attention has been paid to the internal governance mechanisms of corporations. Within a labour perspective, corporate governance is one aspect, among others which also include collective bargaining, ensuring corporate compliance with domestic, regional and international laws and agreements, and wider stakeholder dialogue (including Corporate Social Responsibility). Depending on the national framework that governs corporations, approaches will differ in order to ensure good corporate governance and accountability and wider market integrity, along with regulatory systems to ensure effective implementation and enforcement. Continental European workers have a voice within the internal governance structure of corporations (works councils, board level employee representation). Others, such as in Anglo-American countries, the labour movement seeks influence over institutional investors, including pension funds, to act as responsible and long term shareholders of the companies they invest workers' retirement funds, or through traditional collective bargaining.

CORPORATE GOVERNANCE (OECD Principles)

The OECD Principles of CG were endorsed by OECD Ministers in 1999 and have since become an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. They have advanced the corporate governance agenda and provided specific guidance for legislative and regulatory initiatives in both OECD and non-OECD countries. The Financial Stability Forum has designated the Principles as one of the 12 key standards for sound financial systems. The Principles also provide the basis for an extensive

programme of co-operation between OECD and non-OECD countries and underpin the corporate governance component of World Bank/IMF Reports on the Observance of Standards and Codes (ROSC). The Principles have been thoroughly reviewed in 2002 to take account of developments and experiences in OECD member and non-member countries. The review of the Principles was undertaken by the OECD Steering Group on Corporate Governance under a mandate from OECD Ministers in 2002. The review was supported by a comprehensive survey of how member countries addressed the different corporate governance challenges they faced. It also drew on experiences in economies outside the OECD area where the OECD, in co-operation with the World Bank and other sponsors, organises Regional Corporate Governance Roundtables to support regional reform efforts. The review process benefited from contributions from many parties. Key international institutions participated and extensive consultations were held with the private sector, labour, civil society and representatives from non- OECD countries. The Principles are a living instrument offering non-binding standards and good practices as well as guidance on implementation, which can be adapted to the specific circumstances of individual countries and regions. The OECD offers a forum for ongoing dialogue and exchange of experiences among member and non-member countries. The Principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance. The Principles focus on publicly traded companies, both financial and non-financial. However, to the extent they are deemed applicable, they might also be a useful tool to improve corporate governance in non-traded companies, for example, privately held and state-owned enterprises. The Principles represent a common basis that OECD member countries consider essential for the development of good governance practices. They are intended to be concise, understandable and accessible to the international community. They are not intended to substitute but for government, semi-government or private sector initiatives to develop more detailed “best practice” in corporate governance. Increasingly, the OECD and its member governments have recognized the synergy between macroeconomic and structural policies in achieving fundamental policy goals. Corporate governance (according to OECD Principles) is considered one key element in improving economic efficiency and growth as well as enhancing investor confidence because it involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interest of the company and its shareholders and should facilitate effective monitoring. The presence of an effective corporate governance system, within an individual company and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy. As a result, the cost of capital is lower and firms are encouraged to use resources more efficiently, thereby underpinning growth.

CORPORATE GOVERNANCE AND EMPLOYEE INVOLVEMENT (OECD Principles)

The OECD Principles are the following: I. Ensuring the Basis for an Effective Corporate Governance Framework (*The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities*); II. The Rights of Shareholders and Key Ownership Functions (*The corporate governance framework should protect and facilitate the exercise of shareholders’ rights*); III. The Equitable Treatment

of Shareholders (*The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights*); IV. The Role of Stakeholders in corporate governance (*The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises*); V. Disclosure and Transparency (*The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company*). According to this principle, the Annotations of Part Two of the OECD Principles, at the 7th item “Issues regarding employees and other stakeholders” provide that “companies are encouraged, and in some countries even obliged, to provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company. Disclosure may include management/employee relations, and relations with other stakeholders such as creditors, suppliers, and local communities. Some countries require extensive disclosure of information on human resources. Human resource policies, such as programmes for human resource development and training, retention rates of employees and employee share ownership plans, can communicate important information on the competitive strengths of companies to market participants”]; VI. The Responsibilities of the Board (*The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders*). According to this principle, the Annotations of Part two at the item C, “The board should apply high ethical standards. It should take into account the interests of stakeholders”, provide that “ The board has a key role in setting the ethical tone of a company, not only by its own actions, but also in appointing and overseeing key executives and consequently the management in general. High ethical standards are in the long term interests of the company as a means to make it credible and trustworthy, not only in day-to-day operations but also with respect to long term commitments. To make the objectives of the board clear and operational, many companies have found it useful to develop company codes of conduct based on, *inter alia*, professional standards and sometimes broader codes of behaviour. The latter might include a voluntary commitment by the company (including its subsidiaries) to comply with the *OECD Guidelines for Multinational Enterprises* which reflect all four principles contained in the *ILO Declaration on Fundamental Labour Rights*. Company-wide codes serve as a standard for conduct by both the board and key executives, setting the framework for the exercise of judgement in dealing with varying and often conflicting constituencies. At a minimum, the ethical code should set clear limits on the pursuit of private interests, including dealings in the shares of the company. An overall framework for ethical conduct goes beyond compliance with the law, which should always be a fundamental requirement.

CORPORATE SOCIAL RESPONSIBILITY

Corporate Social Responsibility (CSR) is concerned with treating the stakeholders of the firm ethically or in a socially responsible manner. Stakeholders exist both within a firm and outside. Consequently, behaving socially responsibly will increase the human development of stakeholders both within and outside the corporation. This obligation is seen to extend beyond the statutory obligation to comply with legislation and sees organizations voluntarily taking further steps to improve the quality of life for employees and their families as well as for the local community and society at large. CSR encourages organizations to consider the interests of society by taking responsibility for the impact of the organization's activities on customers, employees, shareholders, communities and the environment in all aspects of its operations. There is no universally accepted definition of CSR. Selected definitions by CSR organizations

and actors include the followings: a) CSR should be the continuing commitment by a business to behave ethically and contribute to the economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large" (World Business Council for Sustainable Development; WBCSD, 2000); b) CSR is about how companies manage the business processes to produce an overall positive impact on society; c) CSR is a company's commitment to operating in an economically, socially and environmentally sustainable manner whilst balancing the interests of diverse stakeholders; d) "CSR is the commitment of businesses to contribute to sustainable economic development by working with employees, their families, the local community and society at large to improve their lives in ways that are good for business and for development" (International Finance Corporation); e) CSR is "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis".

CORPORATE SOCIAL RESPONSIBILITY (EU)

The European Commission defines CSR as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis' (Communication of 2 July 2002, CSR: *A business contribution to sustainable development*). The Commission's Green Paper on CSR of 18 July 2001 stated that CSR means 'not only fulfilling legal expectations, but also going beyond compliance and investing more into human capital, the environment and the relations with stakeholders.' A company is thus considered to be acting in a socially responsible manner if its initiatives are carried out on a voluntary basis, i.e. going beyond common regulatory and conventional requirements; if there is interaction with the relevant internal and external stakeholders; and if social and environmental concerns are integrated into the business operations. The term is used to describe various kinds and degrees of obligation undertaken by enterprises. For example, corporate social responsibility in the area of restructuring would engage mechanisms to minimise the social consequences of compulsory redundancies or changes to working patterns that have a negative impact on job quality. The Green Paper argued that this contribute to a company's competitiveness, for example, through better training, working conditions and management-employee relations. The European Parliament adopted a resolution on 13 May 2003, in response to the Commission's Communication of 2002, making a number of suggestions for improvement: for example, more active promotion of workforce diversity and work-life balance, and 'social labelling' to signal the enterprise's commitment to comply with social, labour and ecological standards. The social partners have also undertaken initiatives in this area. For example, the European-level social partners in the commerce sector (UNI-Europa Commerce for trade unions and EuroCommerce for employers) signed a joint statement on CSR in November 2003. The joint statement includes a pledge to promote CSR throughout business activities and to monitor and assess progress through a variety of means. An example of a company taking on board the values of corporate social responsibility is General Motors Europe, which signed an agreement on 'principles of social responsibility' with its EWC and a representative of the European Metalworkers' Federation in October 2002.

CORPORATE STRUCTURES

Corporate structures denote the system of ownership and control that connects different undertakings belonging to a single group. It has particular relevance in the case of large enterprises. It specifically refers to the mechanisms of ownership and control that inform management decision-making, most particularly at senior level. These structures are often

complex and opaque, and this can present difficulties for the regulation of employment and industrial relations, whether through legislation or collective bargaining. One issue is that the corporate structure may not be readily evident to employee representatives. For example, the first case decided by the European Court of Justice concerning Directive 94/45 on the establishment of a European Works Council (EWC) involved a German works council (Betriebsrat) that had requested information about a company's links with associated companies in other Member States, and their number of employees, with a view to establish an EWC. The European Court of Justice held that, where information relating to the structure or organisation of a group of undertakings forms part of the information essential to the opening of negotiations for the setting-up of a European Works Council, an undertaking within the group is required to supply that information, which it either possesses or is able to obtain, to the internal workers' representative bodies requesting it. Communication of documents clarifying and explaining the information may also be required, where necessary, in order for employees or their representatives to determine whether or not they are entitled to request the opening of negotiations (*Betriebsrat der bofrost Josef H. Boquoi Deutschland West GmbH & Co. KG v. Bofrost Josef H. Boquoi Deutschland West GmbH & Co. KG*, Case C-62/99, Decision of the ECJ, 29 March 2001).

CYPRUS

Companies in Cyprus have hitherto had a single-tier structure of corporate governance. There has been no formal right of workers' participation at board level. Although there is no tradition of workers' participation at board level in Cyprus, there is a tradition of social dialogue and tripartite cooperation on a voluntary basis. In that broad sense we may say that workers' participation does exist in Cyprus. The main forms are collective bargaining and the participation of labour representatives in tripartite bodies and committees. With regard to board-level representation, it has been government practice in state-owned and semi-state-owned companies to give seats on administrative boards to high-level trade union officials, mainly from trade union confederations. However, this is not legally enshrined, but rather a tradition of public management. Indeed, after having been appointed they do not mainly represent their confederation but act as independent personalities. Although no specific national debate has developed regarding SE regulations and employees' representation rights, the social partners in Cyprus have, on their way to accession and indeed since joining the EU, shown a strong interest in workers' participation at the EU level and are making preparations to benefit from implementation of the EU *acquis*. (See Table 3)

CZECH REPUBLIC (Company Law and Employee Interest Representation)

In the Czech Republic companies are regulated by the Commercial Code (No. 513/1991). The relevant regulations are included in the second part of the Business Act, which permits the foundation, development and operation of only five types of trading company: 1) joint partnership; 2) limited partnership; 3) limited liability company; 4) public limited company; and, 5) cooperative society. Companies are divided into "partnerships" or "personal" companies and "investment/capital" companies. Personal companies can be founded only for the purpose of business activities, and the structure of investment companies is strictly formalized. While the supreme authority of public limited companies and limited liability companies is the shareholders, cooperative societies are governed by a meeting of all the members, not just the shareholders.

The management organs are the chief executive officer (CEO) for limited liability companies, and the board of directors for public limited companies and cooperative societies.

Advisory boards, like supervisory boards, are optional for limited liability companies and obligatory for public limited companies, just as control commissions are mandatory for cooperative societies.

In contrast to the other new EU members, employee financial participation, even as a consequence of privatization, is fairly poorly developed in Czech companies. Employee participation in company development and governance is very limited; similarly, employees have not been active in demanding such rights in substantive discussions on improvements that would benefit both employers and employees.

Law No. 120/1991, regulating aspects of trade union–employer relations, protects employee interests. The law regulates partnerships with both existing and newly established trade unions. According to the Labour Code, when a majority of employees are worried about some aspect of company operations, the employer is obliged to discuss the matter with union representatives or request their approval before proceeding. The union organisation with the highest membership within the company has proportionately more say, but all union organizations operating at the same employer must discuss collective agreements as a group and reach a consensus.

Until 2000, the trade unions were the only bodies representing employee interests at company level. According to the EU Directive, all EU Member States are obliged to facilitate, through the relevant national governing body, communications between employers and employees, or their representatives, whether they are trade union members or not. To this end, in 2000 the Czech Republic passed the Labour Code amendment act which regulates communications through works councils and representatives for safety and health at work. Implementation of these new forms of employee interest representation makes social dialogue possible, even in companies with more than 25 employees without trade union representation. Employee interest representation in the Czech Republic is dualistic: trade unions (indirect) and works councils (direct). However, trade unions are authorised to act on behalf of employees and are the sole representative of their interests as regards employment law.

As regards impact on working conditions, one of the most important issues in the Czech Republic is collective discussion of collective agreements, which give employees some influence over the running of their company.

As regards working hours, the new legislation defines the period during which hours can be irregularly scheduled, and reduces the permitted duration of standby work to 400 hours per year and of overtime.

Possibilities are also increased for supplementary wage payments, such as an increase in minimum wages and higher wages for night shifts, and for difficult and unhealthy working conditions.

Unfortunately, many employers still pay little attention to collective agreements, which also reflects the fact that management still undervalues issues of motivation and competition for the best employees.

Collective agreements still lack measures obliging management to information and consultation. Further training and education opportunities for employees are also very poor. Finally, collective agreements continue to address specific commitments to workplace improvements in a very general way.

The Czech Republic has implemented EU Directive 94/45 on European Works Councils, and regulated the procedure for companies and company groups operating within the EU to promote dialogue between management and employees. (See Table 3)

DECISION-MAKING BY AGREEMENT (EU Legislation)

Decision-making in the enterprise is required to proceed through a process of consultation with employee representatives under Council Directive No. 2002/14 establishing a framework for informing employees and consulting with them in the European Community. Article 4 states that ‘... Consultation shall take place... with a view to reaching an agreement on decisions within the scope of the employer’s powers referred to in paragraph 2(c).’ The latter refers to ‘information and consultation on decisions likely to lead to substantial changes in work organization or in contractual relations...’ This seems to indicate that some matters require consultation, but not consultation ‘with a view to reaching an agreement.’ These other matters are specified as information on the recent and probable development of the undertaking’s or the establishment’s activities and economic situation; and information and consultation on the situation, structure and probable development of employment and on any anticipatory measures envisaged, in particular where there is a threat to employment. This raises the question as to whether there are two types of consultation: dialogue with a view to reaching an agreement on some matters, not so on other matters. However, the scope referred to in Article 4(2) (c) is that of the employer’s powers to make substantial changes in work organization or in contractual relations. These powers of the employer will affect almost any matter of concern to the workforce. So long as the decision in question is within the scope of the employer’s powers referred to in paragraph 2(c), it can be argued that it must be made in consultation with a view to reaching an agreement with employees’ representatives. Consultation of employee representatives in the enterprise in accordance with Directive 2002/14 with a view to reaching an agreement is now a legally structured process. It includes transmitting to them necessary information/data, acquaintance with and examination of this data, conduct of adequate study, preparation for consultation, formulation of opinion, meeting with the relevant level of management, a reasoned response by the employer to the opinion formulated by the representatives, an ‘exchange of views and establishment of dialogue’, discussion ‘with a view to reaching an agreement on decisions’ and, finally, ‘the employer and the employees’ representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests of both the undertaking or establishment and of the employees. This is significant since the obligation to ‘work in a spirit of cooperation not only applies in the definition of practical arrangements, but during their operations in practice. This obligation to ‘work in a spirit of cooperation’ applies not only in the definition of practical arrangements, but during their operation in practice. For employers, for example, failure to inform and consult with respect to decisions on dismissal could require the measures and sanctions required by Article 8, which could prevent the decision being implemented, at least until the employer has fulfilled his obligation to work in a spirit of cooperation. Thus, it could develop into something similar to a ‘status quo’ clause in a collective agreement, which precludes unilateral action by the employer to change working conditions. For employee representatives, a breach of the obligation could raise the prospect of claims for compensation if the process of information and consultation is delayed, or the results are unsatisfactory as a result of the alleged failure to cooperate. Similarly, a court might hold

that any industrial action violated the spirit of cooperation required during the information and consultation process. Therefore, the obligation could develop into something parallel to a 'peace obligation' (a no-strike clause) in a collective agreement.

DENMARK (Employee Representation)

Historically, in Denmark there exist a robust social partnership between employers and trade unions with a minimum role played by the state and by the legal process. Its main emphasis was on the negotiation of voluntary collective agreements and the use of conciliation and arbitration to resolve differences. But in recent years there has been a clear shift towards decentralization from industry or sector level to that of the enterprise, mainly under the influence of employers who have sought to achieve much greater flexibility in the management of their business operations. As in other EU member states legislation enabling employee representation at board level in both private and public companies was passed in 1973. It covered all such enterprises that employed more than 50 workers and enabled employees to elect at least two representatives to the board and up to a third of the board whatever its size. The proportion was raised to one third of all company directors from 1980. Further changes were made to the legislation in 1987 which laid down such companies are now covered by its provisions if they employ 35 or more workers and up to half the number who are elected by the shareholders with a minimum of two. However, no employee board representation is required unless such a change has won the initial support of workers in the company involved. A total of 10 per cent of the employees need to request such a procedure for it to come into being. All employee representatives in Denmark are elected for four year terms as board members directly by the workforce. Such a system is only part of a much wider diversity of worker representative bodies in the company. In addition to trade union workplace committees, many enterprises employing 35 or more workers in Denmark also have joint cooperation committees (JCC), composed of equal numbers of employee representatives and managers. These bodies may not deal with issues that involve collective bargaining but they do have a wide range of responsibilities in the company. These include the provision of financial and production information about company operations, working conditions, training, job restructuring and personnel questions. The existence of the JCC outside company boardrooms dates back to 1947 in Denmark. Subsequent legislation has modified or changed some of the details of how the system operates. But it has won considerable support from companies, trade unions and employees. The experience of such consensual approach to decision-making in companies made the advance to employee board representation more acceptable and credible.

DENMARK (Participation in Workers' Protection)

Denmark has had regulation on workers' protection since 1873 when a government authority - the Danish Working Environment Authority (WEA)- was set up to supervise compliance with the Act. The first Act included a number of special rules on work performed by children and young persons in factories and workshops. Rules on guarding machinery were later introduced and in 1913 Denmark got an actual Factory Act. The Act aimed at the prevention of accidents and diseases as a result of factory work. In 1954, the legislation was extended to include general workers' protection. In 1975, the working environment rules were consolidated into a single Act, the Danish Working Environment Act, which applies to all work on the ground and, in particular, work performed for an employer. The central part of the Act is the extended safety and health concept which means that all factors causing accidents, sickness and attrition must be taken into consideration in prevention at work. The current Working Environment Act (AML: see the Consolidated Act No. 268 of 18 March 2005, as subsequently amended issued by the Danish Ministry of Employment), stipulates, among other things, screening of the

working environment of all Danish enterprises within a period of seven years; an obligation for enterprises to seek consultancy advice; and introduction of a smiley scheme to illustrate the state of working environments in the enterprises. The Danish Working Environment Act is a framework Act, which lays down the general objectives and requirements in relation to the working environment. The Act aims at preventing accidents and diseases at the workplace and at protecting children and young persons on the labour market through special rules. The main areas of the legislation are performance of the work, the design of the workplace, technical equipment, substances and materials, rest periods and young persons under the age of 18. The Working Environment Act emphasizes that individual workplaces should be designed in a way which will prevent employees from being forced to leave the labour market due to attrition and stress. Factors (which in the short or long perspective) may lead to health risks of a physical or mental character must be remedied. Developments in society change the working conditions all the time (introduction of new technologies, etc) and as a result, it is the purpose of the Act that the working environment shall be in conformity with the development at any time. It is the responsibility of the employer to ensure that the working conditions are safe and sound. The employer also has a variety of responsibilities, inter alia to ensure that the employees receive work instructions. The employees must participate in the co-operation on safety and health. Furthermore, they have an obligation to use the protective equipment provided by the employer.

DENMARK (Safety Organization)

Chapter 2 of the Working Environment Act (AML) states the rules concerning the safety and health conditions in enterprises. In § 5 it is stated that the control of safety rules and work on the problems of safe working conditions in small enterprises employing between one and nine workers, must be made through *personal contact* between the employer, possibly the foremen or supervisors, and the employees. In paragraph 6 it is stated that work on safety and safety problems must be organized in enterprises employing more than nine employees. The foreman or supervisor of each department and the safety representative of the department forms a safety group for the particular department in such enterprises. The employees of each department of the enterprise elect a safety representative to join the safety group, and to represent their views during negotiations on all questions concerning the safety and health of employees. In enterprises with twenty or more employees, a safety committee must be created. If one or two safety groups exist, the group or the groups together with the employer or a responsible representative of the employer form the committee. If there are more than two safety groups, the safety representatives elect, from amongst themselves, two members, and the foremen or supervisors who are members of the safety groups elect from amongst themselves two members for the committee. The last member of the committee is the employer or a responsible representative of the employer. The task of the committee is to plan, direct and control the proper execution of the rules of safety in the enterprise. The committee must furthermore give advice about safety problems, and inform employees of the rules of safety and the measures put into force in this respect. In paragraph 7 it is stated that factory inspectors, when inspecting enterprises, have a duty to contact the employees' safety representatives and it is likewise stated that the stewards have the right to put any question or problem of safety before the factory inspectors, without previous consent from the employer. According to paragraph 10, safety representatives have protection against dismissal equal to that of a workplace union members' representative elected according to the rules of a collective agreement, even if they are employed in an enterprise which is not covered by a collective agreement containing rules relating to the protection of workplace union members' representatives. Managerial' staffs who are members of the safety organization of the enterprise also have a certain protection against dismissal. In paragraph 11 it is stated that such a foreman or supervisor cannot be dismissed and the employment terminated, if he or his organization insist that the dismissal is caused by

his work in the safety organization, until the question has been discussed and decided according to the rules of the collective agreement which is valid for the foreman or supervisor. Or if there are no such rules, until the question has been considered in negotiation and mediation according to the rules providing for negotiation between the employer and the organization of the employee as well as mediation. The mediator according to these rules, however, is a neutral and independent person who has no competence to decide in the dispute.

If there is no collective agreement covering the employment relationship of the foreman, he has no chance of having the question decided other than by suing the employer and claiming compensation. The burden of proof in such a dispute lies with the foreman. If the employment relationship is covered by a collective agreement, the foreman or supervisor has the possibility of having the case decided upon according to the principles of the Standard Rules for Handling Industrial Disputes. In this connection it can also be mentioned that the safety representative is entitled not only to have his expenses, from carrying out his special duties, reimbursed by the employer but also any possible loss of wage for the time acted as a safety representative. AML, in paragraph 10.1 states an entitlement to compensation from the employer for the time used (working hours) in the execution of duties according to safety rules. The compensation is therefore equal to the wage to which he would have been entitled if he had performed his normal work. This means that a safety representative who works on a piecework rate is entitled to compensation equal to earnings at piecework rates. Cases relating to this right are decided in the same manner as cases relating to dismissals.

DENMARK (Representation on Board of Directors)

In statutes for limited companies, there are regulations on employees' representation in the board of directors. Thus paragraph 49 of the Public Limited Companies Act (AL) states that employees have a right to elect one-third, or at least two members of the board and deputies for these, if the company has employed on average at least 35 persons during the last three years. If more companies are incorporated in a concern, according to paragraph 2.1 of the AL, the same rule applies to the board of directors of the mother company even if this company does not employ the required number of employees but if the number of employees of the concern fulfils the above conditions. If the employees of the mother company have a right to elect members on the board they will only elect two members and deputies for these, whereas the remainder of the board members will be elected by all employees of the concern. The employees of a concern are always entitled to elect at least one member and a deputy on the board of directors of the mother company. Paragraph 22 of the Private Limited Companies Act (APL) contains similar rules. If a company or corporation is not covered by the AL or APL, the statutes of the company or corporation may include similar rights for the employees. Rules similar to those of the AL and the APL are also found *inter alia* in the 1984 Act on Funds. The rules of paragraph 49 in the AL and paragraph 22 in the APL imply that the majority of members of the board of directors must be elected by the shareholders. A rule in the statutes of the company entitling employees to elect the majority of the members on the board of directors in a limited company would be illegal and void. The members on the board of directors elected by the employees are elected for a period of four years from those employees who have been employed by the company or concern for the entire year prior to the election. Paragraph 177 of the AL, and the corresponding rule of the APL, stipulates that if employees wish to be represented on the board of directors they must formally decide this themselves. The decision must be made by holding a secret ballot and at least half the employees of the company or concern must vote in favour of such representation. The decision should then be notified in writing to the board of directors of the company or the mother company and the board should inform the Registrar of Limited Companies of this decision. A secret ballot should also be held to elect the representatives. The rules on the proceedings of the decision as to whether the

employees should be represented on the boards, the election of representatives (who should be considered to be an employee within the meaning of the Act) and how to calculate the average number of workers must be decided by the Ministry of Industry. Such regulations are laid down in the 1993 Decrees Nos. 942 and 943 (with later amendments). It is stated that all employees who have reached the age of 15 years, except the registered members of management and those employees who are permanently employed outside the Danish realm, are considered as employees in the meaning of the Acts. Regarding the decision as to whether the employees wish to be represented on the board of directors, it is stated in paragraph 4 of the decrees that a ballot on the question can be demanded either by a majority of the employees' representatives on the cooperation committee (or the cooperation committees of the subsidiary companies), or by a trade union representing at least one-tenth of the number of employees of the company or the concern or by one-tenth of the number of employees of the company or the concern. It is worth noting that the formal role of the trade unions is limited to demanding a vote by the employees for representation on the board of directors. The trade union has no right to decide who should be elected. If a majority of employees vote for representation, a new ballot must be held within six months from the time of the decision in order to elect those employees and their deputies who will actually be representatives. If on the other hand, the employees have decided that they do not wish for representation there can be no new ballot until six months have passed. Those employees eligible for election are those who have reached the age of 18 years and are under no form of tutelage. Furthermore, the worker must have been employed by the company or concern for the preceding 12 months, and he must be employed at the time when the list of the employees who have the right to vote is published as well as on the date of the election. The representatives of employees do not join the board of directors until the shareholders have elected their representatives at an ordinary general meeting of the company. Until that time the former representatives will remain in office. Members of the board of directors elected by employees have the same rights and duties as those members elected by shareholders, or in certain companies appointed by public authorities, which means that they have responsibilities in accordance with the rules of the AL and APL. This fact also means that they have the same obligation as other members of the board in that they must not divulge confidential matters discussed on the board. This may create problems with their fellow workers who would like to know what is happening in the company. In paragraph 178 of the AL and a similar provision of the APL, it is therefore laid down that the Ministry, by administrative decree, should draw up rules on how to deal with this problem in companies where employees are represented on the board. These rules have been drawn up and are contained in the 1993 decree, which states that the board of directors is duty bound to provide the necessary information for employees. If an employee who is a member of the board of directors leaves his employment in the company, he is replaced on the board by the employee who was elected as his substitute. If the substitute has also left the employment of the company, the board of directors is obliged to have new representatives elected as soon as possible. Those employees who are elected as representatives of the employees on the board of directors can be removed by a decision of their fellow employees, even if the period of election is not terminated. Members of the board of directors of a limited company elected by the employees are protected against dismissal according to the same rules as workplace union members' representatives. (See Table 3)

DEROGATION (in EU Legislation Concerning Information and Consultation)

Derogation is a provision in an EU legislative measure which allows for all or part of the legal measure to be applied differently, or not at all, to individuals, groups or organizations. The option to derogate is often granted to Member States and also to the social partners. In this context, derogation is not a provision excluding application of the legal measure: it is a choice given to allow for greater flexibility in the application of the law, enabling Member States or

social partners to take into account special circumstances. An example is Article 5 of Council Directive 2002/14 establishing a framework for informing and consulting employees in the European Community: ‘Member States may entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely, and at any time through negotiated agreement, the practical arrangements for informing employees and consulting with them’. This follows a common practice in Member States allowing for such derogations provided the result is more favourable for the workers concerned. An example of this principle is found in Article 15 of the Working Time Directive: ‘This Directive shall not affect Member States’ right ... to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry, which are more favourable to the protection of the safety and health of workers’.

DIRECT AND INDIRECT PARTICIPATION

Workers may participate in decision making either directly themselves or indirectly through their representatives (trade unions or elected employee representatives). Direct participation is one-to-one, face-to-face interaction between employees and their management counterparts; indirect participation is where the views and concerns of a body of employees are communicated to management by one or more employees selected to represent or act in an agency function for the larger group. Direct forms of participation tend to be small-scale and decentralized, such as quality circles and self-managed work teams. Exceptions however occur. Indirect forms of participation, of which non-union employee representation is the typical form, can also be small-scale and decentralized, such as a safety committee or peer review panel, but can also be company-wide, or even industry wide. Examples of the latter include plant-wide joint councils, employee professional associations and trade unions. Since the 1980s, there has been a spread of direct participation by workers, if the term participation is understood as the exercise of any influence on their work or how it is to be carried out. Thus workers may “participate” in work-related decisions not only when there is an institution, such as a quality circle, at the workplace. Accordingly, a simple exercise of work enrichment may be a form of promoting direct participation of workers. Direct participation may be on an individual basis - for example, through suggestion schemes or “enriched” work. It may also be on a group basis - for example, in quality circles or similar small-group activities. Teamwork in itself constitutes a form of group-based direct participation. Direct participation may be integrated into decisions about daily work, or it may take place outside daily work, such as in a voluntary quality circle that cuts across the group structure habitually used. Direct participation may also be “consultative” or “deliberative”; research by the European Foundation for the Improvement of Living and Working Conditions has explored this particular aspect in some detail. With consultative participation, employees are encouraged and enabled, either as individuals or members of a group, to make their views known, but it is up to management to accept or reject their proposals. Deliberative participation, on the other hand, places some of traditional management responsibility in the employees' hands, as in the case of team working or semi-autonomous work groups wherein some authority has been delegated to the workers.

DIRECT PARTICIPATION PROGRAM

A direct participation program is an investment option that allows the investors to be involved in the cash flow and tax benefits associated with the company that issues the security. Sometimes referred to as a direct participation plan, this type of program was once considered an excellent tax shelter for investors who wished to form some types of partnership. However, changes in USA tax laws in recent years have reduced the benefits of using a direct participation program in order to gain significant tax advantages in some situations. For the

most part, the direct participation program is a somewhat *passive* investment option. An investor who is involved with this type of program or plan is able to realize a return based on the amount of cash flow associated with the underlying investment that serves as the reason for the creation of the plan. Depending on the terms and conditions associated with the program, the investor may receive a fixed amount as long as monthly revenues exceed a certain amount, or may benefit from a percentage of any net income generated by the underlying security. The investor really has nothing to do in order to enjoy this benefit.

EMPLOYEE INVOLVEMENT

The term *involvement* covers a wide variety of institutions and processes. Generally speaking one could say that employee involvement is a process that allows employees to exercise some influence over their work and the conditions under which they work. In this sense, *influence* and *involvement* can be understood in the same way. Involvement can be passive and active, it depends on the way it is structured into an *organization* (for example, many forms of financial participation, such as stock options, may involve workers, but make no provision for them to exercise influence. In this specific case, then the distinction between active influence and passive involvement can be relevant). Involvement within an organization can be defined as the influence of employees in the decision-making process traditionally controlled by a limited group. Employee involvement in enterprises requires influential employees able to express their opinions autonomously and freely in their negotiations, dialogue and relationships within the organizational units. The degree of real involvement, however, depends on the organizational level of participation, its form and the matters to be discussed. In this regard, employee involvement can be limited to: a) personnel or organizational decisions, in matters like work time, promotions, procedure of collective dismissals, etc.; extended to: b) social decisions or participation in deciding welfare programmes' administration, health and safety regulations, pension funds, vacations schedules; or, maximized to: c) economic decisions, the highest level of participation, as these include issues such as methods of production, planning and control of the production, investments, distribution, etc., including self-determination, collaboration and trust among all the members of an organization.

EMPLOYEE REPRESENTATION

Employee representation may be defined as the right of employees to seek a union or an individual to represent them for the purpose of negotiating with management on issues such as wages, hours, benefits and working conditions. In many developed countries, workers may be represented at the workplace by trade unions or other representatives: a) in disciplinary and grievance matters; b) in works councils or other consultative bodies; c) for the collective bargaining of terms and conditions; d) for making workforce agreements; e) in joint working groups. In the EU Member States, Employee representation is rooted in labour laws on trade unions and the representation of workers at workplace and enterprise levels. It may encompass a range of issues concerning, for example, terms and conditions of employment, working practices, conduct at work, health and safety, and many others. It is most closely associated with trade unions, both at the macro-level of consultation/dialogue, which influences major issues of social and economic policy, and in collective bargaining, which determines pay and other terms and conditions of employment. It is also found in various forms of participation by workers, including 'works councils' and 'enterprise committees'. Collective employee representation was first made mandatory under certain conditions, but this requirement has broadened and deepened over time to arguably become an important principle of the European social model. Employee representation was first declared mandatory under two Directives in

the decision of the European Court of Justice in *Commission of the European Communities v. United Kingdom*, Cases C-382/92 and C-383/92, [1994] (interpreting Council Directive 75/129 of 17 February 1975, on the approximation of the laws of the Member States relating to collective dismissals, and Council Directive 77/187 of 14 February 1977, on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses). Directives concerning employee information and consultation have further developed the principle of mandatory employee representation. First, in Community-scale undertakings and Community-scale groups of undertakings, Directive 94/45 of 22 September 1994 (as amended by Dir No. 2009/38, of 6th May 2009) requires the establishment of a European Works Councils, or a procedure for the purposes of informing employees and consulting with them, where requested by employees or their representatives. Second, through Council Directive No. 2002/14, establishing a framework for informing employees and consulting with them in the European Community is required. Originally, the issue of labour in the enterprise was envisaged in terms of the free movement of workers as a factor of production, together with a principle of improvement of living and working conditions, to be achieved through the benefits of the common market. Arguably, employee representation, in all its diversity, at both EU and Member State levels, in the form of macro-level national dialogue, collective bargaining at intersectoral and sectoral levels, and collective participation in decision-making at the workplace, has since emerged as a cornerstone of the European social model in terms of employment and industrial relations in the EU.

EMPLOYEE REPRESENTATION PLANS

Programs designed to provide some sense of participation by employees in a particular company. These plans were developed during World War I and were designed in part to achieve increased production through cooperation. Some were developed or enlarged during the 1920s. Following the organization drive which came with Section 7(a) of the National Industrial Recovery Act in 1933, employee representation plans multiplied quite rapidly as a means of forestalling unionization by "outside" organizers. They entailed the formation of committees or other bodies elected by the employees to meet with members of management to consider problems of mutual concern, primarily the application or enforcement of company policy, grievances, and working conditions. The plans were not designed to develop machinery for collective bargaining, but rather to provide an opportunity for the exchange of ideas or experience before final decision by management. These plans fell by the wayside when the National Labour Relations Act was passed and the NLRB held these organizations to be "company dominated" or "company sponsored" and not proper agencies for purposes of collective bargaining.

ESTONIA (Employee Representation)

In Estonia, employees participate in labour relations mainly via shop stewards and trade unions. However, the role of employees in work organization and social affairs has not been significant. This is particularly due to the historical development of employees' organizations. The first traditional trade unions were established in Estonia in the 1930s, but they were terminated in 1940 when the Soviet Union occupied Estonia. During the Soviet period, the main task of trade unions was to implement the directives of the Communist Party, not to protect and advocate the interests of employees. Trade union reform was implemented at the beginning of the 1990s.

ESTONIA (Forms of Employee Involvement. Shop Stewards)

The legal status of shop stewards is regulated by the Employees' Representatives Act (ERA). According to ERA, a shop steward is an employee of a company, agency or other organization (hereinafter: company) who is elected by the members of a trade union or by a general meeting of employees who do not belong to a union to represent the employees in labour relations with the employer. Hence, a shop steward may be a trade union representative, as well as a representative freely elected by a general meeting of employees (i.e. unorganized employees). In practice, shop stewards are usually elected in companies with a trade union.

Competence of Employees' Representatives. Competence of Shop Stewards. According to ERA, shop stewards' obligations are as follows:

- to monitor compliance with the terms of collective agreements, employment contracts and labour laws;
- to observe the peace obligation during the term of a collective agreement;
- to mediate between the parties in labour disputes;
- to communicate information concerning labour relations to the employer or the employer's representative and to employees, their unions and federations;
- to keep any business or professional secrets which become known to them.

In order to enable them to perform their duties properly, ERA also provides shop stewards with a number of rights:

- to freely examine working conditions and work organization;
- to receive information from the employer necessary for pursuing their activities, as well as on the details of labour disputes;
- to suspend the termination of employment contracts in the case of collective redundancies;
- to freely disseminate information pertaining to work and trade union activities to employees;
- with the employer's agreement, to use the employer's premises, telecommunications systems, photocopying facilities and means of transport in the performance of their duties;
- to notify the owner of the enterprise, government agencies, unions, and so on, of violations of labour laws, collective agreements, employment contracts or other agreements pertaining to work.

The rights and duties of a shop steward elected by a trade union are detailed in TUA.

ESTONIA (Other Forms of Participation)

In addition to shop stewards and trade unions, employees participate in occupational health and safety via working environment representatives and the members of working environment councils (Occupational Health and Safety Act). In the case of collective redundancies and the transfer of an enterprise, an employer must inform all employees if there are no elected employees' representatives in the company (Employment Contracts Act). Pursuant to the Act on Employee Involvement in the Activities of Community-Scale Undertakings, Community-Scale Groups of Undertakings and European Companies, employees' representatives are elected to special negotiating bodies and statutory representative bodies by general meetings of employees.

Competence of Representatives Elected by a Trade Union: According to the Trade Unions Act (TUA), a trade union is an independent and voluntary association of persons which is founded on their initiative, and the objective of which is to represent and protect the employment, service-related, professional, economic and social rights and interests of employees. TUA provides that a trade union may be founded by at least five employees at the company level. A federation of trade unions may be founded by at least five trade unions. At least five national federations or trade unions bringing together employees by area or profession may form a trade union confederation. Although TUA establishes advantageous conditions for the foundation and operation of trade unions, currently only about 13 per cent of employees are trade union members.

According to TUA, employees have the right to act as elected representatives of a trade union. TUA does not lay down a definition of such a representative, but in practice an elected representative of a trade union may be either a shop steward, a member of a trade union management board, or any other representative elected by the trade union. TUA sets out the competences of elected trade union representatives acting at company level:

- a) entering into collective agreements or other contracts pertaining to employment, service or social issues;
- b) cooperating with the employer and state agencies in order to improve the occupational health and safety situation;
- c) cooperating with state employment agencies and local governments on issues relating to the improvement of employment, training, in-service training, professional skills and professional training;
- d) participating in consulting and informing of employees, and in decision-making to the extent regulated by TUA and other legislation and agreements;
- e) examining employment contracts and collective agreements, as well as other documents concerning working conditions, if this is requested by a trade union member;
- f) representing and protecting trade union members in labour dispute resolution bodies, in relation with state and local government agencies, employers and employers' associations.

TUA lays down detailed rules on the right for trade union representatives to be informed and consulted. The procedure for collective bargaining and entering into collective agreements is provided by the Collective Agreements Act. The rights of elected trade union representatives in settling collective labour disputes are set out by the Collective Labour Dispute Resolution Act.

Conclusions: In Estonia, employees principally participate in employment relations via shop stewards elected by a trade union. The rights and obligations of shop stewards are regulated by law, and the competences of shop stewards elected by a trade union are broader than those of representatives elected by a general meeting of employees. Although ERA and TUA provide extensive rights for employees' representatives, employees do not exercise these rights often because at many companies no employees' representatives have been elected and furthermore, employees lack the necessary knowledge and skills. It will probably take years to develop constructive cooperation between the social partners in Estonia. (See Table 3)

ETHICAL ACCOUNTING

Ethical accounting is the process through which the company takes up a dialogue with major stakeholders to report on past activities with a view to shaping future ones.

ETHICAL AUDITING

Ethical auditing is regular, complete and documented measurements of compliance with the company's published policies & procedures

ETHICAL BOOK-KEEPING

Ethical book-keeping is systematic and reliable on maintaining accessible records for corporate activities which reflect on its conduct and behaviour.

EUROPEAN COMPANY (Employee Involvement)

A European Company (Societas Europea/SE) operates on a Europe-wide basis and is governed by EC law directly applicable in the Member States, rather than by national law. This was established by the European Company Statute (ECS) Regulation (Council Regulation 2157/2001 on the Statute for a European company (SE). Council Directive 2001/86 supplementing the ECS, prescribes employee involvement in SEs in the form of information and consultation of employees and, in some cases, board-level participation. Both the regulation and the directive were adopted on 8 October 2001. EU-based companies may become SEs in four ways (the first three involving more than one company): merger; creation of a joint holding company; creation of a subsidiary; or when a single EU-based company is transformed into an SE, providing it has had a subsidiary governed by the law of another Member State for at least two years. A company based outside the EU may (if individual Member States so decide) participate in the formation of an SE, provided that it is formed under the law of a Member State, has its registered office in that Member State and has 'a real and continuous' link with a Member State's economy. Council Regulation 2157/2001 on the SEs is linked with Directive 2001/86 on the involvement of employees in the SE: they 'form in-dissociable complements(s) [...] and must be applied concomitantly' (Council Regulation 2157/2001). Consequently, in accordance with Article 12(2) of the regulation, an SE may only be registered if an agreement for employee involvement pursuant to Article 4 of Directive 2001/86 has been concluded. Arrangements for employment involvement differ according to the way the SE is created. Companies which decide to establish an SE must negotiate with a special negotiating body (SNB) comprising employee representatives elected or appointed in proportion to the number of employees employed in each Member State. Council Directive supplementing the Statute for a European Company (Directive 2001/86) prescribes employee involvement in SEs in the form of information and consultation of employees and, in some case, board level participation. The Directive aligns the laws, regulations and administrative provisions in force in the Member States so as to cater for the involvement of employees in the running of the SE. The arrangements for the involvement of employees shall be established in every SE in accordance with the negotiating procedure or in accordance with the standard rules on the involvement of employees set by this Directive. Arrangements for involving employees in the SE must be negotiated in conjunction with the establishment process between the managements of the participating entities and representatives of their employees in the different Member States. Failure to reach agreement before the SE is registered will lead to the SE being governed by a set of subsidiary rules, on employee information and consultation and, where appropriate, board-level participation. (See Table 3)

EUROPEAN COOPERATIVE SOCIETY

The European Cooperative Society (SCE) is defined (by Council Regulation No 1435/2003 of 22 July 2003) as a cooperative organisation operating on a Europe-wide basis and governed by EC law directly applicable in the Member States, rather than by national law. The SCE is to

have legal personality from the day of its registration in the State in which it has its registered office. An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions. Subject to this Regulation, the formation of an SCE is governed by the law applicable to cooperatives in the State in which it has its registered office. An SCE may be formed as follows: a) by five or more natural persons resident in at least two Member States; b) by five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, resident in, or governed by the law of, at least two different Member States; c) by companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State which are resident in, or governed by the law of, at least two different Member States; d) by a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States; e) by conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community, if for at least two years it has had an establishment or subsidiary governed by the law of another Member State.

A Member State may provide that a legal body, the head office of which is not in the Community, may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy. The capital of an SCE shall be represented by the members' shares, expressed in the national currency. It may not be less than 30 000 Euros or the equivalent in national currency. An SCE whose registered office is outside the Euro zone may also express its capital in euro. The laws of a Member State requiring a greater subscribed capital for legal bodies carrying on certain types of activity shall apply to SCEs with registered offices in that Member State. The founder members shall draw up the statutes of the SCE in accordance with the provisions for the formation of cooperative societies laid down by the law of the Member State in which the SCE has its registered office. The statutes shall be in writing and signed by the founder members. The registered office of an SCE may be transferred to another Member State without resulting in the winding-up of the SCE or in the creation of a new legal person. The Regulation provides for the SCE structure to be made up of a general meeting on the one hand, and for either a management board with a supervisory board monitoring its activities (the two-tier system), or for an administrative board (the one-tier system), depending on which option is chosen in the SCE statutes.

Council Directive supplementing the Statute for an SCE (Directive 2003/72) prescribes employee involvement in SCEs in the form of information and consultation of employees and, in some case, board level participation. The Directive aligns the laws, regulations and administrative provisions in force in the Member States so as to cater for the involvement of employees in the running of the SCE. The arrangements for the involvement of employees shall be established in every SCE in accordance with the negotiating procedure or in accordance with the standard rules on the involvement of employees set by this Directive. Arrangements for involving employees in the SCE must be negotiated in conjunction with the establishment process between the managements of the participating entities and representatives of their employees in the different Member States. Failure to reach agreement before the SCE is registered will lead to the SCE being governed by a set of subsidiary rules, similar to those of the Directive on the European company, on employee information and consultation and, where appropriate, board-level participation, with some adjustments to take account of the differences in establishing an SCE and an SE.

EUROPEAN SOCIAL MODEL

The Commission's 1994 *White Paper on social policy* [COM (94) 333] described a 'European social model' in terms of values that included democracy and individual rights, free collective bargaining, the market economy, equality of opportunity for all, and social welfare and solidarity. The model is based on the conviction that economic progress and social progress are inseparable: 'Competitiveness and solidarity have both been taken into account in building a successful Europe for the future.' The EC Treaty (ECT), the Charter of Fundamental Rights of the European Union and European labour law established the foundation of legitimacy for the European social model. The EC Treaty contains the legal framework for the European social dialogue in the Social Chapter, Articles 138-139 ECT. The EC Treaty's employment title embodies the 'open method of coordination' for the European Employment Strategy. The EU Charter, by enshrining fundamental rights of association, information and consultation, and collective bargaining and action, anchors the role of the social partners in EU social policy, and ascribes legitimacy to collective bargaining and collective action, and to information and consultation at the level of the enterprise. Finally, European labour law established a general framework for improving information and consultation rights, representing a crucial dimension of the European social model (Council Directive 2002/14).

The European social model has a number of dimensions. For example, in a Communication on 'Employment and social policies: A framework for investing in quality' [COM (2001) 313], the Commission contrasts the 'European social model' of public social spending with the 'US model', which relies on private expenditure, highlighting the fact that 40 per cent of the US population lacks access to primary health care, although per capita expenditure as a proportion of GDP is higher in the USA than in Europe. The Commission goes on to emphasize that it is not only the existence of jobs but also the characteristics of employment that are important to the European social model. A defining feature of the European social model, when contrasted with that of the USA, is the important role of organizations of workers (trade unions) and employers in Europe. For instance, the weighted average union density of the 25 EU Member States in 2002 was 29 per cent. In contrast, trade union density in the USA in 2002 was only 13 per cent, lower than any EU country except France. The European social model is also characterized by a high coverage rate of collective bargaining: the proportion of workers whose pay is determined by collective agreements. The higher collective bargaining coverage in the EU Member States is a result of the prominence of multi-employer collective bargaining in Europe. This means that collective agreements may cover all workers and employers in a sector or country. In fact, in the EU Member States, three forms of collective bargaining are prominent. The most familiar is collective bargaining between an employer association and a union at sectoral level. However, equally important are processes at national and intersectoral level and at the workplace. It is the existence of all three levels that defines the specific character of the European social model in the field of industrial relations.

EUROPEAN WORKS COUNCILS

European Works Councils (EWCs) are standing bodies providing for the information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings as required by the Directive 94/45, of 22 September 1994 (as amended by Dir No. 2009/38, of 6th May 2009). EWCs are highly significant in terms of European industrial relations since they represent the first genuine European institution of interest representation at enterprise level. They reflect a growing recognition of the need to respond to the 'Europeanization' of business emerging from the Single European Market by supplementing existing national channels of information and consultation, a goal which was expressed in the Social Charter of 1989 and the accompanying Social Action Programme. The thresholds required for an enterprise to be covered by the directive are, for a Community-scale

undertaking, ‘at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States’ (Article 2(1) (a)). It is left to Member States to decide on the mechanism for determining the selection of employee representatives, ‘in accordance with the principle of subsidiarity.’ Essentially, the aim of the directive is to promote voluntary agreements on the constitution and operation of EWCs. It did this in two ways. First, the directive allowed multinational companies (MNCs) and groups covered by the directive to reach voluntary agreements with employee representatives on the establishment of EWCs before the directive actually came into force on 22 September 1996. These so-called ‘Article 13 agreements’ were exempt from the provisions specified in the directive, for the life of the agreement, as long as they covered the entire workforce of the group within the scope of the directive. Second, since 22 September 1996, negotiations to establish EWCs have been governed by the procedures under Article 6 of the directive, which requires the formation of a special negotiating body (SNB). Crucially, it is up to central management and the SNB to agree the precise form and function of their EWC. This includes, for example, the signatory parties; coverage, composition, numbers and seat allocation; the terms of office; functions and procedure; venue, frequency and duration of meetings; financial and material resources; duration of the agreement and the procedure for its renegotiation; issues for information and consultation; experts; confidentiality; select committee operation; employee-side pre-meetings; rules on deputies to employee representatives; languages policy and interpretation provided; procedure for agreeing the agenda; procedure for drawing up minutes or other record; and communication to employees generally. Only if there is a failure to agree between the parties, or if they so choose, will the ‘fallback position’ be triggered, as the provisions detailed in the Annex to the Directive. Many agreements exceed the requirement laid down in the Annex, in substantive as well as procedural terms. For example, some companies have agreed so-called ‘framework agreements’ or ‘joint texts’ through their EWC. These often concern restructuring issues. In some cases, this process arguably resembles collective bargaining at European level, as well as directly influencing national-level processes and agreements. Examples include General Motors Europe, Deutsche Bank, DANONE, and Ford/Visteon. However, by no means all MNCs have established EWCs. This is because the introduction of EWCs is not automatic but requires either central management initiative or ‘the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States’ (Article 5.1).

A mechanism for revision of the Directive 94/45 was included under its Article 15. At the beginning of July 2008 the European Commission adopted a long awaited legislative proposal for a revised EWC Directive. This had been preceded by a debate between the ETUC (European Trade Union Confederation) and Employers’ Federations, under the leadership of Businesseurope. The ETUC welcomed the Commission’s proposal to surmount the European employers’ opposition by taking the legislative initiative itself. After 15 years of the adoption of the EWC Directive a window of opportunity opened up to adapt the rights of EWCs to the realities of the European Single Market and in the view to strengthening the options of EWCs and to clear up remaining legal uncertainties. The new directive includes the following provisions: a) a definition of information is introduced and the meaning of consultation is clarified; b) where the structure of an undertaking or group of undertakings changes significantly (i.e. due to a merger, acquisition or division) the arrangements of the existing European Works Council must be adapted; c) the competence and scope of action of a European Works Council is limited to transnational matters; topics are considered to be transnational if they concern the entire undertaking or group or at least two member states; these include matters which, regardless of the number of member states involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between member states; d) in addition, European Works Council agreements must contain arrangements for the links between the information and consultation

of the European Works Council and national employee representation bodies; in the absence of such arrangements, the member states must ensure that the process of informing and consulting is conducted in the European Works Council as well as in the national employee representation bodies; e) in so far as this is necessary for the exercise of their representative duties in an international environment, the members of the European Works Council get the right to training without loss of wages. The new directive replaces and updates the Dir. No. 94/45. The Member States must transpose the new directive into national law within two years after its publication in the Official Journal of the European Union. Currently there are around 830 EWCs in the EU, representing 14.5 million workers at transnational level. However, EWCs have so far been set up only in 37 per cent of undertakings falling within the scope of the directive.

(See Table 3)

FINANCIAL PARTICIPATION

Financial participation (FP) is a term applied to various forms of employee profit-sharing and share ownership schemes which give employees a financial stake in the company for which they work. FP includes profit-sharing, under which a portion of profit is paid to employees in addition to their wage, and employee share ownership, under which employees own shares in the company in which they work. Both forms are often combined in the same enterprise. Like other forms of employee participation, FP is characterized by a sharing of property rights with employees. It gives employees a residual right to the firm's surplus. Both profit-sharing and employee share ownership-schemes can have a number of varying features (who is eligible, who gets how much, etc) which influence their effects on performance or employment. Neither type of scheme is *necessarily* associated in practice with any employee participation in governance. Conditions regarding the sale of their shares (by employees), determine the liquidity of the shares and the stability of employee ownership. Shares that can be traded easily are more liquid, but employee share ownership may be less stable as a result. There have been contrasting experiences of employee ownership, with unstable forms in the US, among privatized firms in the EU and in many transition countries; and stable employee stock ownership plans in the US and workers' co-operatives in the EU. In theory, stock ownership may permit influence but in practice there are few significant opportunities to do this. Stockholders may vote to change management but this is difficult and rarely happens and almost always because an outsider "raider" seeks to change current management. As for ESOPS, in most U.S. plans, management serves as their legal trustee and, except for unusual circumstances can vote their employees' stock as it wishes. As confirmed by several researches, financial participation alone has a limited impact on business performance and employee involvement. When financial participation is combined with other policies, such as job security, extensive training, and forms of direct and indirect participation, the entire scheme may be positively correlated with employee involvement and company success.

FINANCIAL PARTICIPATION (EU)

EU interest in employee financial participation was evident in the publication of the so-called PEPPER reports of the Commission (Pepper I in 1991 and Pepper II in 1996) concerned with the *Promotion of Employee Participation in Profits and Enterprise Results*. The first report, published in 1991, was followed by Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of employee participation in profits and enterprise results, including equity participation. This highlighted the importance the Community attached to the use of financial participation schemes and called for the direct involvement of Member States and the social partners. A second PEPPER report by the Commission issued in 1997 [COM (96) 697 final] was based on replies to a questionnaire sent to Member States. Most national legislation involved fiscal or other incentives such as the tax-free issue of shares to employees, some of which may be made subject to conditions, such as minimum percentage of personnel covered by the scheme, eligibility criteria, retention periods, etc. Arising from the findings of

successive PEPPER Reports, and other work, the European Commission launched a Communication on a Framework for the Promotion of Employee Financial Participation, in July 2002 [COM (2002) 364]. This established a working group of independent experts to analyse legal and legislative obstacles to the transnational diffusion of employee financial participation, with concrete proposals for actions to tackle them. The Commission also proposed a framework for Community action: to include financial participation in the peer review programme under the EU employment guidelines; to support cross-national research into employee financial participation; and also to support transnational networks of financial participation experts and practitioners. In response to this Communication, both the European Economic and Social Committee and the European Parliament drafted opinions, in which they, in particular, expressed their interest in studies on the topic of financial participation in SMEs. Financial participation, in the forms of profit-sharing and share ownership, has been a feature of employee participation in the EU for many years. While financial participation has been supported in some Member States through tax incentives and other forms of legislation, there is a wide divergence in approaches to be found in different countries. There is also concern at European level that costs and administrative complexities have hampered the large scale introduction of financial participation schemes.

At national level, the social partners' activities in this area are mainly reactive to government initiatives and legislation. However, employer associations are generally favourably inclined towards financial participation (though with differences in detail associated with national differences in regulation and institutions). On the trade union side, there is arguably a general softening of opposition to financial participation in some European countries.

In 2004, the European Commission published the report from the high level expert group on various transnational barriers which currently impede the introduction of schemes in companies with several establishments in Europe. (See Table 4)

FINLAND (Participation)

Forms of employee participation have developed in Finland over the past decades, allowing employees to acquire information on the enterprise's affairs and influence production, personnel policy and the general outlines of the enterprise's development, and to take part in the co-operation procedure on behalf of others. The key statutes are the Cooperation within Undertakings Act (1978), the Act on Personnel Funds (1989) and the Act on the Representation of the Personnel in the Administration of Enterprises (1990). Participation mechanisms differ from the collective bargaining system in that they are based not on the idea of a compromise solution to the conflict of interests between labour and capital, but on the conception of the common interest of the enterprise and its employees in success and advancement. A thriving enterprise can also afford to improve the position of its employees and, conversely, taking good care of employee matters feeds the success of the enterprise. Alongside normal direct participation (*suora osallistuminen*) between employer and individual employee, indirect representation (*välillinen/edustuksellinen osallistuminen*) has evolved and is in fact the important form in Finland. In addition to negotiation procedures as provided for in collective agreements, co-operation procedures, co-operation in corporate groups, co-operation in health and safety matters, employee representation in company administration and personnel funds all fall under this heading. Direct participation and these indirect participation mechanisms guarantee the provision of information and the opportunity to be heard and create the means for making a contribution, having a voice in decision-making and reaching agreement. The Constitution charges the government with the task of promoting opportunities for individuals to participate in the affairs of society and influence decisions affecting themselves. (See table 4)

FINLAND (Cooperation System: Scope and Structure)

The Cooperation within Undertakings Act (1978), states the purposes of the Act to be to develop the functioning and the conditions of work in undertakings and to make the cooperation between the management and the personnel, as well as among the personnel more effective. Correspondingly, it is stated that the purpose of cooperation within groups of companies is to promote the interaction between the management and the personnel of the group, as well as among the personnel. It is further stated in the act that in order to fulfil these purposes, the possibilities for the employees of the workplace to influence the handling of matters concerning their work and workplace are enhanced. The Act is applicable to private workplaces which normally have at least 30 employees; provisions on collective terminations are in addition applicable to undertakings with at least 20 employees in case the termination is intended to comprise at least ten employees. The provisions on cooperation within groups of companies are applicable to groups of undertakings with at least 500 employees in Finland, and the provisions on international cooperation are applicable to groups of companies with at least 1,000 employees within the EEA and at least 150 employees within each of at least two member countries. The Act is applicable to government-owned institutions in the form of private law companies. Other government-owned institutions engaging in business activities may place themselves in the scope of the act. It rests with the Labour Council to decide questions concerning the scope of the Act. Parties to the cooperation according to the Act are the employer and the personnel of the undertaking. The practical cooperation takes place either between the individual employees and their superiors or between the representatives of the employer and the personnel. The representatives of the personnel comprise the chief shop steward and the departmental shop stewards of the blue-collar employees and the shop stewards of the white-collar employees as well as the labour protection representatives of the workplace. If a personnel group has no shop steward but the majority of the group wants the group to have a representative for cooperation under the Act, the employees in question are entitled to elect such a representative (regardless of whether they are or may be represented by a labour protection representative). A similar right is accorded to employees who constitute a majority of the personnel group in question but have had no vote in the elections for the shop steward for the group because suffrage has been restricted to members of a trade union. It is possible for the employer and the representatives of the personnel to agree that in the undertaking or in a part of it, cooperation matters or some of them shall be handled by a committee composed of representatives of the employer and the personnel. Cooperation within groups of companies is supposed to be arranged according to an agreement between the management and the representatives of the personnel. If no agreement is reached, the personnel of each undertaking within the group is entitled to elect a representative for the cooperation, bearing in mind that each personnel group within the group of companies shall be represented. Comparable provisions are included for international cooperation, and also for the election of Finnish representatives for international cooperation under the law of another EEA country. If a matter subject to cooperation concerns a single employee only, it shall primarily be handled between him and a representative of the employer; but upon demand of the employer or the employee. Negotiations upon the matter shall also be conducted between the employer and the personnel representative concerned. If a matter subject to cooperation concerns employees of a department or another similar unit in a general manner, it shall be handled with the personnel representatives for the unit in question. If two or more personnel groups are concerned, a meeting of the employer and of the personnel representatives concerned shall be held; unless the matter is to be handled by the above mentioned committee.

FINLAND (Participation in Enterprise Administration)

The employees have been given a say in the administration of enterprises in the Act on the

Representation of the Personnel in the Administration of Enterprises (1990). The purpose of the participation is stated in the Act to be the development of the activities of the enterprise, the intensification of cooperation between the enterprise and the personnel, and the enhancement of the influence of the personnel. The Act is applicable to Finnish corporate employers (except public bodies) which regularly employ in Finland at least 150 persons. The representation can be arranged by agreement between the employer and at least two of the personnel groups under the Cooperation Within Undertakings Act representing together the majority of the employees. In the absence of such agreement and if so required by two personnel groups representing together the majority of the personnel, the personnel is entitled to elect its representatives to the administration of the enterprise. In this case, the employer is entitled to choose whether the representatives will be elected to the board of directors, to the council of administration (if any) or to the management groups of the different units of the corporation, covering together the activities of the whole corporation, and the number of representatives shall be one quarter of the other members of the organ in question, but at least one and at most four. The representatives of the personnel have the same position as the other members of the organ in question. They are not, however, entitled to participate in the handling of matters concerning appointment, dismissals, or service conditions of the directors of the undertaking, service conditions of the personnel, or industrial actions.

FINLAND (Matters Subject to Cooperation and their Handling)

The matters subject to cooperation are included in a vast catalogue. The catalogue comprises matters having all essential influence on the position of the personnel, essential changes in the functioning of the enterprise or a part thereof, the influence of such changes in the number of personnel in various occupations, sets of rules affecting the position of the personnel, and questions pertaining to training, information and social work. In most of the matters indicated, the cooperation under the Act consists of consultation and information. Before a decision is taken on such a matter, the employer shall discuss the grounds, effects and alternatives of the measure with the employees or personnel representatives concerned and give them the information necessary for the handling of the matter. After the required consultations, the decision and the responsibility for it rests with the employer. If unforeseen circumstances having an adverse influence on the production or economy of the undertaking constitute a hindrance to the cooperation procedures, the employer is entitled to act without advance consultations. In such a case, the matter shall be taken to consultation as soon as possible, and the employer shall concurrently account for the reasons of the exceptional procedure.

There are, however, certain matters in which the decisive power of the employer is more restricted than in cooperation matters in general.

A) *Job security, business transfers, and mergers.* A collective termination may not be effected before agreement is reached or at least seven days have passed since discussions on the planned action began. Lay-offs and transfers to part-time work are treated like terminations. In the case of a collective termination, a transfer to part-time work, or a lay-off for more than 90 days will evidently cover at least ten employees, the period of seven days is replaced with a period of three months (two months in the case of a transfer of business or merger) reckoned from the day the negotiation proposal was given to the representatives of the personnel. Employer's actions like changes in work methods, acquisitions of new machinery, etc. as well as transfers of business and mergers shall be treated, like terminations, etc., if the action will obviously lead to a termination, a transfer to part-time work, or a lay-off. A transfer of business or merger shall in any case be discussed in order to ascertain whether the action has effects which involve a duty to negotiate. The transferee is entitled to participate in the negotiations already before the effective date of the transfer or merger and to include the time of such participation in the effective negotiation time.

B) *Utilization of outside manpower.* Personnel representatives concerned shall be informed about a planned contract involving utilization of outside manpower. With certain exceptions, any one of the personnel representatives concerned is entitled to demand that the matter be handled in the cooperation procedure, and until the consultations have been concluded, but not for longer than one week, the employer is not allowed to conclude the envisaged contract.

C) *Shop rules* and comparable regulations can only be adopted upon agreement between the employer and the personnel representatives concerned.

D) *Training in cooperation matters* can only be affected as far as agreement has been reached as to its extent and contents.

E) *Allocation of fringe benefits.* This is the area where the restrictions on the employer's decisive power are most extensive. The fringe benefits concerned comprise meal services at the workplaces, day care of children, utilization and planning of welfare facilities (from washing facilities to clubrooms) at the workplace, club and vacation activities, gifts and subsidies to the personnel, and housing for employees (except for managerial employees).

The Cooperation Within Undertakings Act neither directly obliges the employer, nor entitles the personnel to require him, to allot resources to any of the purposes mentioned; but if the employer has in fact reserved resources for any of the purposes just mentioned and no agreement is reached as to how the resources shall be allocated, the final allocation of the resources (within the purposes to which the resources have been allocated) is for the personnel representatives to decide upon. But even though the employer has no duty under, the Cooperation Within Undertakings Act to reserve resources for the benefits concerned, other legislation (e.g. the Protection of Labour Act) or a collective agreement may require the employer to take care of adequate washing facilities at the workplace for example. What happens if in the opinion of the employer the allocation of the resources as decided by the personnel representative does not satisfy the requirements of the legal or agreement provisions in question is left open. In regard to company housing, the provisions are somewhat more detailed. The general principles for the allocation of dwellings as well as their division among the different groups of personnel shall be handled according to the general provisions of the cooperation procedure: after consultations with the personnel representatives, the decision rests with the employer. The execution of these decisions, like the fixing of the detailed grounds for the allocation as well as the allocation of the individual dwellings among the individual employees is then a matter for the personnel representatives to decide. The employer must furnish information necessary for the handling of matters in cooperation. In addition, the employer shall provide the personnel representatives with regular information not connected with any specific matter under cooperation. This regular information comprises the annual financial statement (profit and loss account and balance sheet) of the enterprise; an annual economic statement with trends of productions, personnel, profitability and cost structure; an annual personnel plan, clarifying probable changes in the number and arts of the personnel and their reasons; an annual training plan, indicating the general training needs, based on the personnel plan, the carrying out of training in regard to the various personnel groups; and the statistics on wages and salaries (to be compiled as required in the appropriate industry, or craft-wide collective agreement and given to each personnel representative with regard to the personnel he represents.). To fulfil these requirements, it is not enough for the employer to disseminate information already in existence. The personnel and training plans and economic projections shall be, whenever needed, compiled especially for the purpose. In a bilingual municipality, the information shall be drawn up and delivered in both Finnish and Swedish, if the linguistic minority at the workplace comprises at least ten persons and more than ten per cent of the personnel. Information, whether given for a specific matter or not, concerning business or trade secrets of the employer shall, upon demand of the employer, be handled solely by the employees or personnel representatives concerned, without divulging such

information to outsiders.

FINLAND (Co-operation in Corporate Groups)

System of participation by the workforce within a corporate group which gives workforce representatives the right to be provided with information and to influence decisions relating to work and staff matters. The right to participate also encompasses the parent company that takes decisions. In accordance with the 1978 Co-operation Act, co-operation within corporate groups is to be arranged in the first instance by agreement between management and workforce representatives. In addition, it is possible to conclude national collective agreements which derogate from the Act's provisions, as has been done in the pulp and paper and metalworking industries. Co-operation in corporate groups is divided into co-operation in national groups and co-operation in multinational groups.

Co-operation in multinational corporate groups is based on Dir. No. 94/45 (the "EWC Directive"). In Finland the matter has been implemented by way of legislative rules and, in addition, by agreements concluded within multinational corporate groups.

Rules on *co-operation in national corporate groups* are binding on only certain Finnish corporate groups. The manner in which co-operation is put into effect is that the employees of each of the group's member companies elect individuals from among themselves to represent all the different employee categories for this purpose. The minimum content of co-operation in enterprise decision-making is an obligation on the group's management to provide these workforce representatives with information on the group's financial situation and on any major decisions to be taken by the management which will affect the member companies and the position of their employees. However, the actual negotiations that constitute co-operation takes place within the separate member companies concerned. (See Table 3)

FINLAND (Cooperation: Supervision and Violations)

The observance of the Cooperation within Undertakings Act is supervised by the Ministry of Labour and by the parties to the national (industry, or craft-wide) collective agreement which shall be applied in the enterprise concerned. An employer or his representative contravening the provisions of the act concerning sub-mission of matters to cooperation procedure, information to be given to employees and personnel representatives, or time off and compensation for personnel representatives, is liable to a fine. An employer, employer's representative, or fellow employee who prevents or tries to prevent the election of an employees' representative for co-operation within a group of companies is likewise liable to a fine, and so is anyone divulging matters to be kept secret according to the act. If a provision in the act has been (validly) deviated by means of a national agreement, the normal consequences for violations of collective agreement clauses apply instead of a fine according to the act. Employers' associations and trade unions bound by such an agreement are also, under threat of a compensatory fine, obliged to see to it that their member employers and employees observe the agreement clauses; but it seems that a local trade union is not liable to any adverse consequences for breaches of any duty which such an agreement purports to impose on the union or its representatives, such as shop stewards (acting as such). If an employer decides a matter concerning a collective termination, a lay-off, or a transfer to part-time work in wilful or obviously negligent disregard of the provisions of the Cooperation Within Undertakings Act on the conduct of negotiations and as a result of the decision an employee is dismissed, laid-off or transferred to part-time work, the employee is entitled to a pecuniary compensation, amounting to twenty months' salary or wages at most. The disregard of the negotiation rules does not render the decision of the employer invalid, but if the decision was in itself unlawful, the

employee is in addition to the pecuniary compensation entitled to a compensation of his actual damages.

FINLAND (Personnel Funds)

A *personnel fund*, according to 1989 Personnel Funds Act, is a fund erected, owned and administered by the personnel of the enterprise (through their representatives), with the function of controlling the profit-related payments paid into it by the employer and other assets regulated by the Act. A personnel fund may be erected in a Finnish general or limited partnership or a Finnish corporation (except a public body) having at least 30 employees, or at least 10 employees if no person owns more than one tenth of the enterprise or of its voting power. Personnel funds are not compulsory. A personnel fund registered with the Ministry of Labour possesses legal personality in its own right. However, it may engage only in those activities referred to in the Personnel Funds Act. The asset of a personnel fund consists primarily of profit premiums paid by the employer according to a profit premium system decided by the employer after having discussed it with the representatives of the personnel according to the Cooperation Within Undertakings Act. The assets of the personnel fund are placed either in the employer enterprise (or another enterprise within the same group of companies) even as venture capital or elsewhere in a safe and profitable manner. The share of each member in the fund is divided into a bound part and a free part. Profit premiums paid by the employer are added to the bound part, as well as the gains from the investments of the fund. After five years' membership in the fund, at most 15 per cent (as determined according to the by-laws of the fund) of each member's bound part is annually transferred to the free part, which can be freely disposed of by the member. After the end of a member's employment relationship, the bound part of his share is after some time paid out to him (or his heirs, as the case may be).

FRANCE (Employee Representation at Enterprise Level)

France has a well developed system of works councils or enterprise committees for all enterprises employing 50 or more workers. Under the 1946 law such committees were to be informed and consulted about the management and general situation of the enterprise, they could appoint two members to attend board meetings and were given training facilities to perform their duties. The 1982 so-called "Auroux laws" went on to strengthen workplace institutions within the enterprise, especially the committees who have the power to manage the company's welfare and cultural activities. In addition, employee delegates have to be elected in establishments employing 11 or more workers, who can present individual or collective grievances to management as well as raise issues concerning pay, labour discipline, health and safety questions and matters that concern collective agreements. Trade union members can also establish their own separate workplace organizations in enterprises that employ 50 or more workers. In addition, France has health, safety and working conditions committees made up of 3 to 9 employee representatives as well as group committees covering a group of commercial undertakings. Since 1986 public limited-liability companies in France have been offered the possibility of changing their internal rules to allow the election of worker representatives to their board but only with the right of discussion. However, representation on the board is an obligation and not an option in the inclusion of two members with an advisory role.

FRANCE (Employee Representation at Board Level)

Until very recently France had no law that specifically requires or provides for employee representation at board level in private sector companies. This reflected the country's strong

syndicalist traditions that tended to emphasize the commitment in many trade unions to the cause of workers' control of industry and worker participation. The limited advance of employee representation at board level was also a consequence of the specific capital structure of French firms. More than elsewhere in Europe they have been dominated both by the influence of the state and the direct control of the banks, which established close and stable relations between management and shareholders to the exclusion of workers' interest. The obstacles in France to the creation of worker directors in privately owned or publicly listed companies are therefore formidable. Until recently company law tended to encourage single, unitary boards of directors rather than a dual system on the German model with a division between administrative and supervisory boards. But under a 2001 law more flexibility is being encouraged in the way in which companies organise their decision-making processes. Under the statutes of joint stock companies it is possible but not compulsory to provide for the election of board members by the firm's employees through the enterprise committees. Moreover, only employees of the company are eligible. The proportion so elected must not make up more than a third of the entire board. But the ultimate power on whether such a system is acceptable lies with the company's shareholders who, at an extraordinary general meeting, can cancel such participation. Under a 1994 law the annual shareholders meeting must discuss whether or not employees are entitled to board representation where employees hold more than 5 per cent of the capital. However, under another law passed in 2001 it is possible for employee representatives to be elected to the board of directors where they hold at least 3 per cent of the company's share capital. In practice, there are few joint stock firms that have employee representatives on their boards. But in this case they serve as representatives of the employee shareholders. This is fundamentally different from having the right of participation in one's capacity as employee of a company. Employee board members in the private sector must not only be employed by the company but are also not allowed to have another mandate as a member of the company's enterprise committee. But the position in France's public sector is different. As a result of a law passed in 1983 employee representation at board level was introduced into state-owned enterprises. The number of representatives elected depends on the size of the organization concerned. Three can be elected in those bodies that employ between 200 and 1,000 workers. For larger enterprises up to a third of the board's members can be elected from among employees. They are not paid any salary for their service but nor are they expected to take overall responsibility for the governance of the firm unlike the other directors. However, the public sector in France has been reduced substantially since 1986 under governments of both right and left with the movement of companies into the private sector. Nevertheless, board level representation has not been abolished in case of privatization. Depending on the size of the board, the statutes of the company must reserve two or three seats to the employee board members. However, the advance of private ownership into what was formerly state-controlled enterprise has expanded the importance of shareholder value. A wave of mergers and acquisitions as well as the growth in the pressures imposed by globalization, have all strengthened the position of capital at the expense of labour in corporate governance. Perhaps inevitably, as a result, France's company structure has moved more closely towards the so-called Anglo-Saxon model in recent years. On the other hand, the system of worker representation below board level remains substantial in many French companies. (See Table 3)

FRANCE (Worker Members of the Board)

Although French law provides for the compulsory attendance by two members of the works council at meetings of a company's board of directors or supervisory board, these delegates are not *worker members* of the board: they do not possess their powers or responsibilities and can act only in an advisory capacity. In public sector enterprises, which are fewer in number since the privatization wave of 1986-87, representatives elected by the workforce sit on the board of directors or supervisory board, usually accounting for one third of the members. In the private

sector, French law leaves it to shareholders to decide whether or not worker members of the board should be appointed. Only a handful of examples exist, although admittedly this form of employee participation is not favoured either by the employers or by the trade unions, with the exception of some Christian factions and bodies representing professional and managerial staff ("cadres").

FRANCE (Pay Related to Company Performance)

A range of methods introduced by French law since 1967 which link the allocation of benefits to employees towards an improvement in the enterprise's results. The law encourages the introduction of cash-based profit-sharing schemes, both by exempting the sums allocated to employees from social security contributions and taxes levied on pay and by permitting their deduction from the company's taxable profits. The introduction of such schemes is, however, subject to control. The concessionary legal arrangements are available only if certain conditions are fulfilled; in particular, schemes must be established by collective agreement. The law also stipulates that the sums in question may not take the place of existing components of pay.

FRANCE (Shareholding)

The preamble to the 1946 Constitution, which has been expressly preserved in the present Constitution, establishes the right of all workers to participate, through the intermediary of their representatives, in the collective determination of terms and conditions of employment and in the management of enterprises. In a technical sense, the term refers to the holding by one company of some of the share capital of another. French company law defines it as the situation arising from the holding of shares representing 10-50 per cent of the capital.

FRANCE (Employee Share Ownership)

In France, there is a distinction between employee share ownership and popular share ownership, whose aim is to ensure the broader distribution of the securities issued by companies to represent their capital. Numerous obstacles stand in the way of employee share ownership. One problem, which can be overcome, is that caused by many employees' limited ability to save. Various measures have been taken to transfer all or part of the cost of purchase to other shareholders or to the general community: the issue of free shares, as in the case of public enterprises; the grant of incentives to employees who subscribe to or purchase shares (e.g. mechanisms for purchase or subscription options provided for by the law); the introduction of a preferential taxation system for companies formed by members of the workforce with a view to ensuring the continuing existence of an enterprise by purchasing a proportion of its share capital ("reprise d'une entreprise", that is buy-out or takeover by an enterprise's own employees); assistance for an employee in starting up a business, etc. All these measures form the skeleton of a policy whose achievements have been somewhat limited. (See Table 4)

GAINSHARING

Gainsharing is the generic term used for a variety of programs intended to address the problem of loss of sales and jobs caused by declining productivity. A common feature of these programs is the payment of bonuses to employees when productivity is increased. Gainsharing programs are often developed and administered by joint labour-management committees, which also serve as clearinghouses for employee suggestions for improving productivity.

GERMANY (Works Constitution)

The works constitution forms the basis for the institution of employee representation bodies within establishments, and their rights and obligations. Together with the co-determination enshrined in the company constitution, it is the core of the system of institutionalized representation of interests. It is governed by the Works Constitution Act (*Betriebsverfassungsgesetz*) of 1972 (and following reforms; sometimes also referred to in English as the *Labour/Management Relations Act*). The principal active organ of the works constitution is the works council. Regulations on collective employee representation bodies are also laid down in the relevant statutes for disabled persons or on representative bodies for executive staff. The works constitution also contains individual rights relating to consultation and grievances which the employee can assert even in establishments where there is no works council. Otherwise, the various participation rights of the works council provided for in the works constitution are vested in the council alone.

The works constitution applies to all establishments located in the Federal Republic which are organized under private law. In the public service, these matters are governed by provisions on staff representation. Participation rights as provided for in the works constitution are not applicable to Church institutions and Religious Communities (Works Constitution Act, paragraph 118), which have their own ecclesiastical staff representation bodies. In the category of establishment known as a "*Tendenzbetrieb*" the co-determination rights of the works council are restricted.

In terms of personnel, the scope of the works constitution covers only those within an establishment who are employees within the meaning of the Act (paragraph 5); executive staffs, for example, are excluded. The Act requires the works council and the employer to work together on a basis of co-operation in good faith and with due regard to rules contained in statutes and collective agreements. This does not, however, place the works council in a position of direct subordination to the trade unions as representative bodies. Rather, within individual establishments the unions perform a supportive and monitoring role. Union officials possess a right of access to establishments in which they have union members. With the exception of provisions on penalties and administrative fines, all disputes on matters concerning the works constitution fall within the jurisdiction of the Labour Courts, which decide them according to the "*Beschluss*" procedure. Under the Act (paragraph 40, f.), all costs connected with the works constitution are borne by the employer.

The historical precursors of an institutionalized system of employee representation were the workers' committees instituted in the mining industry from 1905, the manual and white-collar workers' committees instituted in all establishments with more than 50 employees from 1916, and the legal guarantee of employee representation provided by the Works Councils Act (*Betriebsrätegesetz*) of 1920. Forms of employee representation as provided for in the works constitution have existed since the Works Constitution Act of 1952. The Act of 1972 then broadened the scope of the works council's co-determination rights and completely re-codified the works constitution. This Act can therefore be viewed as an industrial equivalent of the democratization of the state. The Federal Parliament's Standing Committee on Co-Determination (*Mitbestimmungskommission*) has also expressed the opinion that, with due regard to the protection of human dignity and the right of individuals to develop their personality freely as enshrined in the Basic Law, the subordination of the employee to other people's managerial and organizational authority is acceptable only if the guarantees of freedom afforded by the Constitution are reflected in the opportunity to have a voice in the shaping of the work process. The Act of 1972 consequently contains minimum participation rights which can in principle be extended.

In a number of companies which operate branch establishments or subsidiaries in various EC Member States, special "works councils" have been set up for the purpose of voicing the interests of employees in all their establishments throughout the Community. These bodies do not, however, have institutional backing comparable to that of the German-style works council, nor corresponding rights.

GERMANY (Works Council)

As the form of institutionalized representation of interests for employees within an establishment, the works council is an organ of the works constitution. It serves the establishment and the workforce. The means it has at its disposal for fulfilling this function are its rights of participation, the information, consultation and co-determination rights of the works council. It is empowered to conclude works agreements for the establishment, and is authorized to institute legal actions under the "*Beschluss*" procedure if its rights are disregarded. Its relationship to the workforce is governed by the duty to conduct its business impartially, without regard to race, religion and creed, nationality, origin, political or union activity, sex, or age. Consequently, manual workers and white-collar workers and (in principle) both sexes, as well as the individual departments of the establishment, must have representation on the council proportional to their presence among the workforce. The council is elected in accordance with the provisions on works council elections. It is not bound by the decisions of works meetings and cannot be voted out of office. It can, however, be removed from office by the Labour Court for gross violation of its duties. It must observe the principles of the peace obligation and co-operation in good faith towards the employer, and is also required to co-operate with those trade unions which have a presence in the establishment and with the relevant employers' association.

The requirement for setting up a works council is that the establishment in question should regularly employ at least five employees who are eligible to vote. The term of office is four years. The size of the council depends on the number of employees in the establishment who are eligible to vote; provided that it has several members, the council elects two of them as its chairperson and vice-chairperson. Council members enjoy special protection against dismissal. Membership ends after expiry of the term of office, resignation, termination of the employment relationship, loss of eligibility, expulsion, or dissolution of the council by court decision. The works council is not capable of possessing assets and cannot be held liable under the law. The employer bears the costs of the council's activities and in this respect is also liable for the council's actions. In companies where there are several works councils, a company works

council must also be formed. In a group (of companies), a group works council is formed in addition to this, if the company works councils of the member companies so decide. The interests of executive staffs are protected not by the works council but by a separate representative body for executive staff.

In a number of companies which operate branch establishments or subsidiaries in various EC Member States, special "works councils" have been set up for the purpose of voicing the interests of employees in all their establishments throughout the Community. These bodies do not, however, have institutional backing comparable to that of the German-style works council, nor corresponding rights.

GERMANY (Co-determination)

The concept of co-determination refers to two distinct levels and forms of employee participation: co-determination at establishment level by the works council and co-determination above establishment level, on the supervisory board of companies, which is the main subject of this entry. At this level, co-determination is regulated by three statutes for different sectors of the economy and sizes of company. The system which provides the most extensive form ("parity co-determination") of co-determination is co-determination in the coal, iron and steel industry, governed by the 1951 Coal, Iron and Steel Industry Co-Determination Act (*Montan-Mitbestimmungsgesetz*). Companies in other industries with between 501 and 1,999 employees are covered by the corresponding provisions of the Works Constitution Act of 1952 (*Betriebsverfassungsgesetz*) (and following reforms) under which employee representatives occupy only one third of seats on the supervisory board. Lastly, the 1976 Co-Determination Act (*Mitbestimmungsgesetz*) covers all standard forms of company normally employing more than 2,000 employees. This provides for equal numbers of representatives from the employee side and the company side on the supervisory board, which consists of 12, 16 or 20 members according to the size of the company. However, the procedure for electing the chairperson of the supervisory board stipulates that, if a second ballot is necessary, the chairperson is elected by the shareholders' representatives while the employee representatives may elect only the vice-chairperson. This is crucial since decisions by the supervisory board require a simple majority vote. In the event of a tie, the chairperson has two votes in the second ballot and hence can give the casting vote in favour of the shareholders' side. For all practical purposes, this means that the shareholders' side is always over-represented by one vote.

The employee representatives are elected either by direct election by the workforce if they so wish, or otherwise indirectly by a secondary body of delegates elected by the workforce. The shareholders' representatives are elected by the appropriate shareholders' meeting or company general meeting. Historically, participation at company level dates back as far as the 1920 Works Councils Act (*Betriebsrätegesetz*). In terms of the history of ideas it covers a broad spectrum, ranging from catholic social theory via radical democratic to socialist perspectives. The Works Councils Act itself already provided a right for the works council to send a member to the supervisory board. Following the system established in the coal, iron and steel industry in 1951 and that introduced under the "works constitution" in 1952, the 1976 Co-Determination Act laid down a new form of participation at company level which was more extensive than the 1952 system, although the parity co-determination prevailing in the coal, iron and steel industry was still not achieved. In this respect the emphasis here again is more on acquiring additional information, without the ability to exert a real influence.

The 1976 Co-Determination Act was passed in the face of strong resistance from the employers' associations. A constitutional appeal against the Act was rejected by the Federal Constitutional Court in 1979.

As regards the form of co-determination to be applied in the European Company (Societas Europea, or SE), there are three variants available. The first is modelled closely on practice in the Federal Republic and the Netherlands, and the second corresponds to the French system. The third variant provides minimum conditions for co-determination; here, the form of co-determination can be agreed between management and employees as they choose, but employee representatives must be informed and consulted on the company's business situation at least every calendar quarter. As a general principle the nature of co-determination is, however, governed by the provisions on the matter in the Member State in which the SE is located. (See Table 3)

GERMANY (Co-determination Rights of the Works Council)

The most far-reaching form of the participation rights of the works council. With the establishment of general collective rules as its objective, co-determination covers participation in arrangements on health and safety at work, voluntary and obligatory co-determination and the formal adoption of a reconciliation of interests and a "social plan" in the event of a substantial alteration to the establishment (Works Constitution Act, paragraphs 87 ff. and 111 ff.). The works council's co-determination rights also include the involvement of the council in deciding on the design of staff application forms, methods of appraisal and guidelines for personnel selection, in-service training and individual staff measures (engagement, grading and re-grading, transfer, dismissal) (paragraphs 94 f., 96 ff., 99 and 102). As a general principle, the right of co-determination is exercised through a works agreement or semi-formal works agreement in the case of collective measures, and through a corresponding decision by the works council in the case of matters relating to individual staff. In individual matters, a decision by the courts may take the place of the council's assent. The works council's co-determination rights must be observed even in urgent cases.

The area of obligatory collective co-determination encompasses matters connected with: works rules ; working time in the establishment, including breaks, short-time working and overtime ; the method of payment used for remuneration ; the arrangement of general principles on annual holidays and the preparation of the holiday roster; the introduction and use of technical devices for monitoring employees' conduct and performance; accident prevention and health protection; the form, structure and administration of fringe benefits; the provision and withdrawal of company-owned housing; matters connected with remuneration arrangements in the establishment and principles and methods of remuneration; the fixing of performance-related rates of pay; and the principles underlying the company suggestions scheme for employees' suggestions for improvements. On these matters, the employer cannot take any action without the agreement of the works council, and indeed either side can take the initiative in such matters. Consequently, the works council can even require the company to accept rules on these matters by referring to the establishment-level arbitration committee. In collective matters, the decision of this arbitration committee can take the place of voluntary agreement between employer and works council. As a rule, the co-determination rights of the works council are confined to formal regulatory conditions of employment and, as regards company fringe benefits and performance-related rates of pay, to participating in the "how" after the employer has made a decision on the "whether". This restriction of the council's rights of co-determination is a result of the fact that statutes and collective agreements take precedence over the exercise of these rights.

With the introduction of new production technologies and new production concepts, and terms in collective agreements which assign the practical implementation of regulations on working hours to the parties at establishment level, the co-determination rights of the works council have steadily increased in importance. These rights can be extended by collective agreement.

GERMANY (Staff Council)

Staff council is the equivalent in the public sector of the works council in the private sector. A staff council must be formed in every public sector establishment with at least five employees including career public servants (*Beamte*), white-collar workers and manual workers. Its legal basis lies in the Federal Staff Representation Act (*Bundespersonalvertretungsgesetz*) and the staff representation laws of the individual Länder.

In terms of the individuals concerned, the composition of the staff council is determined by the outcome of staff council elections. The statutory regulations, however, stipulate that every employee group with a presence in a public sector establishment must have at least one representative on the staff council. The actual number of such representatives depends on the total number of members of the group. The size of the staff council itself is calculated on the basis of the number of people employed in the public sector establishment concerned. The term of office is normally four years.

The internal structures of the staff council are laid down by law. It must elect an executive board which includes at least one representative of every group present in the council, each group electing its own board member. The staff council also elects the chairperson and a vice-chairperson. The chairperson represents the council in the context of the decisions it takes. These are arrived at by an absolute majority vote of the members present. The costs of the staff council's activities are borne by the public sector establishment; this includes reimbursement of travel expenses, accommodation facilities and office staff where applicable. In public sector establishments with more than 300 employees, staff council members are granted full-time release from work.

The activities of the staff council consist essentially in exercising its participation rights, in which it is required, together with the public-sector establishment head, to maintain amicable co-operation in good faith. Its participation rights are structured along similar lines to those under the works constitution in the private sector, with information and consultation rights mainly in personnel matters, and co-determination rights in the context of social matters. In all these areas the staff council reaches its decisions by formal resolution. In cases where a matter to be decided concerns only one of the employee groups represented, that group alone is involved in reaching the decision. The council can also exercise its co-determination rights in concluding an establishment agreement with the head of the public sector establishment. If it proves impossible to come to an agreement, the matter can be referred to the establishment-level arbitration committee.

In all cases, the precondition for the exercise of participation rights is that the public sector establishment concerned should possess the authority to regulate the matters in question. Furthermore, if no agreement can be reached authority passes to the next-higher administrative level and the administrative-tier staff representation body associated with it.

GERMANY (Supervisory Board)

Under company law, the supervisory board is a company organ which is required in the case of registered co-operative societies and public limited companies; is obligatory in the case of private limited companies only if certain preconditions apply; and is optional in all other cases. Its essential function is to supervise the way in which the business is managed. It represents the company in dealings with the management board and possesses the authority to appoint and remove the members of that board. The size of the supervisory board varies according to the size of the company and, if the company is subject to co-determination, to the form this has to take. The board appoints a chairperson and vice-chairperson from among its members and meets at least once a year. Only natural persons who do not form part of the company

management may be members of the supervisory board. They are appointed from among the society members, shareholders or company members at the general meeting, shareholders' meeting or company general meeting and, in companies subject to co-determination, from among the employees (using various methods of election). Of all the employee representatives on the supervisory boards of companies subject to co-determination, some 80 per cent are members of trade unions affiliated to the German Federation of Trade Unions (*DGB*).

GERMANY (Management Board)

The organ which conducts the business of an association or of the forms of company known as a registered co-operative society and a public limited company and which has the legal status of representative for the association or company in all external dealings.

The management board runs a public limited company in the role of entrepreneur on its own responsibility and is in principle not subject to instructions. In companies which are subject to co-determination, one of its members must be a labour director. Its internal procedures are regulated by the articles of association and possibly standing orders. Its functions and obligations are determined by law, the articles of association and the resolutions adopted by the shareholders' meeting, the requirements for the proper conduct of the business, loyalty to the company, convening and providing information for the company general meeting or shareholders' meeting, briefing the supervisory board, and consideration in general of the members or shareholders and employees and the general public.

The board consists of one or more individuals appointed by the supervisory board for five years, with the possibility of reappointment. Appointment to the board is a separate matter from the conclusion of the corresponding contract of employment. If an individual ceases to be a member of the board, this does not automatically end the contract. Board members are subject to a restraint on competition for the duration of their membership. Since members of the management board are usually not employees, labour law has significance for them only in so far as the board assumes the role of employer within the meaning of labour law, with the resultant obligations in relation to the employees, the works council and the economic committee. In addition, the board members may have their legal actions heard in the system of labour courts.

GERMANY (Financial Participation by Employees)

A term referring to the participation of the employees of a company in its' equity capital or profits. Employees frequently acquire shares in equity capital by way of investment made possible by capital-forming payments or profit-sharing schemes. Capital forming payments are not paid over to employees in freely disposable form but invested on their behalf (for example, savings with building societies and participation in productive assets in the form of shares, certain investment fund certificates or holdings in private limited companies) or used by the employees for specified purposes (for example, the construction or acquisition of their own home). The state encourages this with the employee savings supplement. Employees themselves decide on the particular type of investment, within the range of statutory possibilities. Employees have an entitlement to capital-forming payments over and above their remuneration only if provision has been made for these additional payments in a collective agreement, works agreement or individual contract of employment. (See Table 4)

GREECE (Participation)

The development of participatory processes is a relatively recent phenomenon in Greece, even though there has long been provision in the framework of industrial relations for the participation of representatives of the unions and employers' organizations in various tripartite bodies at national level such as the Supreme Labour Council, the Council for Technical Training and the OAED (institutionalized participation). Although demands for "co-operation" of organized employees in the management of the enterprise and decisions affecting them were first voiced in 1918, participation by employees and their representatives in the enterprise's decisions did not appear in practice until after 1974. Today, it is regulated mainly by Law 1767/1988, which institutes works councils, and by a series of other provisions establishing rights to information, consultation, joint decision-making and company-level bargaining. It is also affected through the functioning of both enterprise-level unions and workplace health and safety committees. Although the necessary legislative framework now exists in Greece, this institution is not yet generalized in the labour practices of Greek enterprises. (See Table 4)

GREECE (Works Councils)

Organs of employee representation and participation (Law 1767/1988, ratifying ILO Convention No. 135) in enterprises with at least 50 employees, or 20 employees in the case of enterprises which have no trade union. They are composed exclusively of employees, elected by direct and secret ballot. The works council consists of three members in enterprises with up to 300 employees, five members where there are 301 to 1,000 employees and seven members where there are over 1,000 employees. One week after its election the council meets as a body and elects a chairperson, vice-chairperson and secretary. The chairperson, who represents the council, convenes an ordinary meeting once a month (plus extraordinary meetings when this is requested by more than one third of the members) and draws up the agenda, which also includes any topics proposed by one third of the council members or by the employer. The agenda is communicated to the employer and the council members five days before the meeting. Council members are granted release from work for two hours per week for the purposes of fulfilling their functions if this is judged to be absolutely necessary, and during their term of office they are entitled to take a total of twelve days' paid leave in order to attend training courses.

In addition to the right to hold meetings, works councils possess rights relating to information, consultation and participation in decision-making. They are not empowered to engage in collective bargaining, which is the exclusive province of the unions. In cases where there are no unions in the enterprise the council also fulfils union functions.

GREECE (Co-determination. Employee Representation at Board Level)

Greece has had no tradition of board-level representation for employees in their companies. Historically the country's industrial relations system was characterized by adversarial attitudes between capital and labour while governments were not interested in encouraging the advance of worker participation in companies through the use of the law. Moreover, the Greek economy was dominated by small and medium-sized enterprises in the private sector and such firms displayed no interest in establishing forms of corporate governance that they believed were irrelevant to their business operations. However, after 1981 when PASOK the Socialist party was elected into government, legislation was passed that provided for direct board-level representation for workers who were employed in state-controlled and public sector utility companies and in former private firms that were brought into state ownership.

Participation in management and control bodies is provided for, and exists, in "*socialized enterprises*" in accordance with Law 1365/1983, which provided for the "socialization" of the enterprises specified in its Article 19(2b) (public utilities and services), to which it added banks and insurance companies, by the end of 1990 the Public Power Corporation (DEN), the Hellenic Telecommunications Organization (OTE) and the Hellenic Railways Organization (OSE, in 1985) had also been "socialized", through Presidential Decrees.

Under the legal provisions, a labour supervisory council was established for each of the enterprises involved. This was made up of 27 members of which nine represented the employees, nine the government and the remaining nine came from other stakeholders such as local councils, technical and economic chambers and various public bodies. The law was modernized in 1996 to establish a more flexible form of boardroom representation. Under this reform company employees were entitled to two elected representatives on the boards of the state-owned companies. Employee representatives on the Administration Board are elected by direct universal vote and removed either by the employees themselves or by a reasoned decision of two thirds of the members of the Representative Assembly for Social Control (ASKE). Only employees are eligible. The employee board members have the same rights and duties as the other board members. However, in the late 1990s Greece started to move parts of its public sector into private ownership, mainly through the development of joint private-public enterprises. These developments have inevitably undermined the board-level representation of workers that was always confined to the public sector. Such worker participation is now confined to those enterprises that are still under the majority control of the state. These are for example the companies that own the electricity system and the postal services and the national bank. But the country's industrial structure of small firms and a substantial number of self-employed workers has ensured that even works councils, enterprise unions and other forms of employee representation below company board level remain under-developed. (See Table 3)

GROUP OF UNDERTAKINGS (EU Legislation)

According to Directive 94/45 (as amended by Dir No. 2009/38, of 6th may 2009) "group of undertaking" means a group with the following characteristics: a) at least 1 000 employees within the Member States, b) at least two group undertakings in different Member States, and c) at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State. For the purposes of this Directive, the prescribed thresholds for the size of the workforce shall be based on the average number of employees, including part-time employees, employed during the previous two years calculated according to national legislation and/or practice.

HAWTHORNE EFFECT

The Hawthorne effect, defined as the tendency under conditions of observation for worker productivity to steadily increase, was discovered during the earliest "scientific management" phases of the Hawthorne Research. It was suggested that when human work relations (i.e., supervision and worker camaraderie) were appropriate, adverse physical conditions had little negative effect upon worker productivity. If the company could only learn more about the human relations aspects of the workplace, they might soon be able to utilize them to increase overall plant production. The latter phases of research, therefore, become more socio-psychological in design.

HAWTHORNE RESEARCH

From 1924, until 1932, an innovative series of research studies was funded by the Western Electric Company at its Hawthorne plant in Chicago, then a manufacturing division of AT&T. The research proceeded through five phases: The initial *Illumination studies* were aimed at evaluating the effect of lighting conditions on productivity; 2) *the Relay-assembly Room studies* assessed the effects of pay incentives, rest periods, and active job input on the productivity of five selected woman workers; 3) *the Mica-Splitting Test group* in which a group of piece-workers were used to corroborate the relative importance of work-group dynamics vs. pay incentives; 4) *the Bank Wiring Observation group* a covert observational design in which the dynamics of control in a work-group of 14 male employees on the regular factory floor were observed; and, 5) *the plantwide Interviewing program* essentially an attempt by the company to categorize concerns, mitigate grievances, and manipulate employee morale according to the principles of social control learned in the previous phases). The latter two phases were interrupted by the detrimental effects of the Great Depression on company production orders, but the interviewing phase was later reinstated as a "Personnel Counselling" program, and was even expanded throughout the Western Electric company system between 1936 and 1955. *Elton Mayo* was the most prominent early popularized of these studies. His previous industrial psychology work included reducing turnover in a Philadelphia area textile mill by establishing a system of rest periods for workers but he now stressed a social relations interpretation of the ongoing Hawthorne research. This portrayal had the eventual disciplinary effect of extending the purview of industrial testing beyond the previous individualized placement of workers toward the wider realm of manipulation of work-place relationships.

HEALTH AND SAFETY REPRESENTATIVES (EU Legislation)

Council Directive 89/391 of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (Framework Directive on health and safety) refers both to the role of individual workers, namely 'designated workers' (Article 7) and 'workers with specific functions in protecting the safety and health of workers' (e.g. Article 10(3) and Article 11(2)), and also to the role of representatives. Article 3 (c) defines a

worker representative with specific responsibility for the safety and health of workers as ‘any person elected, chosen, or designated to represent workers where problems arise relating to the safety and health protection of workers at work’. In addition, the framework directive sometimes also refers to ‘worker representatives’ in general terms. As regards general worker representatives, the framework directive provides for the following: ‘Employers shall consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work’. This presupposes [...] the right of workers and/or their representatives to make proposals, balanced participation in accordance with national laws and/or practices’ (Article 11(1)). Again, ‘Worker representatives must be given the opportunity to submit their observations during inspection visits by the competent authority’ (Article 11(6)). Worker representatives with responsibility for the safety and health of workers are given more specific functions by the following provisions: “*Workers or worker representatives with specific responsibility for the safety and health of workers shall take part in a balanced way, in accordance with national laws and/or practices, or shall be consulted in advance and in good time by the employer with regard to (a) any measure, which may substantially affect safety and health;(b) the designation of workers referred to in Articles 7(1) and 8(2) and the activities referred to in Article 7(1); (c) the information referred to in Articles 9(1) and 10;(d) the enlistment, where appropriate, of the competent services or persons outside the undertaking and/or establishment, as referred to in Article 7(3);(e) the planning and organisation of the training referred to in Article 12. (Article 11(2)) ‘Worker representatives with specific responsibility for the safety and health of workers shall have the right to ask the employer to take appropriate measures and to submit proposals to him to that end to mitigate hazards for workers and/or to remove sources of danger’.* (Article 11(3))

The framework directive refers repeatedly to ‘workers and/or their representatives.’ Here it may be assumed that the word ‘or’ is applicable only where there are no worker representatives. There may be no representatives as national rules may lay down thresholds for the establishment of employee representation bodies. The directive envisages three such situations: a) there are no representatives (due to thresholds): only workers are engaged; b) there are representatives: the employer may engage representatives only; c) there are representatives: the employer may engage representatives and workers.

In case there is a system of representation, there would be no option to consult workers only. Inspiration for such reading can be found in the European Court’s decision in *Commission of the EC v. UK* (Cases C-382/92 and 383/92, [1994] ECR I-2435). A mandatory system of representatives would be negated if employers, by confining the framework directive’s rights to individual employees, were free to ignore worker representatives upon whom the directive had conferred rights to be informed and consulted.

The framework directive provides also for information, consultation, balanced participation (Article 1(2)), consultation and taking part in discussions of workers’ general representatives (Article 11(1)), consultation or taking part in a balanced way of representatives with specific responsibility for safety and health (Article 11(2)), asking for measures and submitting proposals by representatives with specific responsibility for safety and health (Article 11(3)), and submitting observations by workers’ general representatives (Article 11(6)). However, there is no precise definition of these terms in the directive.

It seems clear, however, that ‘balanced participation’ is not the same as consultation and must include some new element of involvement of worker representatives. Article 11(1) presupposes both ‘on all questions relating to safety and health at work.’ Further, the right to consultation ‘on all questions relating to safety and health at work’ should not be confined to safety representatives.

As to the meaning of ‘consultation’, the definition in Article 2(1)(f) of the European Works Councils Directive 94/45 (as amended by Directive No. 2009/38, of 6th may 2009) refers to

‘...the exchange of views and establishment of dialogue between employees’ representatives and central management or any more appropriate level of management.’ Building on this, the substance of the definition of ‘consultation’ in Directive 2002/14 of 11 March 2002 establishing a general framework for informing employees and consulting with them in the European Community implies the exchange of views and establishment of a dialogue, not a static, formal, ad hoc, one-way process. The establishment of dialogue implies an active and continuous process of communication and interaction between labour and management. On issues as vital as safety and health, this is the minimum expected of the consultation required under the Framework Directive 89/391.

HUMAN RELATIONS THEORY

An approach in the sociology of industry originating in the United States before the Second World War, whose influence spread to Britain for a short period after it. Human relations (HR) comprised both an academic literature of varying quality and a set of prescriptions for managerial practice supposedly based upon it. Authority for the ideas in both components was initially developed out of the so-called Hawthorne experiments (or studies) which were carried out in Chicago from the mid-1920s to the early 1940s, under the aegis of the Western Electric Company, and in conjunction With the Harvard Business School. Academically, HR sought both causes and solutions within the workplace, for worker dissatisfaction, trade-union militancy, industrial conflict, and even anomie within the wider community. Because, for a time, human relations and industrial sociology were virtually synonymous, the latter also tended until recently to study in-plant factors in isolation. However, human relations theorists have also been noted for a willingness to downplay the role of 'economic motivations even within the workplace itself, and to stress instead the supposed logic of sentiments affecting worker behaviour. Sentiments, and work-group norms deriving from them, create an informal structure within any organization that cuts across the goals and prescriptions of the organization's formal structure, which is dictated by the contrasting managerial, logic of efficiency. Within this broad analysis there is considerable variation. The ideas of *Elton Mayo*, based on vulgarization of the social theories of *Vilfredo Pareto* and *Emile Durkheim*, are commonly taken as the major theoretical statements of the movement. They assert that market industrial societies suffer from a loss of empathy and community feeling that is (mistakenly) characterized by Mayo as anomie. Workers attempt to compensate for this by seeking social satisfactions in the workplace. But the formal structures and payment systems established under the vogue for scientific management fail to meet this need, with the result that supervision and productivity goals are resisted. Mayo's analysis depends on an interpretation of the results of the Hawthorne studies which does not wholly coincide with that of F. J. Roethlisberger and W. J. Dickson (the authors of *Management and the Worker*, 1949, the main report on the experiments themselves). In turn, the compatibility of their own interpretation with the actual findings as presented in the report itself, has been challenged by various authors. In particular, it has been argued that the findings do not confirm the authors' thesis that workers attach more importance to the social than to the economic rewards of work. The main interest of *Management and the Worker* today is, first, as a historical document showing the reaction against behaviourist and economic approaches to the industrial worker in social science; and, secondly, as a warning of the methodological traps awaiting unwary fieldworkers, especially in the industrial context. The most famous of these is the so-called Hawthorne Effect, in which the very act of setting up and conducting research produces reactions in the subjects, which are then reported as findings about social reality. Greater methodological sophistication is to be found in the various ethnographic studies of *W. Lloyd Warner*, *Melville Dalton*, *Donald Roy*, and *William Foote Whyte*. All of these researchers developed or modified Human Relations doctrine in some way. *Warner* conducted a classic study of a major strike, caused by job losses and de-skilling characteristic of industrial decline and recession, among a

hitherto quiescent labour-force. *Dalton* and *Roy* both carried out influential, research by means of participant observation that showed how this method could illuminate the behaviour of industrial work-groups. *Roy's* work, especially, demonstrated that workers' treatment of pay incentive schemes is economically rational once allowance has been made for their long-term income expectations. *Whyte's* studies were among the first to acknowledge the effects of technology and work organization on industrial behaviour and job satisfaction. Very little of the above work was carried out as entirely disinterested science: the search for successful management techniques to boost worker productivity is often explicitly acknowledged by Human Relations writers. This aspect was so prominent at one point that the perspective was dubbed 'cow sociology' from the saying that contented cows give the most milk. Managements were urged to enrich the experience of work by enlarging its content and understanding workers' problems. For Mayo therapeutic counselling was the principal means of mollifying workers' antagonism to managerial plans; for other writers, effective employee-centred supervision provided the key. Increasingly, theorists working within the tradition prescribed participatory styles of management or even self-supervision by workers, in order to give a veneer of industrial democracy and to humanize employment (especially in factories). Nevertheless, no writer within the movement abandoned the idea that management constitutes legitimate scientific elite, or ever proposed a permanent shift of effective control to the workforce. Ultimately, therefore, human relations managerial techniques were criticized as manipulative and as a classic example of a method of managerial control which one author has called management by responsible autonomy. The much later Quality of Worklife Movement is thought by some observers of management theory to be a recrudescence of Human Relations. The same might be said for the 1980s fad for so-called Japanization and for post-fordist management styles. Indeed, Japanese quality circles are a development of human relations prescriptions imported into Japanese companies from the United States after the Second World War, and developed there more successfully than in their country of origin. There is an excellent account of the human relations approach-or, rather, two excellent accounts-in separate editions of *Michael Rose's "Industrial Behaviour"* (1975, 1988).

HUNGARY (Works Councils)

Works councils were introduced in the Labour Code of 1992. In Hungarian dual representation statutory works councils were integrated into a national industrial relations system based on decentralised workplace-level bargaining, traditionally carried out by workplace unions. No wonder the new institution met the fierce opposition of union confederations at top-level political negotiations. As a result of political compromises between the government and the social partners, the responsibilities of works councils and workplace trade unions became rather confused in Hungarian labour law. In the course of the 1990s, unions developed a controversial relationship with works councils: at the majority of companies, unions have come to dominate works councils or have made them largely redundant. Recent surveys show that works councils operate only in larger companies where there is also a workplace trade union organisation, and they do not function as an institutionalised channel of employee representation at non-unionized firms. The union-works council relationship took a new turn in the period between 1998 and 2002 when the right-wing government reinforced the legal position of works councils, which was seen by the unions as an attempt to weaken them. After winning the 2002 elections, however, the Hungarian Socialist Party-led coalition – which enjoyed the support of a large number of important unions – repealed the amendment of the Labour Code that had extended the rights of works councils in the face of trade union protests. On the other hand, the amendment created almost complete overlap between the responsibilities of works councils and those of workplace trade unions.

In 2003 Hungary completed the transposition of Directive 94/45 on European Works Councils (as amended by Dir. No. 2009/38, of 6th may 2009) in a very controversial fashion. The relevant articles of the amended Labour Code make no reference to the role of company unions either in the setting up or in the actual operation of SNB and EWC. The law only authorizes works councils (or central work councils) to delegate representatives of Hungarian employees to SNBs and EWCs, or in the absence of a works council, it calls for direct elections.

HUNGARY (Employee Participation at the Supervisory Board)

Along with the Management Board, a Supervisory Board must be established at all joint stock companies and at limited liability companies above a certain size. The role of the Supervisory Board, however, is limited to monitoring management activities on behalf of the shareholders. Thus, the legal entitlements of Hungarian supervisory boards are rather weak; nonetheless, if specifically authorised by the shareholders' meeting, the Supervisory Board can make decisions on the appointment, dismissal and remuneration of the Management Board, and approve any other legally binding agreement concluded by the management. In companies with over 200 employees one-third of the Supervisory Board must consist of employee representatives, who are delegated by the company's works council or central works council following consultations with the company trade union. Any employee can be delegated, and the law does not rule out delegation of a manager who is in a position to hire, fire and sanction employees (to exercise employer's rights). Such board-level representation is obligatory in both state-owned and private companies, and the rights and duties of employee delegates are basically the same as those of members elected by the shareholders. (See Table 3)

HUNGARY (Civil Servants' Participation)

The civil servants' council or civil servants' representative, elected directly by the civil servants, may exercise the right of participation on behalf of the civil servants collectively. A civil servants' council shall be elected at each employer where the number of civil servants reaches 15. At an employer employing less than 15 civil servants, a civil servants' representative shall be elected. After having heard the opinion of the national trade union concerned, the Government defines the contents of the ballot-papers for the election of the civil servants' council and the sequence of regional, sectoral and national totalization of votes. The civil servants' council is entitled to the right of consent relating to the utilization of monetary funds serving welfare purposes defined in the collective agreement as well as to the exploitation of institutions and real estates. The employer must request the opinion of the civil servants' council before it decides on the following: a) the utilization of the revenues resulting from the economy of the employer; b) the employer's internal regulations; c) the employer's measures affecting a larger group of civil servants; d) concepts concerning pensioning off before pensionable age and rehabilitation of civil servants with an altered working capacity; e) plans connected with the training of civil servants, and f. the determination of the working order of the employer and the annual plan of granting leaves. In agreement with the Ministry of Labour, the Minister of the sector concerned may confer further rights of participation on a defined group of civil servants or on civil servants collectively. The civil servants' council, together with the employer, create the civil servants' regulations for determining certain questions concerning the system of relations between the council and the employer. In absence of a trade union entitled to conclude a collective agreement, issues normally regulated by a collective agreement shall be regulated by the civil servants' regulations. This part of the regulations concluded, may be terminated by notice by the trade union once one has become entitled to conclude a collective agreement.

INDIA (Worker Participation: Constitutional and Legal Framework)

The *Constitution* of India (1950) guarantees freedom of association and freedom of expression. Through an amendment to the Constitution of India, providing for workers' participation in management was included as a Directive Principle of State Policy (Article 43A). Some western democracies have provided right to information, which is critical for workers' participation in management. India, too, enacted and brought into enforcement, in 2005, the right to information in the *Right to Information Act* (June 2005). Several conventions of the ILO provide for consultation and communication, directly with workers and between management and trade union(s) within undertakings, and among the social partners through tripartite institutions at all levels, including at the national level. In India, Labour laws provide for constituting works committees and joint management councils. Canteen committees and safety committees are statutory committees. All establishments employing more than 250 workers should provide for canteen facilities and constitute a canteen committee. After the Bhopal tragedy (gas leak in the Union Carbide plant) in 1984, even the canteen committee has been made statutory.

INDIA (Purposes and Forms of Participation)

The form of participation is a function of the purpose: 1) *Communication* (The purpose is to give and to get information); 2) *Consultation* (The purpose is to obtain the other party's views); 3) *Participation* (To let the people concerned take part in taking decisions); 4) *Joint decision-making* (Management taking decisions together with workers/unions). The schemes of participation introduced by the government through legal provisions or gazette notifications provide for *indirect participation* by the representatives of workers. In the works committees within undertakings, the representatives are usually elected by the workers themselves from amongst workers. For the purpose of collective bargaining and representation at board level, however, the schemes allow outsiders to represent workers. *Direct participation* would mean opportunity for each and every worker to participate in management through a variety of mechanisms like suggestion schemes, small group activities, quality circles, etc. These schemes are usually voluntary and/or introduced at the initiative of the management as part of their human resource management philosophy. Some trade unions have reservations about direct participation as they apprehend that they are directed, among other things, to weaken or undermine the unions. To minimize or avoid such negative perceptions and possible hostility in unionized firms, managements like to discuss the schemes with unions before their introduction. Also they let the direct forms of representation co-exist parallel to indirect representative systems/schemes of participation.

INDIA (Schemes of Participation)

Since Independence in 1947, various schemes have been formulated to provide for communication, joint consultation, employee involvement, and workers' participation at shop floor and enterprise levels. They include:

a) *Works Committees*. The Industrial Disputes Act (IDA, 1947), provided for a limited participation of elected representatives of workers in bipartite works committees with a view to promoting measures for securing and preserving amity and good relations between employers and workers. The functioning of the works committees is not, however, considered satisfactory due to lack of clarity in the scope and the functions of the committees, and conflicts between the elected representatives of the works committees and trade unions operating in these enterprises;

b) The *Joint Management Councils experiment* arising out of the Industrial Policy Resolution (JMC, 1956). JMCs were introduced in the Civil Services and the Indian Railways and given a trial in the Second and Third Five Year Plans. JMCs head the following functions: b(a) Administration of standing orders; b(b) Consultation on retrenchment and rationalization; b(c) Checking the general economic situation of the concerned enterprise; b(d) Improving productivity; b(e) Matters concerning the health, safety, and welfare of workers. This list could be altered and transformed from group to group. Matters related to wages, allowances, and bonus, which are subjects under collective bargaining, were excluded. The First National Commission on Labour (1966-69) carried out an objective study and attributed the failures of JMCs to the following: b(f) Lack of faith of the represented parties in the ability of the Council to produce the desired results; b(g) Progressive employers, who already had a system of consultation with their workers through a recognized union or works committee, found JMCs superfluous; b(h) Managements and unions are generally averse to having a multiplicity of joint bodies; b(i) JMCs cannot function efficiently where (a) industrial relations are not cordial, and (b) works committees, grievance procedures, and union recognition are absent;

c) *Joint Management Councils (JMC, 1958)*. The Industrial Policy Resolution, 1956 stated that, 'In a socialist democracy, labour is a partner in the common task of development and should participate in it with enthusiasm. There should be joint consultation and workers and technicians should, wherever possible, be associated progressively in the management'. Accordingly, in 1958, the JMCs were introduced. JMCs were supposed to have administrative responsibility for various matters relating to welfare, safety, vocational training, preparation of holiday schedules, changes in work practices, amendment/formulation of standing orders, rationalization, productivity, etc. JMCs did not receive much support from unions or management and the apparent similarity in the scope and functions of JMCs and works committees resulted in multiplicity of bipartite consultative bodies;

d) *Employee Directors in Nationalized Banks (1970)*. Following the nationalization of banks in 1969, the government required all nationalized banks to appoint employee directors to their boards, one representing workers and the other representing officers. The scheme entailed verification of trade union membership, identification of the representative union, and appointment of a worker director from a panel of three names proposed to government by the representative union. The tenure of an employee director was to be three years, while union membership verification process may not occur even once in a decade. Parallel to this, the government also began appointing labour representatives on the boards of several public enterprises; but such labour representatives may not have any direct link with the enterprise in organizing the union at the local level and may have been drawn from among the national leadership or some other elusive criterion. There is no clarity about the role and functions of worker directors.

e) *Amendment to the Constitution* and the 1975 Scheme. In 1975, the Constitution was amended and Section 43A was inserted in the “Directive Principles of State Policy (Part IV of the Constitution) providing that, ‘the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments, or other organizations engaged in any industry’”. Accordingly the scheme of workers’ participation in management at shop floor and at plant levels in manufacturing and mining industries employing 500 or more workers was notified in 1975. Shop-floor and plant-level councils were assigned specific functions relating to production and productivity, management of waste, reduction of absenteeism, safety, maximizing machine and manpower utilization, etc.

f) Scheme of *Workers’ Participation in Management* (1977 and 1983). That scheme, broadly similar to the 1975 scheme, was introduced in 1977 and extended to commercial and services organizations with 100 or more employees. The first scheme evoked some enthusiasm initially during the emergency, but withered soon after the lifting of the emergency and change in the government in 1977: the new government, led by Janta Dal, constituted a special tripartite committee on workers’ participation in management which recommended a three-tier participation at board, plant, and shop-floor levels, but the government did not last long enough to pursue the recommendations. A new scheme introduced in 1983 and made applicable to all central public sector enterprises, except where specifically exempted, and a standing tripartite committee, was set up by the Ministry of Labour to facilitate review of the previous scheme and take corrective measures if required. Implementation of the scheme was left to the concerned administrative ministries. Barely half the central public sector enterprises introduced the scheme over the next decade;

g) *Workers’ Share in Equity*, 1985. The Union Budget for the year 1985-86 made provisions for the offer of stock portions to employee’s up to at least 5 percent of the total shares. It was hoped that workers’ participation in equity would be a major element in enhancing workers’ participation in management.

h) *Participation of Worker in Management Bill* (1990). The Government’s discontentment with the implementation of voluntary efforts resulted in a Bill introduced in the *Raiya Sabha* on 30 May 1990, which introduces workers’ participation at all the three levels: board, plant, and shop floor. The Bill proposed to make provisions for the Participation of Workers in the Management of undertakings, establishments or other organizations engaged in any industry and to provide for matters connected therewith or incidental thereto.

i) *Worker Directors*. In the past, a few private business houses, like the Shriram group (DCM), used to have a worker representative nominated by the management on the board of directors. Subsequently, most private companies have discontinued the system, though some Tata companies (for instance, Tata Iron and Steel Company) have continued with the practice for a longer time. In several (though not all) central public sector undertakings, there has been a tradition of worker representation at the board level. These were appointed by the government. This is now less widespread than earlier. In the wake of the nationalization of banks in 1969, the government introduced statutory provisions for two worker representatives in the board of every nationalized bank. The Worker Director is nominated / elected by the most representative union in the bank. The Director representing officers (non-workers category employees) is, however, nominated by the Department of Banking, Ministry of Finance, and the Government of India. A review of the working of the system of worker directors in nationalized banks highlighted many weaknesses in the system. There is also a feeling that some members are not able to make much difference. In the major ports also, there is provision under the Major Ports Act (Act. n. 31 of 1997), for two workers to function as members on the board of trustees. In the dock labour boards (which are now becoming extinct due to government policy for their abolition) there used to be provisions for proportionate

representation of workers members on the administrative body of such boards. In the sick industrial enterprises taken over by or with workers' cooperation and equity participation, there is usually provision for worker directors. In some of these enterprises workers' shares are held by a workers' cooperative, which is under the control of the majority union(s). This allows workers a greater say in management, including the appointment of top management. When a worker director is on the board, he/she can have access to information and future plans. Several worker directors, however, complain that often they were denied information (on grounds of confidentiality) or did not know what kind of decision have been adopted.

INDIA (Joint Consultation)

In India, at the centre, no statutory provisions exist, other than for constituting works committees under the above mentioned Industrial Disputes Act, for promoting joint consultation either on a bipartite or tripartite basis. However, the tradition of tripartite consultations at the initiative of the government has been maintained though at one stage it had been allowed to fall into disuse. The Indian Labour Conference which is the apex tripartite body no longer meets every year as was the earlier practice but is convened from time to time to discuss policy matters which might be under the consideration of the government. However, the tripartite Industrial Committees meet more often and therein 'the issues like strikes, lock-out, sickness of the industries, workers' participation in management and safety and occupational health requirements' are discussed and analyzed individually and comprehensively. The government is committed to workers' participation in management. This policy goes back to 1956 when the idea of a joint management council was conceived by the government and soon implemented at its behest. However, this scheme lost momentum mainly due to indifference on the part of both managements and unions, and gradually even the government lost interest. During the Emergency (1975-1977) the government again revived the idea in the form of joint councils at two levels in organizations employing 500 or more workers. However, the Janata government (1977-79) allowed it to wither away and planned to introduce a three-tier scheme of workers' participation. This idea mostly remained at the planning level and never got off the ground. The concepts discussed in this context include the formulation of a statutory scheme providing for consultative forums at the shop floor, plant and corporate board levels both in the public and private sectors. The other concept involving equity participation -required to be made by the management but optional for employees- has also been mooted. However, not much progress has been made in this direction. At the state level, under the Bombay Industrial Relations Act (BIR, 1946) and the Gujarat Extension and Amendment Act (1961), as amended in 1972, the governments of Maharashtra and Gujarat have made provisions for joint councils in industrial undertakings. The scheme of joint consultation usually faces two hurdles: (a) workers' apathy to consultation in disregard of issues that concern them most. These relate to wages, housing, social security, job security and promotions, etc.); b) managers' hostility and insecurity born out of the apprehension that they would lose such limited powers and role as they have if all the important matters are discussed in the joint bodies. There also remains the more fundamental opposition of private employers to sharing of prerogatives, and in the public sector of the ministries' reluctance to delegate effective power on the ground of their accountability to Parliament. Moreover, in the public sector, at the crucial stages of wage negotiations the ministers like to play the decisive role, relegating even the top managements of public service undertakings to secondary importance.

INDIA (Joint Negotiations)

The government has taken several steps to maintain dialogue with its employees. This by itself reflects a considerable erosion of the doctrine of master and servant relationship that basically

governs the service conditions of government employees. In a number of cases the same bodies also negotiate and reach agreements. The Joint Consultative Machinery (JCM) now covers the entire general body of employees including the civilians employed in defense installations and the departmental run undertakings. The Indian Railways have maintained permanent negotiation machinery (PNM) since 1951 and, in addition, have a JCM since 1969. They have discussed issues relating to pay and service conditions, as well as safety and the interests of the travelling public. The PNM in the railways is the result of an agreement between unions and the Ministry of Railways and is not subject to any statutory provisions. It functions as a three-tier structure: a) the first tier operates at the divisional or workshop level and, at the headquarters, it involves the general manager of the Zonal Railway and the central executive of the recognized union; b) the second tier consists of the Railway Board and the recognized federation of unions; and c) the third tier functions as an *ad hoc* tribunal consisting of equal numbers of representatives of unions and the railway administration with a neutral chairman. As the sphere of the negotiation unit increases so does the scope of negotiations. Questions concerning pay scales, allowances, etc., are handled at the second tier. At the first level, only matters within the purview and competence of the divisional superintendent may be brought up. Thus at the first level the PNM also functions as a grievance committee. At the second level, matters pertaining to confirmation and creation of posts, amenities, housing, administrative anomalies, etc., are discussed. The tribunal can investigate any dispute between the Railway Board and the recognized federations of unions which may be referred to it. The awards are not binding, and it is open to the government to accept, reject or modify the decision of the Tribunal'.

INDUSTRIAL DEMOCRACY

An ideal in which citizenship rights in employment are held to include partial or complete participation by the workforce in the running of an industrial or commercial organization. The term, and others associated with it, is often laden with ideological overtones. At one extreme, industrial democracy implies workers' control over industry, perhaps linked with worker ownership of the means of production, as exemplified by producer co-operatives. Another approach is the appointment of worker or trade-union representatives to company boards or governing bodies. For others, industrial democracy takes the form of 'worker participation', such as collective bargaining in which trade unions operate as a kind of permanent opposition to managements. In this model managements are seen to propose, employees and their unions offer reactions and if necessary opposition, and negotiation subsequently leads to collective agreements more or less satisfactory to both sides. A fourth approach places less stress on power-sharing and more on consultation and communication: managers are seen as retaining all responsibility for decisions but make arrangements to consult worker representatives before changes are introduced. These and other approaches to industrial democracy which involve representative structures on the workers' side are often described as examples of indirect democracy. Where individual workers represent themselves without such intermediaries, direct democracy is said to exist. An example would be an autonomous work group in a factory or office, charged with making its decisions about work organization and planning independently of higher management, but which is sufficiently small for all its members to take a personal direct part in influencing the group's decisions. Industrial democracy challenges not only the characteristically authoritarian and bureaucratic structures of the capitalist enterprise but also centralizing tendencies, in the planned economies of socialist regimes. Without participation, it is argued, worker alienation will persist. Critics claim, however, that participation maybe used as a manipulative device to control workers' efforts or to weaken trade union organization and unity. Actual examples testify that the degree of power achieved by or delegated to the workforce is a crucial consideration. Sceptics argue that, even in the extensive worker self-management of the decentralized state socialism of Yugoslavia, underlying party control is

retained. The alternative of worker co-operatives, notably the Mondragon experiment in Spain, has attracted much interest. In Germany, a system of codetermination has been introduced as a result of labour-movement pressure to find a middle way between capitalism and socialism, and has influenced the labour policies of most countries in the European Community. Profit-sharing and share-ownership schemes may be regarded as examples of management-initiated systems of participation, which also include self-managed work-groups and teams, participatory leadership styles reflecting the ideas of the Human Relations Movement, and the quality circles based on Japanese practice.

INFORMATION AND CONSULTATION (EU Legislation)

Access to information in the process of decision-making is an important right of employee representatives. EU law has provided for information and consultation for employees in specific circumstances, such as collective redundancy or transfer of an undertaking, or over issues such as health and safety. The Directive 94/45 on European Works Councils (as amended by Dir.No.2009/38, of 6th may 2009) provided for information and consultation on certain matters in multinational companies and groups. However, a general obligation for the information and consultation of employees was first established under Council Directive 2002/14 establishing a framework for informing employees and consulting with them in the European Community. It applies to all undertakings employing at least 50 employees or establishments employing at least 20 employees in the European Community, according to the choice made by Member States. ‘Information’ is defined in the directive as the ‘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’ (Article 2(f)). In Dir. 2002/14, ‘Consultation’ is defined in Article 2(g) as ‘the ‘the exchange of views and establishment of dialogue between the employee representatives and the employer.’ Consultation is thus a stage in the process of management of the enterprise in which those consulted can influence decision-making. The conditions for consultation are further articulated in Article 4(4): “(a) while ensuring that the timing, method and content thereof are appropriate; (b) at the relevant level of management and representation, depending on the subject under discussion; (c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees’ representatives are entitled to formulate; (d) in such a way as to enable employees’ representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate; (e) with a view to reaching an agreement on decisions within the scope of the employer’s powers referred to in paragraph 2(c)”. Article 4(2) specifies the subject matter of information (and consultation in the enterprise): (a) information on the recent and probable development of the undertaking’s or the establishment’s activities and economic situation; (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment; c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations.

Practical arrangements for information and consultation are to be determined by Member States, which can entrust management and labour to make voluntary agreements, including different arrangements, ‘while respecting the principles set out in Article 1’. For example, Article 1(3) requires that: “*When defining or implementing practical arrangements for information and consultation, the employer and the employees’ representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees*”. The practical arrangements which Member States are required to determine for information and consultation incorporates a process of nine sequential stages: a) transmission of

information/data (Article 2(f)); b) acquaintance with and examination of data (Article 2(f)); c) conduct of an adequate study (Article 4(3)); d) preparation for consultation (Article 4(3)); e) formulation of an opinion (Article 4(4)(c)); f) meeting (Article 4(4)(d)); g) employer's reasoned response to opinion (Article 4(4)(d)); h) 'exchange of views and establishment of dialogue', (Article 2(g)); i) discussion (Article 4(4)(b)) 'with a view to reaching an agreement on decisions' (Article 4(4)(e)).

Information relating to the activities of the enterprise is often sensitive, and Article 6 specifies the conditions under which information may not be supplied or where it may be made confidential. Article 6(2) states, 'in specific cases and within the conditions and limits laid down by national legislation, that the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment or would be prejudicial to it'.

Directive 2002/14 is highly significant since it is the first EC law generalising the obligation to inform and consult employees. Arguably, it establishes a European social model of mandatory employee representation and mandatory information and consultation of employees' representatives.

IRELAND (Worker Participation)

From the very earliest times of organizing, unions have campaigned for the right for workers to have information on the company/enterprise they work for and the right to be involved in the making of decisions that are likely to affect them. Up to recent years this side of union organizing and campaigning was referred to as industrial democracy. Industrial democracy is simply about extending democracy into the workplace. It involves the employees being properly informed on developments about their company or enterprise and having the right to be consulted by the employer in advance of any developments or management decisions being taken. This is to ensure that such decisions take into account the needs and interests of the employees. In more recent times this has become known as 'worker participation'. Statutory provisions that provide for a limited form of worker participation cover a number of public sector enterprises. In the private and public sectors some companies are covered by legislation that provides for European level transnational worker information and consultation. Finally, the EU Directive n. 2002/14 has been transposed into law in Ireland. It will give very many workers in the public and private sectors the right to be informed and consulted on matters likely to affect them and their company. All of the legislation falls short of providing real worker participation. But it does provide good opportunities for Union Representatives to access important information and to engage with senior levels in management where they can express their views, challenge management positions on a range of issues and increase their knowledge about the company and its prospects. This should enhance the effectiveness of Union Representatives on behalf of their members.

IRELAND (Employee Representation at Board Level of "State Enterprises")

The private sector companies operate with a single tier board structure and they are concerned exclusively to meet the interests of shareholders. There has been no tradition of employee representation at company board level. Nor are works councils part of the Irish industrial relations system in the private sector of the economy. But the picture is different in the public sector. In 1977 the Worker Participation (State Enterprises) Act, gave employees in some "State enterprises" (state-sponsored commercial companies), the right to elect up to a third of the members of their boards, "through the election [...] from among the workforce for

appointment to the boards”. These worker representatives are known as ‘Worker Directors’. Worker Director elections to the Boards of the State Enterprises covered by the Act are held every four years. Any employee, who is eighteen years of age or over and has been employed in the enterprise over a continuous period of not less than one year, may vote at an election. The number of elected Worker Representatives on the Board of an enterprise may be varied by order below the one-third arrangement, providing the number fixed is not less than two. The following Worker Participation (State Enterprises) Act (1988) provides ‘to facilitate the introduction of sub-board participative arrangements in a broad range of State enterprises by agreement between the enterprise and the employee interests.’ The legislation provides for the appointment of an ‘appropriate officer’ in each State enterprise who will have responsibility for procedures relating to the establishment of sub-board participative arrangements. The establishment of worker consultation arrangements is initiated by the employees of the body. Consultation arrangements may be activated either at the request of the trade union recognised by the company or, in a case where a majority of the employees vote in favour of consultative arrangements. The new law was highly flexible in what form the proposed consultation mechanisms ought to take. But it did set out some basic provisions of their functions. Trade unions, staff associations or other designated bodies, recognised for collective bargaining purposes, were given the exclusive right to nominate candidates for election as worker directors. All employees, including those who are working part-time, are entitled to vote in the election of these board-level representatives. Once elected the worker directors have the same rights and duties on the board as ordinary company directors, who are generally appointed by the government. However, the government was reluctant to extend or impose participation legislation onto Ireland’s private sector if it proved impossible to stimulate such a development through encouragement and the negotiation of partnership arrangements.

Section 6 of the Worker Participation (State Enterprises) Act, provides that the representatives of employers and employees of 'a specified body' may enter into 'arrangements' dealing with: a) a regular exchange of views and information between management and employees concerning matters which are specified in the agreement; b) the giving in good time by management to employees of information about certain decisions which are liable to have a significant effect on employees’ interests; c) dissemination to all employees of information and views arising from the participative arrangements. Agreements may contain, in addition, such other features as management and employees may decide between them. The section also allows for a review, amendment and replacement of the participative agreement and for winding up the agreement. Agreements to establish sub-board worker participation are usually negotiated by unions on behalf of their members. Unions would have their own particular priorities and issues for inclusion in the agreement. In addition, unions provide information, advice and training on the establishment and operation of sub-board participation structures and processes. Expenses incurred by a State enterprise in establishing and maintaining sub-board participative arrangements shall be borne by the enterprise itself.

A few of the former state companies, which have been privatised, continue to have worker directors still sitting on their boards. Initially, managers in the state-owned enterprises were hostile and suspicious at the creation of worker directors, who were often excluded from key decision-making and important company sub-committees such as finance. For their part, many worker directors felt uncomfortable in dealing with financial issues and called for more access to training. Originally there was some concern that worker directors could pose a challenge to existing collective bargaining and industrial relations structures. But with their sole right to nominate representatives to the board, the trade unions have been able to maintain a dominant role in the process. (See Table 3)

IRELAND (Worker Directors in Public Commercial Bodies)

The formal basis for worker participation on company boards is the Worker Participation (State Enterprises) Act (1997, 2001). The organizations subject to the duty to accept worker directors are described as 'designated bodies' (or companies). There is no right of personal nomination. Nomination to the position of worker director is controlled by trade unions, or qualified bodies that are recognised for the purpose of collective bargaining by the designated body. The electoral college for the purpose of these elections is all employees of not less than 18 years, who have been employed for a period of not less than one year before the taking of the poll. The legislation does not, however, describe the duties of worker directors, or expand the content of directors' duties to the company's employees. Worker directors' function as ordinary company directors subject to the usual fiduciary duties of company directors, with the primary function of safeguarding shareholders' interests.

IRELAND (Works Councils in Community-Scale Undertakings)

The Transnational Information and Consultation of Employees Act, 1996, implemented into Irish law the Directive 94/45 on the establishment of European Works Councils (as amended by Directive No. 2009/38, of 6th May 2009). Particularly, section 18 of the Act constitutes three offences: failure by central management to provide employees' representatives with information as to the number of workers employed by the group; failure by central management to establish an EWC when required under Section 13; and disclosure by employees' representatives of information provided in confidence.

IRELAND (Employee Share Option Schemes)

Irish revenue law encourages the development of employee share-holding schemes. Tax incentives have been put in place the purpose of which is to encourage companies to put in place share ownership trusts; and to encourage employees to take remuneration in the form of shares. There exist three types of approved share schemes: profit sharing schemes, and savings-related share option schemes. Under the approved profit sharing scheme, profits are distributed in the form of shares which are conveyed to a trust acting on behalf of participating employees. Where the employee allows the trust to retain the shares for three years, he may then acquire the shares (and the power to dispose of these shares) without any liability to income taxation (although capital gains tax will be payable on the profits of sale of the shares). In *Abbot v. Philbin* (1960; 39 TC 82) it was held that the grant of a share option represented a perquisite or profit of office, and was therefore subject to income tax. However, any difference in the value of shares over option price at the time of the exercise was not an emolument, but represented an appreciation in the value of property owned by him (and was, therefore, liable only to capital gains tax). The view that income tax was payable only on the discount, if any between the share price and the option price at the time of grant, benefited employees. This, of course, was because the exercise price at the time of the grant was usually set at the market value of the share. The Finance Act, 1986, reversed *Abbott v. Philbin*, providing for liability to income tax at the point of exercise of the share option. However, the Finance Act, 2001 (Section 15) restored once more the earlier position: in the case of an approved share options scheme only capital gains at 20 per cent of the difference between the price paid on exercising the option, and the sum realized on the sale of the shares, is payable. These benefits apply only in the case of an approved share option scheme. The essential condition to approval under the Income Tax Act, 1997, is that shares under such a scheme must be granted on similar terms in respect of 70 per cent of the options granted. The balance of options granted (up to 30 per cent) can be granted to 'key employees or directors', directors or full-time employees whose specialist skills, qualifications and experience are certified by the company as being vital to the success of the

company. Employee share ownership trusts were established by the Finance Act, 1997. They are used most commonly in public or semi-public companies. Payments are made by the company to share ownership trust. The trust uses the profits for the purpose of purchasing company shares. No income tax is payable if the employee postpones acquiring the shares for three years. (On the other hand, capital gains tax is payable on profit gained by disposal of the shares; the current rate of capital gains tax is 20 per cent.). All employees who have been such for a qualifying period of not more than three years must be entitled to be beneficiaries of the shares. Under the savings-related share option scheme constituted under the Finance Act, 1999 (and inserted into the Income Tax Act, 1997 as part 17, chapter 3) no income tax is payable on the difference between the option price set by the employer, and the market value. This immunity from income tax only arises where the shares are purchased from savings accumulated under a 'certified contractual savings scheme': a scheme which provides for periodical contributions to be made by employees for a specified period to a qualified savings institution. The tax benefits are contingent upon the purchase of shares being funded from withdrawals from the account established under the contractual savings scheme. (See Table 4)

ISRAEL (Workers' Participation)

Workers' participation was first introduced voluntarily in Israel in factories controlled by Hevrat Ovidm, a holding company belonging to the Histadrut on the basis of resolutions adopted at two of the Histadrut's Conventions and at an earlier stage by two of its conferences, decisions reached by the 76th executive of 1964 and the 84th executive of 1970 and decisions reached by the 10th and 11th Conventions of the Histadrut of 1966 and 1969 respectively. After some initial resistance, management executives of Histadrut enterprises became more responsive, and the principles of industrial democracy were implemented in more and more Histadrut enterprises on an entirely individual and voluntary basis. Employees elected representatives to joint management boards at all levels of directorship, from individual plant to overall corporate level. Joint management boards in industrial plants usually had seven members, three of whom represented the workers. These councils met regularly and consulted on all matters concerning the operation and policies of the plant. Worker members could not be appointed to management posts, could not be elected for more than two three-year terms, and received no material benefits for their participation on the board. They also could not take part in decisions on questions covered by collective agreements, such as wage policies, social benefits, etc. Co-management gained a further foothold in 1975 with the enactment of Section 17(c)(3) of the Government Companies Law, 1975, which empowered the Minister of Finance to prescribe general regulations according to which a representative elected by the workers could be appointed as a director of a government company. These regulations provided that workers' participation in management could only take place in government-owned companies employing a minimum of 100 workers, and on condition that these were not banking institutions. The elected representatives of the workers participated in the directorship of the company. The number of directors from amongst the workers was two. The representatives elected to directorship had to be elected by a system of general, secret, personal and direct ballot. The right to elect a worker to a directorship was given to every worker who, on the appointed day, was at least 18 years old and had worked at the place in question for at least one year. Anyone with the right to vote could become a candidate, with the additional proviso that she/he had worked for that company for at least three years and had not been convicted of any serious offence. Workers holding certain positions - such as those in executive: posts or those with authority to employ or dismiss workers, or to establish conditions of work - were prohibited from becoming candidates. Members of workers' committees or of any other elected body were likewise prohibited from being elected to a directorship. A director's term of service was three years, but a representative elected by the workers could not serve as a director for more than five years. Workers' participation in the management of a government-owned

company is not automatic. The co-management only takes place after the establishment of an election committee in a particular government company. The establishment of an election committee is decided upon by the workers' representative organization at the place of work and by the ministers in charge of that company and in consultation with the government companies' authority. Unfortunately, despite the legal possibility of introducing workers' participation, it has been very seldom used.

ITALY (Participation. Legal Framework)

The Italian legislative framework for workers' participation is not highly developed. However, the Constitution lays down in Article 46 that: 'For the purpose of raising the economic and social level of labour and subject to the requirements of production, the Republic recognizes the right of the workers to participate, in ways and within limits established by law in the management of undertakings'. Not only has this constitutional provision never been brought into force from a technical point of view in the sense that Parliament has not enacted legislation referring explicitly to Article 46, but the Italian system of industrial relations as a whole has not developed historically along the lines foreseen at the time of the Constitution. Indeed, the law lays only a limited role in Italy on this matter. Employer hostility or indifference on the one hand and conflicts between the unions on the other has ensured a very limited development of worker directors on company boards.

In the past two decades there have been some voluntary participation systems in some firms such as the airline Alitalia, and Zanussi, the white goods firm that is part of the Swedish-owned Electrolux, but these were the exception. In some public sector enterprises such as the postal services and ENI state holding company worker representatives were elected on to their respective management committees. However, the reform of the public services and the privatisation drive of the 1990s in Italy have undermined these developments. The trade unions, which had already been sceptical of such participation, came to the conclusion that the presence of worker representatives on management boards in state-owned companies being moved to the private sector or undergoing restructuring was quite ineffective in influencing what happened. The country's employer association has already expressed its opposition to the employee participation provisions contained in the European Company Statute. However, an advance may be coming in information and consultation rights for employees in small companies. But on the other hand, trade unions appear to be changing their traditionally negative attitude to worker representation at company board level as they debate the introduction of the European company statute. Moreover, Italy's three main trade union federations are developed a wide bargaining agreement that would include progress on the implementation of the new measure on employee representation at supervisory board in European companies. On the other hand, the country's leading employer association, Confindustria, remains sceptical about any moves that provide for the direct representation of a company's employees on to its board at national or European level.

The role exercised by Italian trade unions in the workplace has in fact, been mainly interpreted in an adversarial perspective and for a long time and until only a few years ago, in an ideological sense of conflict between different social classes that were irremediably antagonistic towards each other.

Although collective bargaining is by far the most important source for the regulation of participatory forms, it is by no means the only one. There is a tendency towards the expansion of participatory forms that have not been formally defined in agreements but that are being experimented with at the initiative of management. The management of human resources by means other than trade union negotiations is no longer anomalous or infrequent, especially in medium to large undertakings. Quality circles and similar strategies for favouring employee

participation for the purposes of achieving greater productivity at work no longer meet with a hostile response from the trade unions, that was often the case until not so long ago. (See Table 3)

ITALY (Rights to Information and Consultation)

The first legal rights to information and consultation were introduced only in the early 1970s and only in the face of strong resistance from the companies. Indeed, the tradition of conflict and confrontation in Italy has ensured little advance for notions of employee representation on company boards. Introduced *via* collective bargaining, these rights have been extended and formalized in appropriate clauses of collective agreements at various levels. These clauses oblige the employers' associations and/or individual enterprises to provide the unions with information on a range of matters relating to company decision-making: from investment programmes to technological innovations, from the decentralization of production to the establishment of new plants, from the use of subcontracting and home working to horizontal mobility. Disclosure of information is usually accompanied by the right to verify, by appropriate joint examination, the significance and consequences of the information received by the trade unions (see also workers' control over investment). This model of workers' participation in company-level industrial relations has been reinforced by some interconfederal agreements. For the purposes of dealing with the effects on social aspects, levels of employment and working conditions associated with processes of technological innovation, company reorganization and restructuring, this agreement provides for recourse to participatory instruments such as the procedures for information, consultation, monitoring and enforcement or negotiation established by law, industry-wide agreements, all lower-level collective agreements and current bargaining practice.

ITALY ('Specialized' Participation in Health and Safety)

Collective bargaining has in many cases set up joint bodies at company level for the protection of the health and safety of workers. A tendency partly in contradiction with legislative provision on the subject, that was originally to be found only in Article 9 of the *Statuto dei diritti dei lavoratori* (Act. No 300/1970), which provides that the initiative in monitoring these matters as well as in proposing new measures for the prevention of accidents is to be taken by the employees through their 'representative bodies'. As mentioned above, collective bargaining has reconsidered the matter, often setting up joint bodies with a view to achieving close collaboration between the parties.

The transposition in Italy of Directive 89/391 by means of Legislative Decree No. 626/1994 (subsequently translated in the Legislative Decree No. 81/08, new consolidated Act on Health and Safety) makes provision for the appointment of specific representatives as regards health and safety, with rights of information, consultation, supervision and proposal. In particular, hazard prevention and protection services have been set up, consisting of the human resources, technical systems and internal and external resources of the company (from Article 2 of Legislative Decree No. 626/94) aimed at providing prevention and protection from occupational hazards in the company or the productive unit. This is an operational instrument that the employer can make use of to comply with the obligations laid down by law. With regard to the organization of these services, there are three possible approaches. They may be organized within the company or productive unit by the employer, who is required to appoint a health and safety officer in charge of prevention and protection from among those with the aptitude and skills, as well as safety stewards who are also required to have the appropriate skills and to be allocated the resources and the time necessary to carry out the tasks assigned to them. It is also possible for Such Services to be outsourced. Also in this case however, those

outside the company appointed by the employer to provide the services are required to be in possession of the necessary skills. Finally, the employer may opt to perform these tasks directly (pursuant to Article 10 of the Legislative Decree under consideration, this is possible only in certain cases and prior notice to the workers' health and safety representative is required: these cases are generally correlated to the size of the company or the type of activity carried out), The health and safety officer must be appointed (pursuant to Article 8(2) of the Legislative Decree under consideration) from among the employees involved in health and safety Services, and is distinct from the health and safety 'delegate' (or health and safety representative) who is required to monitor compliance with Safety regulations; he or she does not have the power to adopt safety measures in practical terms and does not have power to allocate resources but carries out a largely consultative but obligatory role. Consequently, the law does not lay down specific sanctions for the health and safety representative, nor for the safety stewards, for failure to comply with safety measures, since they do not have power to take practical measures and are therefore not liable to prosecution if these measures are not implemented. One of the tasks of the health and safety service (Article 9, Legislative Decree No. 626/94) is to draw up proposals for a plan of information and training for the employees, as well as to take part in consultations on health and safety issues (periodic meetings for hazard prevention and protection) and to provide employees with the necessary information for the protection of their health and safety. The former is in fact one of the most significant and innovative aspects of Legislative Decree No. 626/94, in that it represents the main forum for participation in health and Safety matters on the part of all the individuals concerned by the legislative provisions, as well as the channel for the information, training, consultation and participation of the workers through their representatives. There is an obligation to hold such a meeting periodically, at least once a year, only in companies with at least 15 employees. In companies or productive units below this threshold such a meeting is held only at the request of the health and safety representative, and only if circumstances arise that justify calling such a meeting. The employer is in general responsible for convening a meeting of this kind, where necessary through the health and safety representative. The employer, on the other hand, is required to provide the health and safety service with information relating to the nature of hazards and work organization and the design and implementation of preventive and protective measures; a description of the productive installations and processes information from the register of accidents and occupational diseases and finally the measures taken by the monitoring bodies.

A fundamental role is played by the workers' health and safety representative who is defined (Article 2(1)(f) of Legislative Decree No. 626/94) as the person or persons, elected or appointed to represent the workers in relation to aspects of health and safety at work. This representative is not expected simply to put forward trade union demands. He/she is a worker who is able to interact with the employer in a competent and well informed manner, thanks to the fact that the health and safety provisions guarantee on the one hand the right to information and consultation on matters relating to the protection of health and safety at work and access to the relevant company documents, and on the other hand the right to receive (at the expense of the employers the necessary training to carry out the tasks for which he/she was appointed, in relation to health and safety legislation and the specific hazards in the workplace represented (pursuant to Article 22(4) of Legislative Decree No. 626/94). For the first time in the workplace a specific and institutionalized form of worker representation on health and safety has been set up, to which specific prerogatives and participatory rights are granted in connection with significant decision-making processes. The general principle (laid down by Article 18 of Legislative Decree No. 626/94) is that in all companies or establishments, there is a requirement to elect or appoint a health and safety representative. With regard to the appointment or election of the representative, as well as the means for the exercise of his/her specific functions the law refers the matter explicitly to collective bargaining. Among the main

functions assigned to the health and safety representative, mention must be made of the right of access to places where work is carried out: the right to be consulted in advance and in a timely manner about risk assessment, the identification, planning, implementation and monitoring of prevention in the company or the productive unit; to be consulted about the appointment of health and safety stewards, measures for fire prevention and first aid services and the evacuation of workers; to be consulted about the organization of training for the workers appointed to take charge in an emergency; to receive company information and documentation relating to the assessment of risks and the related preventive measures, as well as information about hazardous substances, processes, machines and equipment, the organization of the working environment, occupational injuries and diseases; to receive information from the health and safety monitoring service; to promote the drafting, design and implementation of preventive measures for protecting the health and physical integrity of the workers; to report any relevant facts during visits and inspections carried out by the competent authorities; to take part in regular meetings to discuss health and safety matters; to make proposals relating to preventive measures; to notify the company health and safety officer of hazards identified at work; and to refer matters to the competent authorities when it appears that the measures of prevention and protection adopted by the employer and the resources allocated to implement them are not sufficient to safeguard health and safety at work. Finally, Legislative Decree No. 626/1994 lays down that among the trade unions joint bodies may be set up (pursuant to Article 20, Legislative Decree No. 626/94) involving the employers and the workers, with a view to providing guidance and promoting vocational training for the workers. These bodies are also the first port of call for resolving disputes arising from the application of rights of representation, information and training laid down by the health and safety legislation.

ITALY (Participation; “Bilateral Bodies”)

Some interconfederal agreements and national industry-wide collective agreements for certain sectors have introduced bodies for the joint management not only at company level but also on a territorial basis of vocational training, a subject about which there is a considerable and interesting convergence of views between the two sides of industry. These joint (or “bilateral”) bodies (*enti bilaterali*), were first set up in an embryonic form in the 1950s, as mutual funds for the building industry (*casse edili*). However, it was only in the 1970s that collective bargaining introduced joint bodies that were similar to those that are now widespread, aimed at dealing with certain matters, such as the examination and resolution of labour disputes, and the interpretation and classification of labour agreements. The real turning point for bilateral bodies came in the mid-1990s, when the social partners strengthened them, redefining their functions and area of operations. This period saw the conclusion of a number of cross-sectoral agreements between workers and employers, laying down the compliances of these bodies, not just in the coordination of services and vocational training systems (introducing a certification process for the quality of the services provided), but also as a means of providing support for workers involved in restructuring processes leading to the termination or suspension of the employment relationship, and providing services favouring technological and organizational innovation in the enterprise. The most significant agreements are those with the employers' association Confindustria, the one in the artisan sector, the one concluded by Confapi in 1993, and finally the interconfederal agreement of 23 July 1994 for the cooperative sector. From an analysis of these agreements and their implementation, it can be seen that the first services to be developed were those providing mutual support, as opposed to those providing vocational training. Measures were taken in support of employment in an attempt to make up for the inadequacy of social security 'shock absorbers' or safety-net measures that have never been extended to cover small enterprises. These measures consist mainly of funds supposed by the enterprises and in certain cases also by the employees, by means of small contributions, and subsequently the payment of subsidies to firms at critical moments.

The legislator has also underlined the importance of bilateral bodies, in particular by means of Article 9, Act No. 236/1993, that provides for the setting up of these bodies in implementation of agreements between the most representative trade unions and employers' associations at national level making provision for them to sign agreements with autonomous regions and provinces for the analysis and in-depth study of local employment markets and surveys of vocational training needs. Bilateral bodies may in general be defined as 'associations of associations' in which the parties are, for the trade unions, the confederal associations (CGIL, CISL, UIL) each with its own autonomy and separate identity, while for the employers the signatories may be individual associations (for example, Confindustria) or pluralism associations (Confartigianato, Can, Casa, Claii). Bilateral bodies may have an internal structure consisting of an ordinary and extraordinary general meeting of the members, a board of directors or management, and an audit committee. All the management and administrative bodies are appointed on the basis of the principle of joint representation of the employers and the trade unions, generally for a renewable three-year term of office. The chair of the bilateral body, in particular, as the legal representative, is normally appointed by the employers' association, whereas his or her deputy is normally appointed by the trade unions. With regard to internal management procedures, the unanimity rule is prevalent, and is applied for all major decisions, to underline the consensual approach that these bodies are intended to take. The system of bilateral bodies is strongly decentralized to regional and, in certain cases, provincial level. The four national bodies (Bilateral body for the artisan trades, for Confindustria, Confapi and Cooperation) are cross-sectoral and confederal. In addition there are bilateral bodies for tourism and commerce that are defined in the same way in spite of the particular characteristics of this sector.

From an analysis of certain legislative provisions (Act No. 30/2003 and Legislative Decree No. 276/2003, implementing this Act), there emerges an intention on the part of the Italian legislator to provide incentives by means of a range of measures, for bilateral bodies and methods. In particular, Article 2(1) (h) of Legislative Decree No. 276/2003 lays down a definition of bilateral bodies, that on the whole confirms that they may be set up in various ways, and lists in a non-exclusive manner the functions they may perform. The long-standing practice in Italian industrial relations is therefore confirmed, by which bilateral bodies are set up at the initiative of one or more employers' associations and the most representative trade unions', that are destined, from this legislative provision onwards to become the preferred forum for the regulation of the labour market 'by means of the promotion of regular employment of good quality; the matching of the Supply and demand for labour: the promotion of training initiatives and the identification of ways of providing in-company training; the promotion of best practices against discrimination and for the inclusion of the most disadvantaged groups; the joint management of funds for training and income support; the certification of employment contracts and of regular and proportionate remuneration; the development of actions relating to health and safety at work' and, perhaps even more important, 'any other activity or function assigned to them'. It should be noted that this measure provides for bilateral bodies to be set up only by the most representative trade unions, and is therefore not of general application but only for those bodies that intend to perform the functions laid down.

ITALY (Iri-protocol)

In 1984, the state owned IRI group (at the time the largest industrial group, privatized in 1992 and closed down in 2002) and the three major trade unions (CGIL, CISL and UIL) signed a general agreement (the IRI-protocol). The agreement was the result of a convergence of opinions concerning: the industrial policy objectives of the IRI group; the consolidation and development of key sectors and the restructuring and/or conversion of other sectors; the

contribution of the employees to these objectives of reconstruction and development, with wider opportunities for them to apply their occupational skills at enterprise level; an active labour policy directed at the rational allocation of resources; and guidelines on conduct, including bargaining mechanisms, likely to favour the solution of these problems. This form of participation was developed by "Joint Consultative Committees" at various levels: group, territory, sector and company grouping. The general tasks of these committees were the following: a) prior examination and investigation of the strategic options for industrial and economic policy, of restructuring and development projects and of relevant aspects of labour and industrial relations policy; b) evaluation of and formal, obligatory but non-binding advice on these matters; c) verification and monitoring of the implementation phases; d) presentation of proposals on work organization, industrial relations and the labour market. The Protocol also established a procedure for consultation between IRI and the CGIL/CISL/UIL confederations to enable the unions to be brought up to date with the general lines of industrial policy, with meetings either weekly or at the request of one of the parties. Finally, a considerable part of the Protocol was devoted to procedures for preventing and resolving collective conflict at company level and procedures for settling individual and group disputes.

ITALY (Employee Financial Participation. Legal Framework)

The main regulatory tenets relating to employee financial participation are to be found in the Constitution of 1948 (Articles 46 and 47) and in the Civil Code of 1942. Moreover, no significant measures have been taken to implement Article 46 (as mentioned above) or Article 47, paragraph 2, where the references to favouring direct or indirect investment in the country's main industries are generally taken as references to savings in general, without any specific restriction to employees savings or to investment in the capital stock of a company by individual employees. In Italy, the financial participation of employees in the enterprise is deeply rooted though it continues to be a controversial matter. However, EU Recommendation No. 92/443 of 27 July 1992 (concerning the financial participation of employees in enterprise results and profits, including share ownership), required Member States to adapt their national frameworks to the promotion of employee financial participation, also by means of financial or tax relief, this Recommendation has not been followed up by any action except for Legislative Decree No. 314/1997, which was not sufficient on its own to support or develop this concept.

Therefore, the most important elements of the regulatory framework are to be found in the Civil Code that governs the different forms of profit-sharing and employee share ownership, (Article 2349 of the Civil Code, as amended by Legislative Decree No. 6/2003). On the basis of this provision, the general share-holders' meeting may, as an exceptional measure, allocate a share of the profits to the employees of the company (or of subsidiary companies) by means of the issue for an amount equivalent to the profits to be distributed, of special categories of shares to be allocated to company employees on an individual and free basis (in other words by means of a free or nominal increase in capital). The Civil Code also specifies that by means of this procedure special categories of shares may be allocated 'with particular norms concerning the form, the method of transfer and the rights of shareholders'. The shareholders general meeting therefore has not only the task of determining the number of shares to be given to the employees but also of regulating the allocation of shares and the related rights. Article 2349 of the Civil Code grants the shareholders' meeting the right to allocate to employees of the company or of subsidiary companies financial instruments other than shares, with rights that do not include the right to vote at the shareholders' meeting (instruments of this kind are provided on a general basis by the new clause 6 of Article 2364 of the Civil Code). In this case particular norms may be laid down regarding the conditions for the exercise of the rights assigned, the conditions for the transfer and any reasons for the expiry of shareholding rights or of redemption. It must be underlined that the employees are in any case free to accept or reject the

offer of free shares. As well as a free allocation of shares, the Italian Civil Code makes provision for employees to purchase shares on favourable terms. This arrangement is more widely used by enterprises, and is regulated by Article 2441(8) of the Civil Code (as amended by Legislative Decree No. 6/2003), on the basis of which the company may pass a resolution for an increase in share capital with a corresponding increase in the number of shares issued at a given price to employees of the company or of the parent company or subsidiary companies. The same clause allows for the suspension of the stock option rights of existing shareholders, for up to one quarter of the new shares issued. By means of the approval of the majority required for extraordinary general meetings. For the suspension of stock option rights above this level an absolute majority is required. The particularly favourable conditions consist in the derogation from the general principle laid down in Article 2441(1) of the Civil Code, on the basis of which, in the case of an increase in social capital, any new shares issued must be offered as an option to the shareholders in proportion to the number of shares held. Moreover, in this case the price of the new shares issued does not have to be calculated by taking account of the net worth of the company but may be based on the nominal value, that in general is much lower.

A further arrangement by which workers are given preferential treatment for the purchase of shares in the company consists of the sale of company shares as laid down in Article 2357 *et seq.* of the Civil Code. In this case, the allocation of shares does not take place by means of an increase in capital stock, but by the redistribution of existing shares. Unlike the two schemes described above, this is not a particular form of employee shareholding, since in principle the employees are in the same position as investors in general. The particular nature of this arrangement depends on the special terms of purchase, comparable to the sale of shares to the public but with the employees having an option on the shares.

All the schemes so far outlined result in the individual allocation of shares to the employees. However, there are no legal provisions for the allocation of shares on a collective basis, so schemes of this kind may be considered to be an atypical form of share ownership. The most widespread and representative form of collective investment is the unit trust fund. By means of this instrument the company does not allocate shares to individual employees, but places them in a professionally managed unit trust fund, and the employees have a share in the fund based on the number of units allocated. It is important here to distinguish between trust funds of a collective nature, including unit trust and pension funds, and employee shareholding schemes set up for the workers in a company. Whereas the unit trust is based on the collective management of shareholdings, the employee shareholding scheme is a collective arrangement for those participating in the shareholding plan. This structural difference is reflected also in the difference in the aims of these funds. Although Italy is still far from achieving the level of employee shareholding envisaged when provisions were first made, it must be noted that the pension fund law is a highly significant development along the way towards greater 'economic democracy'. Although enacted with some delay in relation to developments in the main industrialized countries, the legislation on complementary social security (Legislative Decree No. 124/1993 and especially, the changes introduced by Act No. 335/1995) made possible interesting developments, allowing employees to try out new institutional forms of 'collective' investment, with an impact on the financial market, and significant repercussions on the Italian industrial relations system. Among the most widespread forms of shareholding participation, mention should be made of stock option schemes. In this case the company gives the employee the right to purchase shares at a later date at a price determined when the stock option is made available. This is therefore an atypical form of share ownership, in which the transfer of shares to the employee does not take place when the scheme is launched, but after a set period when the employee can opt to purchase the shares. Such schemes are clearly not aimed at raising capital from the employees, but rather at increasing loyalty to the firm and productivity on the part of certain employees (nearly always senior management). For those benefiting from the

stock option scheme, the correlation between their earnings and the value of the company shares at set intervals, known as vesting, provides a strong incentive for the employee to promote the interests of the company, intended to result in greater royalty and higher productivity. However, since these schemes do not have a collective dimension. It is doubtful whether they can be included among participation schemes in the strict sense (unlike employee shareholding schemes for which all the company employees are eligible). Finally, mention should be made of a legislative provision relating only to tax and contributions. That is particularly advantageous for the companies that make use of it, introduced by Legislative Decree No. 505, 23 December 1999. This Decree provided tax exemptions for stock options for individual or certain categories of employees. Other incentives are provided for employee shareholders by Legislative Decree No. 58/1998, for companies listed on the Stock Exchange, and in order to facilitate the sale and repurchase of shares in employee shareholding schemes in which the ownership of shares is planned for a period of time that is sufficient to maximize earnings and capital gains (Article 132). In conclusion it may be argued that recent legislative measures have tended to confirm the individual character of employee shareholding in Italy. Employee shareholders are not considered as an organized group, and do not have organizational autonomy, nor a functional position within the company enabling them to exert pressure on management. However, it must be said that Legislative Decree No. 6/2003 lays down certain regulations with regard to supplementary agreements between the two sides of industry, laying the foundations for forms and procedures for organizing the votes of small shareholders (and therefore also of employee shareholders). It is evident that a number of schemes of considerable interest, at least from the industrial relations point of view have been implemented in Italy especially since the privatization of public bodies and the transformation of State-owned companies into joint stock companies. However, it should be underlined that the level of employee shareholding is insignificant, even in those cases where this form of financial participation has been introduced. The only significant exceptions that might be mentioned in this scenario have been (with different and controversial results) the cases of Telecom and Alitalia. (See Table 4)

ITALY (European Works Councils)

The Legislative Decree No. 74, 2 April 2002, implemented the Directive 94/45 (on European Works Council); provisions on this matter were made in the interconfederal agreement of 6 November 1996, that resulted in the partial transposition of the Directive as a result of negotiations, but that was considered to be insufficient for the purposes of full transposition.

ITALY (Workers' Co-operatives)

Workers' co-operatives may be argued that in this model employee involvement and influence over management is to be found in its most advanced form. It is possible in this context to speak of a self-management model. The majority of workers employed in these co-operatives are also shareholding members. They invest not only their physical energy but also part of the capital. They therefore have the right to elect the board of directors and to approve the financial statement at the annual general meeting. The originality of this model consists of the fact that they do not lose their prerogatives as employees: they join trade unions and their working conditions are laid down by national collective agreements for each sector negotiated by associations representing the co-operatives companies and the trade unions. Moreover, there is a considerable amount of plant-level collective bargaining. This may therefore be seen as a separate system of industrial relations properly speaking (that is, a system in which trade unions and collective bargaining are to be found) in self-managed companies. What at first sight seems to be a contradiction is actually proof that an advanced model of participation is

not incompatible with the role and activity of trade unions. Moreover, this trade union presents guarantees that the self-management model does not degenerate into bureaucratic or authoritarian forms. This is an important force also from an economic point of view: suffice it to mention that some of the most impotent Italian construction companies, operating both in Italy and abroad are workers co-operatives. The law on this matter was amended by Act No. 142, 3 April 2001, introducing a 'Reform of the legislation relating to the cooperative sector, with particular reference to the position of the worker member'. This law introduces regulations on a matter on which current legal opinion and case law had produced conflicting views and rulings, both with regard to the definition of the nature of the relationship between the worker member and the cooperative, and with regard to the provisions to be applied to such workers. With regard to worker members of cooperatives, the law clearly laid down that they take part in two different and distinct legal relationships not only as members of an association, but also as workers (with the member becoming an employee either at the time of Coining the association or at a later date). The question of membership is dealt with in Article 1(2): 'The worker members of a cooperative: a) participate in the management of The undertaking by participating in the governing bodies and in the definition of the management or administrative structure of the company, b) take part in the drafting of development programmes and decisions concerning strategic choices, as well as in the implementation of productive processes in the undertaking; c) contribute to the formation of the capital stock, and share the commercial risk of the undertaking and company earnings, and take part in decisions about the distribution of such earnings; d) make available their vocational skills also in relation to the type of business carried on, as well as the quantity of labour dedicated to the cooperative'. With regard to the employment relation, this is governed by the provisions of Article 1(3), on the basis of which work may be carried out 'in the form of salaried employment or self-employment or in any other form, including quasi-salaried employment not of an occasional nature in order to contribute to the achievement of the aims of the undertaking'. The new law makes detailed provisions for the various types of labour relationship of the cooperative member in relation to individual and collective rights (Article 2), remuneration (Article 3), social insurance matters (Article 4), the assignment of a general charge on the assets of the cooperative and of rights relating to legal procedures (Article 5), and matters relating to the internal regulation of the cooperative (Article 6). With reference, in particular, to the exercise of trade-union rights, the new law lays down that 'In relation to the special nature of the cooperative system, specific forms for the exercise of trade-union rights may be negotiated under collective agreements'. However, the agreements that can regulate these rights in the cooperative sector were only those at national level concluded by the comparatively most representative associations. Article 9(1) (b) of Act No. 30/2003 laid down that the rights under Title III of Act No. 300/1970 are to be exercised in a manner compatible with the status of the worker member, as laid down in the collective agreements negotiated by the national associations of the cooperative movement and the most representative trade unions in comparative terms.

JAPAN (Employee Participation)

In Japan representative participation for employees was based largely on the presence of enterprise unions, the dominant form of unionism after World War II. Management councils, or joint consultation committees, include management and employee representatives, and are concentrated in larger firms. They existed in a large number of unionised companies where they are established by enterprise agreements between the unions and management. However, a significant proportion of non-unionised employees are represented in these councils or committees, notwithstanding their concentration in unionised companies. Japanese firms also have been major exponents of quality circles, but these represent more of a production-oriented direct participation method than a genuine form of employee representation. Management councils have a consultative role in the management structure of Japanese corporations, mainly concerning management strategies, employee welfare, redundancies, and finances. Their focus has been on productivity improvement, with the trade-off for employees of enhancing employment security and sharing in the fruits of increased productivity. However, the jurisdiction and powers of management councils vary considerably between organisations. They have no statutory basis, although these management councils now have substantial support in case law. Empirical studies demonstrate that economic motives outweigh the social in the establishment and operation of Japanese participative practices, and that these never threaten the hierarchical structure of authority. Recent changes in the Japanese corporate environment have tended to weaken traditional forms of labour–management consultation, or at least have the potential to do so over time. In 2002 the Japanese Commercial Code and related laws were revised to allow large corporations to choose an American style of corporate governance, essentially based on boards with a majority of externally appointed directors. The American system has commonly been referred to as the ‘shareholder model’. This contrasts with the more traditional Japanese model of corporate governance, whereby management and directors have been internally promoted, with a significant proportion of directors also being employees. This model, when combined with the traditional practice of long-term or ‘life-time’ employment in Japanese corporations, has contributed to the corporation operating as a community, with employees being cast as the corporation’s most important stakeholders; hence the characterisation of the traditional Japanese model of corporate governance as the ‘stakeholder model’. This form of corporate governance has been a mainstay of Japan’s co-operative industrial relations, underwriting the viability of its non-legal, practice-dependent form of labour–management consultation. However, it is vulnerable to the recent changes in the system of corporate governance. While only a small number of companies have adopted the American form of corporate governance so far, these include some very significant corporations, such as Sony, Toshiba, Mitsubishi and Hitachi.

The Japanese model of labour–management consultation has been further weakened by the apparent decline in the incidence of life-time employment, which has been so fundamental to the employees being cast as major stakeholders in large corporations. Employment security was supported by a strong body of case law. However, from the 1990s case law relaxed economic dismissal regulations in response to the collapse of the bubble economy and the

perceived need for corporate restructuring. Unemployment rose to 5.4 per cent in 2002, and the labour market has been characterised by increased mobility and deregulation. 'Atypical' or 'non-regular' employment (part-time, casual and contract) has grown from 20 to 32 per cent of the total labour force from 1990 to 2004, and the 2003 revision of the Labour Standards Law (LSL) allowed an extension of fixed-term contracts from one to three years. Nevertheless, some legislation has tended to support employment security in this context. In 2001 the Labour Contract Succession Law (LCSL) allowed transfer of existing employment conditions under certain conditions in the case of merger and division of corporations, as a means of protection against widespread downsizing. The Labour Standards Law amendments of 1999 and 2003 also included provisions which required dismissals to have 'objectively rational grounds', to be 'appropriate in general societal terms' and to notify employees adequately. Opinion is divided, but some commentators have argued that this effectively reinstates the case law restrictions on dismissals which underwrote life-time employment.

Finally, insofar as labour-management consultation is dependent on union presence, the Japanese system has been weakened by the declining level of union membership. This trend has been exacerbated by legislative changes in 2000 designed to promote corporate restructuring, in response to the economic downturn of the 1990s. Where a company is divided into a number of separate companies with the original one becoming a holding company, enterprise unions may lose their collective bargaining rights because they will have no members in the new holding company. However, we have noted that many non-unionised employees have access to consultative arrangements, which may partially balance the decline in union membership. For all of the reasons discussed here, therefore, it seems that the threats to the Japanese system of labour-management consultation have not fully materialised to date. Nevertheless, taken together they suggest significant long-term vulnerability.

Perhaps in anticipation of this, the 1998 amendments to the Labour Standards Law created a new representation system, the labour-management committee (*roshi iinkai*), which has been described as an 'embryonic form of Japanese works council'. These committees consist of equal numbers of labour and management representatives. The employee representatives are appointed by the union representing a majority of workers at the workplace concerned, or by a majority of workers where there is no union. The composition of the committees, therefore, represents a considerable departure from the European works council model, which consists entirely of employees and in many cases these are elected directly by all employees. The jurisdiction of the new Japanese committees also is confined to regulation of working hours, and their formation is voluntary. Few appear to have been established, notwithstanding further legislative changes in 2003, which simplified their decision-making processes.

JAPAN (Forms of Worker Participation)

As mentioned above, collective bargaining mostly takes place at enterprise level, industrial relations within an enterprise being the most important part of the Japanese industrial relations system. There is no doubt that collective bargaining is a very important form of worker participation in the company's decision-making process. However, at enterprise level, there are various important forms of worker participation other than collective bargaining. These are the statutory system of workers' participation in the form of employees' representatives and voluntary systems of workers' participation in the form of joint labour-management consultation, the workshop meeting system (*shokuba kondankai*), the grievance procedures system, the suggestion system, the self-reporting system and do on.

JAPAN (Employees' Representative System: *jogyoin daihyo sei*)

There are many statutory provisions requiring the employer to acquire the consent of the employees' representatives. The employees' representative means here, in principle, either the trade union, where a trade union organized by a majority of employees exists at the workplace concerned, or the representative of a majority of the employees, where a trade union organized by a majority of employees does not exist. The form of participation of this representative follows provisions that can be classified: conclusion of an agreement with the employer, submission of opinion to the employer, recommendation of committee members to the employer. With regard to these three different forms of participation of employees' representative, the main provisions will be seen below. The main provisions requiring a written agreement between an employer and an employees' representative (the so-called 'worker-management agreement') are those concerning the calculation of working hours outside the premises, the introduction of flexible working hours, overtime work, planned annual paid holidays, and the exception of regulations concerning wage payments. Other provisions include those worker-management agreements required for specifying workers who cannot take child care leave (Child and Family Care Leave Law, Art. 6), for workers' savings entrusted to the employer by the employees (LSL, Art. 18), for excepting from the employer's obligation to take the statutorily required measures to preserve retirement allowances, for specifying a certain amount of money to ensure payment of retirement allowances (Enforcement Ordinance of the Security of Wage Payment Law, SWPL, Arts. 4 and 5), for employment adjustment (Enforcement Ordinance of the Employment Insurance Law, Art. 102(3)). The main provisions requiring employers to hear the opinion of employees' representatives are those concerning the drawing up a *shugyo-kisoku* drawing up a safety and health improvement plan (Industrial Safety and Health Law, Art. 78), drawing up all older worker re-engagement assistance plan, assistance for an older workers' re-engagement (Older Persons' Employment Stabilization Law, Arts. 6(7) and 6(9)). The main provisions requiring an employees' representative to make a recommendation to the employer are also found in the Enforcement Ordinance of SWPL, the Industrial Safety and Health Law of 1972 and the Promotion of Shorter Working Hours Law of 1992. The Industrial Safety & Health Law requires the employer to establish a safety committee and a health committee (or a safety and health committee in lieu of these two separate committees) for each workplace in a certain industry and of a certain size. For one half of the members other than a chairperson, the employer must designate those persons recommended by the employees' representative (Articles 17-19). However, these committees are merely advisory bodies and their resolutions are not binding upon the employers. The Promotion of Shorter Working Hours Law requires the employer to establish a committee for the promotion of shorter working hours. The employer must designate those persons recommended by the employees' representative as one half of the members of the committee. In contrast to the safety and health committees, this committee's resolutions have certain legal effects. Namely they will be treated as written agreements between the employer and the employees' representative with regard to the calculation of working hours outside the premises, the introduction of flexible working hours, over-time work, planned annual paid holidays, etc. (Articles 6-7). Article 38(4) of the LSL which came into effect in April 2000 provides for a similar type of committee, the so-called (worker-management committee'), which determines to adopt discretionary work arrangement. Employees' representative systems other than the worker-management committee and the committee for the promotion of shorter working hours are not standing committees and there are no precise regulations concerning the method of selecting committee members, their term of service, guarantee of their status, etc. There is some demand to enact a law to establish a standing organ of employees' representatives in the enterprise and to regulate their selection, term of service, status guarantee, having regard to the rapid decrease in union membership.

JAPAN (Information and Consultation in Case of Collective Dismissals)

In Japan, restructuring is a key issue in company-level collective bargaining and consultation. However, there is no legislation which requires information, consultation or negotiations on restructuring, redundancies and more. A survey published by the Ministry of Health, Labour and Welfare in June 2003 found that, of the discussions undertaken by trade unions and management during the previous three years, those on 'corporate restructuring and/or reductions in business divisions' had accounted for 42.3 per cent of the total, i.e. a 3.4 percentage point increase on the previous survey (1997). In terms of the stage at which negotiations are initiated, on the employer side 41.6 per cent of negotiations are commenced once 'the broad framework has been decided', followed by 36.4% at the 'exploratory phase' and 13.5 per cent once 'the details have been fixed'. Thus employers are tending to initiate negotiations with labour representatives at a comparatively early stage in the restructuring process. A survey of collective agreements by the same Ministry (covering 5,000 trade unions), released in June 2001 for the first time in five years, found that advance discussions relating to the reduction and/or closure of a business had increased, and these matters appeared in 40 per cent of all agreements reached. Furthermore, a 2000 survey by the Ministry of Health, Labour and Welfare found that issues such as 'temporary lay-off, workforce rationalization and dismissal' are dealt with by a majority of the labour-management consultative bodies which exist in around 40 per cent of private-sector establishments with more than 30 employees (see below under 'Employee involvement'). Above company level, restructuring-related issues have also been discussed by the national-level Japanese social partners over the past couple of years. With the desire to avert job losses and safeguard jobs apparently weakening among Japanese companies, the Rengo trade union confederation and the main employer confederation engaged in vigorous discussions on the importance of measures to maintain and preserve employment levels for many years now.

JAPAN (Corporate Governance)

In the last decade, Japan has implemented reforms of its economy after the Anglo-American model with less attention to the Continental European model. Pursuant to the 2002 Commercial Code revisions, Japanese Corporations may now select between the "company-with-committees" and "company-with-auditors" structures. Very few companies including Sony, however, adopted the "company-with-committees" system and the rest remain to be "companies with auditors". The "company-with-auditors" system is a traditional structure since the Meiji Era, when it was modelled after the one provided under the German law. Its basic framework charges "directors" with the responsibilities for execution and "auditors" with those for supervision. This may resemble the German institution but, in fact, they are different in that both "directors" and "auditors" are elected at the general shareholders' meeting and that "auditors" are regarded as subordinate to "directors". As such, the challenge has been to reform the legal system regarding corporate structure so that auditors can perform their intended duties and revisions to the Commercial Code since the 1970s have provided for measures including the delegation of greater authority to and increase in the number of auditors, and the appointment of outside auditors. There have been no changes, however, in how auditors are selected and outside auditors tend to be the last, honorary appointments for prominent people from the business and legal communities before retirement. Except for rare cases at a very limited number of companies, it is quite doubtful that the auditor-system is living up to the expectation.

JAPAN (Joint Labour-Management Consultation System: *rosshi kyogi sei*)

A survey at the beginning of 2000 found that the surveyed establishments employing 30 or more workers had a workshop meeting system (55.3 per cent), a suggestion system (48.2 per cent), a self-reporting system (40.8 per cent) and a grievance procedure system (25.2 per cent). It also found that 41.8 per cent of these establishments had joint labour-management consultation systems: 84.8 per cent of the organized establishments and 17.1 per cent of the unorganized establishments. Of those establishments with joint labour-management consultation systems 57.0 per cent had only a single consultation committee, 36.8 per cent had a general committee with specialized sub-committees and more than one committee. 83.3 per cent of those establishments with specialized sub-committees had safety and hygiene committees, 38.1 per cent had welfare committees, 27.9 per cent had committees on working hours, and 23.6 per cent had production committees. Members of committees are representatives of unions in 65.6 per cent of the cases while they are elected by employees in 32.6 per cent and appointed by employers in 7.8 per cent. Joint labour-management consultation committees were held in case of need (in 39.4 per cent of the cases), regularly and in case of need (32.4 per cent) and on a regular basis (27.0 per cent). Consultation committees in organized establishments were held both regularly and in case of need in 28.1 per cent of cases while consultation committees in unorganized establishments were held in 23.8 per cent of cases. Working hours, holidays and vacation (87.3 per cent), health and safety (83.1 per cent), changes in the way of working (84.9 per cent), welfare (81.9 per cent) and wages and bonuses (80.4 per cent) were most often discussed in joint labour-management consultation committees while standards for promotion or upgrading (60.6 per cent), standards for hiring and assignment (57.0 per cent), management policy (76.0 per cent) and plans for production and sales (68.8 per cent) were less often discussed. Since joint labour-management consultation discusses matters concerning working conditions as well as matters related to business management, there is no clear-cut distinction between the competence of a joint labour-management consultation and collective bargaining in organized establishments. According to the survey of 1997, 14.4 per cent of the unions which organized 30 or more employees made no distinction between the competence of a joint labour-management consultation and collective bargaining, while 70.8 per cent of the remaining establishments made the distinction between the competence in the subject matters of a joint labour-management consultation and collective bargaining. Other ways of distinguishing the competence are to hold a joint labour-management consultation prior to collective bargaining (41.4 per cent), to hold a joint labour-management consultation without the possibility of industrial action (9.0 per cent) and others (4.3 per cent).

Most matters are dealt with in joint labour-management consultation. Except for the amount of wages, all other matters were more often discussed in joint labour-management consultation than in collective bargaining. Joint labour-management consultation very often dealt with welfare, overtime and holiday work, working hours and job assignment. A rather interesting conclusion is that amendment and interpretation of collective agreements were more often discussed in joint labour-management consultation than in collective bargaining.

The 1997 survey found that 50.5 per cent of surveyed unions regarded a joint labour-management consultation as the most important means of resolving the future problems of industrial relations, followed by collective bargaining (41.6 per cent) and industrial action (0.6 per cent). Of unions in the establishments where there was a joint labour-management consultation system, 60.9 per cent indicated that the most important means was joint labour-management consultation, 34.0 per cent indicated collective agreement and 0.7 per cent indicated industrial action. However, it should be noted that the consequence of joint labour-management consultation and collective bargaining is that there is often no difference in legal terms. The 1997 survey found that, when a union and an employer reached an agreement on matters through joint labour-management consultation, they would conclude a collective

agreement in 33.0 per cent of cases, make a document other than a collective agreement in 32.4 per cent and insert the content of agreement into the *shugyo kisoku* in 15.1 per cent of cases. These percentages are compared with those where they reached an agreement on matters through collective bargaining. These are 49.2 per cent, 22.0 per cent and 10.4 per cent respectively.

JOINT CONSULTATION COMMITTEES (Theory and Models)

The literature discusses four main models of Joint Consultation Committees (JCC), considered in their impact on Collective Bargaining (CB): they are alternative, marginal, competing, and adjunct models. The first model is based on JCCs being an alternative to CB. In this environment, employers will introduce and develop JCCs in order to oppose Collective Bargaining. The basic assumption is that consultation provides a means for employees to give their opinions to management and for management to disseminate information to their employees. This kind of consultation is not based on union channels and is initiated at department level regardless of union recognition. Introduction of this model would weaken the union's power to influence the workplace decision-making process. The establishment of this model of JCC by the employers should be designed to dilute the value and dependence of employees on unions. The second model regards JCCs as being marginal to CB. In this model, JCCs have minimum impact on workers and management, and little mutual benefit is gained. Here, the trust between parties is lacking and management does not take the development seriously. Normally, the chairperson will be a junior manager, who will lack the authority to make decisions. Meetings are usually informal and friendly, and the subject matter can be quite trivial. JCC membership combines union and management representatives who are incapable of enforcing action. The third model is the competing model. In this model, the JCC is considered a direct competitor to Collective Bargaining. As such, employers attempt to upgrade the consultation machinery in comparison to the negotiation structure of Collective Bargaining. In this model employers are keen on JCCs because their aim is to undermine the power of the union in the workplace. The subject matter is more substantive, and the focus is on reducing competitive friction and increasing cooperation. Introduction of this model of JCC should be designed to encourage shop floor employees to commit to management actions and strategy. For instance, during JCC meetings, management will expect and employee representatives to encourage workers to support direct forms of Employee Participation. The fourth model sees JCC as an adjunct to Collective bargaining. In this model JCCs and Collective Bargaining have an integrative relationship where both can have different roles but together they achieve cooperation between management and employees. For example, Collective Bargaining is mainly to negotiate on wages, working conditions and distributive issues whereas JCCs focus more on investment decisions, new business plans, takeovers and mergers, etc. Although JCCs and Collective Bargaining have different interests both are beneficial for management and employees. These models have been tested mainly for the USA, United Kingdom and Australia.

JOINT LABOR MANAGEMENT COMMITTEES

In union settings, especially in USA, joint labour-management committees provide union and management leaders with a forum for ongoing discussion and cooperation outside the collective bargaining context. In non-union settings, the committees are composed of employees (elected or volunteered) in addition to management officials.

JOINT PROJECT GROUPS

The practice of establishing joint project groups to study the best ways of introducing technological or organizational changes through the joint efforts of managers and workers is a traditional feature of labour relations in some countries, such as Sweden. A joint project group is normally composed of managers, workplace union representatives and shop-floor workers and often assisted by outside experts. The management and the union concerned often establish joint project groups separately on four issues: new technology, work organization, training and work environment. The Swedish model of joint project groups presents a notable example of direct participation of shop-floor workers within a framework of established collective labour relations. The system is also found in other countries, such as Germany and Japan

KOREA (Cooperative Labour Relations)

Traditional labour relations have been interpreted as based on antagonistic relations. This concept of antagonism is derived from the fact that while workers are vendors of their labour, an employer is a vendee of labour. Their interests run counter to each other, both in making labour contracts and in fulfilling them. Therefore, struggle for their respective interests' breaks out in all labour-management relations. The collective bargaining system provides peaceful machinery by which disputes of interests are settled. But however peaceful it may be, this system is based on the concept of antagonism. When they cannot reach agreement, workers go on strike and an employer uses the lockout to accomplish their purpose. Accepting that labour relations are based on antagonistic relations, it cannot be rightly said that labour relations have only an antagonistic character. We may imagine situations in which labour and management have common interests. Both employees and an employer profit by the expansion and the success of their enterprise. They have common interests in the prosperity of their enterprise. A constructive and cooperative combination of capital and labour could create far greater benefits than any other combination. These cooperative relations cannot be denied by reason of the antagonistic character of labour relations. We may rightly say that labour relations have both an antagonistic character and a cooperative character, and cooperative relations are based on antagonistic relations. In other words labour-management relations are essentially antagonistic but in addition they may also have a cooperative nature.

KOREA (Workers' Participation)

Cooperative labour relations have been established by developing the system of workers' participation in management. Formerly management was exclusively the prerogative of the employer. But to further spontaneous cooperation from workers, matters concerning enterprise management need to be opened to workers. Through labour-management consultation about matters concerning management policy, production plans, manpower plans, workers' grievances and the improvement of the working environment, common interests could be improved and mutual understanding and cooperation could be established. However, there is a problem in ascertaining to what extent workers should participate in management. To speak generally, the more labour-management joint consultation there is, the more both will profit by it. But we admit that this problem in reality depends on economic and social circumstances. And it also depends on the actual state of labour-management relations.

KOREA (Forms of Workers' Participation)

Workers' participation may in theory be divided into four main categories. Depending on the extent to which workers participate in management in reality, labour-management joint consultation may take the form of: a) information-exchange; b) the exchange of advice; c) the exchange of ideas, or d) joint-determination. Cooperation in information-exchange means that both employees and the employer give and receive information that is useful to one another.

How each evaluates and makes use of it is left solely to the decision of the other. When opinions and advice are shared with respect to pending problems, we call this the exchange of advice. In this case one side gives advice to the other side and defines its activities. Mutual understanding could be improved and lack of trust could be eliminated between employees and employer. But they still stick to and persist in their views. However, in the exchange of ideas both parties take up a more open and positive attitude. Proposals and ideas concerning economy in expenditure, improvement in quality and production plans are put forward and the management side accepts them. Constructive cooperation can be established by sincere conferral. Though the final decision may be left to management, the management takes into consideration the results of joint consultation. Joint-determination allows the most positive workers' participation. Here workers have the equal right to a voice and the equal right to a vote. This does not imply that all management questions should be decided by joint determination. Matters of common interest can be subjects of joint determination. This classification of workers' participation is made according to the degree and the extent of participation in management. These forms are only theoretical ones. Existing labour-management consultation may not exactly fall under any of these categories. It may involve any admixture of them.

KOREA (Labour-Management Council System)

In Korea labour-management consultation was introduced for the first time by the amended 1963 Trade Unions Act (Art. 6) (TUA, subsequently modified in 1973, 1975, 1997). Labour-management consultation was not imposed by law but only encouraged by administrative guidance. The Trade Unions Act (TUA) itself did not make any distinction between labour-management joint consultation and collective bargaining. For this reason the system of labour-management consultation did not develop either in name or in reality. As the labour movement became stronger and strikes became more destructive and more violent in the process of industrial modernization, the Government thought that traditional antagonistic labour relations should be transformed into cooperative ones. To further economic development and to induce foreign capital required for industrial modernization the Government began to turn its attention to labour-management consultation. Thus Article 6 of the TUA was amended in 1973. The subject of labour-management consultation was newly introduced and the provision giving the capacity to undertake collective bargaining to the representative of the labour-management council was abolished. But this was not enough to establish systematic machinery for the furthering of common interests and for establishing cooperative relations between management and labour. In the 5th Republic a new Act called the 'Labour- Management Council Act' was enacted as an independent law in 1980 for the above purpose. Considerable effort is being made to make it a system both in name and in practice and to make its activities vigorous. The Act provides that its purpose is to promote the common interests of labour and management through their mutual understanding and cooperation, thereby securing peace in industry and making a contribution to the development of the national economy (Art.1). It goes on to provide for the Labour-Management Council, a consultative body established for the purpose of improving employees' welfare and effecting the healthy development of enterprises by means of cooperation between employees and the employer (Art.2). The labour-management council has the function of establishing cooperative labour relations between employees and employer and thereby to secure peace in industry. Though its purpose is evident in law its function and mode of operation give rise to many problems awaiting solution, we will see later in relation to its activities, especially in regard to collective bargaining by a trade union.

KOREA (Labour-Management Council System: Basic Principles)

The Principle of Good Faith: Cooperative labour relations can be established not by legal compulsion but by mutual understanding and spontaneous contribution, in other words by a sincere attitude of good faith. This is particularly required of management. The employer must open matters concerning management as far as possible to employees. The Labour-Management Council Act (LMCA) imposes on both sides the duty of good faith by providing that the employer and employees shall consult each other in good faith (LMCA, Art.2). This duty is an intrinsic one. To the same effect the Act also imposes on both sides the obligation of observance. The Act provides that employees and employer shall observe in good faith matters agreed upon by the council (LMCA, Art. 23). When either the management side or the labour side has failed to comply in the areas agreed upon without justifiable reason, a fine not exceeding 5 million won is to be imposed (LMCA, Art. 31).

The Principle of Mutual Independence between Labour-Management Consultation and Collective Bargaining: These two systems have a different legal character. The right to bargain collectively is recognized for workers by the Constitution together with the right to organize and the right to act collectively. This right is not recognized for employers. On the contrary the duty to bargain in good faith is imposed on an employer or an organization of employers. In the case of labour-management consultation the right to demand a labour-management conference is not guaranteed by the Constitution. Both parties have only the duty of Good Faith, which is inherent in the labour-management consultation system. While the collective bargaining system has the purpose of improving the social and economic status of workers by maintaining and improving working conditions of workers, the labour-management consultation system has the purpose of promoting common interests of labour and management by establishing joint consultation on matters concerning management and thereby to secure peace in industry and bring about industrial democratization. The former may contribute to peace in industry as a result of concluding a collective agreement which puts an end to disputes between employees and employer, but this is only secondary and incidental to the original function of the collective bargaining system. We can find great differences between the subjects of collective bargaining and the subjects of the labour-management conference. Working conditions, namely, wages, hours of work, ventilation, temperature, speed of work, and the like can be subjects of collective bargaining. Besides working conditions those matters which have a close relation to the living conditions of workers and are within an employer's discretion are generally regarded as subjects of collective bargaining. With respect to these matters we may find a conflict of interests between employees and employer. However, those matters concerning the management of an enterprise in which both employees and an employer have common interests can be the subjects of joint consultation. We may enumerate the improvement of productivity, management policy, production plans and manpower policy. These matters originally belonged to the employer's prerogative. Though it may be clear in theory, it is not easy to draw a sharp line between the subjects of collective bargaining and those of joint consultation. Subjects of labour-management consultation differ among countries. Sometimes the same matters may be the subjects of both. In this case the issues undergo different processes because of the difference between these two systems. When bargaining between management and labour is broken off, a labour dispute occurs. Then both sides may resort to force to accomplish their aims. The right to act collectively is constitutionally recognized to support the right to bargain collectively. But when a joint conference ends in failure, workers cannot resort to the right to act collectively. When the labour-management conference results in success both sides reach an agreement. But this does not have the character of a collective agreement. While the latter has a normative effect in addition to its obligatory effect, the former does not have a normative character. While the latter cannot be naturally extended to non-members of the trade union which is party to it, the former applies to all employees whether or not they are members of a trade union.

KOREA (Labour-Management Council System: Establishment and Composition)

A labour-management council shall be *established* in an enterprise or workshops which are vested with the right to decide working conditions provided that an enterprise or workshop proscribed by the Presidential Decree shall be accepted. When an enterprise holds separately located workshops, a council may be established in each one. By Presidential Decree certain kinds of enterprises, for example, agricultural, financial and individual service enterprises and workshops or enterprises which employ less than 100 workers are exempted from the obligation to establish a council. But when trade unions are organized in the above enterprises or workshops or when labour disputes have broken out in the last three years in workshops employing more than 50 and fewer than 100 workers, a council must be established. Labour-management councils and trade unions are operated independently on a separate basis. It is explicitly required that a labour-management council should not disturb, weaken or exert influence on union activities, especially collective bargaining. A council is *composed* of an equal number of members representing employees and an employer. The number of members shall not be less than three nor more than ten from each side (LMCA, Art. 6, Section 1). The members representing employees (hereafter referred to as 'labour members') are elected by employees provided that when a trade union exists, the representative of the union and others commissioned by the union are to be the labour members. The members representing the employer (hereafter referred to as 'management members') are the chief executive officer of the enterprise or workshop concerned and other persons commissioned by the chief executive officer, provided that in workshops located separately from the enterprise, the chief responsible person thereof and other persons commissioned by the chief responsible person are to be the management members. Where no trade union exists, matters concerning the election of labour members are to be prescribed by Presidential Decree. The chairman is to be assumed alternately by a member from each side. The official term of the council members is one year but existing members may be reelected or recommissioned to make the activities of a council vigorous. A member may not work permanently for the council and may not be paid for his office. The employer cannot take disadvantageous action against a labour member in connection with the performance of his duty as a member of the council. Article 10, Section 2 (LMCA) makes it clear that labour members must perform their duties without interference from the employer.

KOREA (Labour-Management Council System: Operation, Functions and Competence)

A council is requested to formulate rules concerning the establishment and operation of the council and to submit the rules to the Minister of Labour (the appropriate District Office of the Ministry of Labour) within 15 days from the date of the establishment of the council (LMCA, Art. 16). A council should meet regularly once every three months and an extraordinary meeting may be held whenever it is considered necessary (LMCA, Art. 11). When an employer has not complied with the provision concerning regular meetings, (LMCA, Art. 11. s.1), a fine not exceeding one million won is to be imposed. The chairman convenes meetings of the council and presides over them. He must notify each member of the date, time, place, agenda etc. of a meeting at least seven days prior to the meeting (Art. 12). Meetings of a council are to be open to employees. This is to encourage industrial democracy and to eliminate any possible mistrust caused by a closed meeting between an employer and employees and among employees themselves. However, meetings may be closed by decision of the council whenever considered necessary. Council members are not to divulge any secret obtained at the council and the scope of secrecy is to be decided at each meeting. This obligation not to divulge secrets is imposed on the members of the council to protect the interests of the enterprise in which the council is established. If matters of great importance concerning the management of an

enterprise fell into the hands of a competitor, this could cause severe damage to the enterprise. The competence of the labour-management conference embraces those subjects in which labour and management usually have common interests. Formerly these subjects belonged exclusively to the prerogative of an employer. But to expect spontaneous cooperation from employees these subjects have been opened to employees through the workers' participation system. The subjects of the labour-management conference differ from country to country. In Korea according to the extent and degree of workers' participation, subjects are divided into two groups, matters subject to consultation and matters subject to report. A council consults on matters falling under any of the following headings: matters concerning the improvement of productivity and the promotion of workers' welfare; matters concerning workers' education and training; matters concerning the prevention of labour disputes; matters concerning handling workers' grievances; matters concerning safety, health and the improvement of the working environment; matters concerning an improvement of the institution for a rational operation of the labour management; and other matters concerning labour-management cooperation. With respect to such matters the labour side can require the management side to confer about them. The management side must consult with the labour side. They take an open and positive attitude. Constructive proposals and ideas are exchanged. They may reach an agreement as a result of consultation. Then the council must promptly notify employees of the matters agreed upon. Once an agreement is reached, the employer and employees must observe it in good faith (LMCA, Art. 23). When a representative of either labour or management has failed to comply in areas agreed upon without justifiable reason, a fine not exceeding 5 million won is to be imposed. An employer must report and explain good faith at regular meetings issues falling under any of the following headings: matters concerning the general management plan and actual results; matters concerning quarterly production plans and actual results; matters concerning the manpower plan; and economic and financial conditions of the enterprise (LMCA, Art. 21). Labour members may report and explain employees' demands. With respect to these matters both employees and employer give and receive information. Unlike matters subject to consultation, an employer does not have an obligation to consult about these matters. He has only the obligation to report and explain these matters. But once an agreement is reached with respect to these matters, the employer and employees must observe it in good faith as in the case of matters subject to consultation.

LEAN MANUFACTURING

Lean Manufacturing (LM) is a generic process management philosophy derived mostly from the Toyota Production System (TPS) but also from other sources. It is renowned for its focus on reduction of the original Toyota 'seven wastes' in order to improve overall customer value. LM is often linked with Six Sigma because of that methodology's emphasis on reduction of process variation (or its converse smoothness). Toyota's steady growth from a small player to the most valuable and the biggest car company in the world has focused attention upon how it has achieved this, making "Lean" a hot topic in management science in the first decade of the 21st century. For many, LM is the set of TPS 'tools' that assist in the identification and steady elimination of waste (muda), the improvement of quality, and production time and cost reduction. To solve the problem of waste, LM has several 'tools' at its disposal. These include continuous process improvement (kaizen), the "5 Whys" and mistake-proofing (poka-yoke). In this way it can be seen as taking a very similar approach to other improvement methodologies. There is a second approach to LM which is promoted by Toyota in which the focus is upon improving the 'flow' or smoothness of work (thereby steadily eliminating mura, unevenness) through the system and not upon 'waste reduction' per se. Techniques to improve flow include production levelling, "pull" production (by means of kanban) and the Heijunka box. The difference between these two approaches is not the goal but the prime approach to achieving it. The implementation of smooth flow exposes quality problems which always existed and thus waste reduction naturally happens as a consequence.

LITHUANIA

The Lithuanian model of workers' representation at enterprise level seems to be unique and also quite mysterious. It has an evident structural problem which lies in the fact that the works council elected by all the employees at the enterprise is not an autonomous institution with its own competences, but rather a kind of surrogate for an enterprise-level trade union in the case of its absence from the enterprise: that is, if there is a trade union at an enterprise it enjoys exclusive rights of representation and no works council can be established. However, the Labour Code has nothing to say about what happens to a works council if a trade union emerges subsequently. Secondly, the legislator does not clearly differentiate between the competences of trade unions and of works councils: they are both considered to be workers' representatives at the enterprise and both enjoy all workers' representation rights, including the right of collective bargaining. This situation reflects the difficulties which surrounded the drafting of the Labour Code. Confronted by the marginal trade union representation at enterprises and the need to facilitate enterprise-level collective bargaining, the legislator accepted the employers' proposal to allow a new form of employee representation. In fact, pressure from the national trade unions prevented the introduction of the classical dual model of workers' representation with a clear division of competences between trade unions and works councils. The chosen "middle way" (the so-called "Lithuanian solution") seems to have done more harm than good, however, since the unsolved problems of the relationship between

works councils and trade unions have increased the legal uncertainty. The situation concerning employee representation in enterprises for the purpose of collective bargaining is also relevant to the participation issue. The legislative framework regarding information, consultation and workers' participation at enterprise level is also found in the Labour Code of 2002. When defining these forms of social partnership, the legislator uses the notion "workers' representative" but without specifying who or what this is to be. As already mentioned, enterprise-level trade unions or, in their absence, the sectoral trade union or the works council may play this role. As far as information and consultation are concerned, the Labour Code stipulates the right of workers' representatives to be informed and consulted about the general situation in the enterprise, collective dismissals, transfer of businesses or parts of businesses, and so on, but without going into details. The notion of "participation", however, is not understood as a right of the workers' representatives to influence the election or appointment of members of the company's supervisory or administrative organ, but rather to the requirement to obtain the consent of workers' representatives for particular actions on the part of the employer (for example, approval of internal work regulations, work shift schedules, and so on). Other decisions of the employer require the weaker "consideration" of the workers' representatives. The idea that workers should participate in the election or appointment of management was first introduced by Soviet labour legislation in 1988 in order to promote the principles of self-government in state enterprises. After the restoration of independence in Lithuania these rules were quick abolished (1990) as a relic of the Soviet regime which contradicted the principles of private property and the undisputed right of the owner to manage a private enterprise. So far this attitude has not been disputed even by the trade unions. Workers' participation on enterprise boards was abolished even before privatization had got under way. As a result, in Lithuania no labour law today specifically requires or provides for workers' representation at board level in either private or state-owned enterprises. Lithuanian company law follows the German model, with a division between administrative and supervisory boards (single, unitary boards are allowed and are even quite popular in small companies). There is no legal obligation for enterprises to permit workers to elect/appoint members of the administrative or supervisory boards or for shareholders to discuss the possibility of employee involvement. The only way to get employee representatives on to the board of a joint stock company is through the votes of employee shareholders. To be sure, it is not prohibited for the statutes of joint stock companies to provide for the appointment of board members by the employees, but no company has ever taken that step. (See Table 3)

LUXEMBOURG (Industrial Relations' System)

Luxembourg's system of industrial relations is close in its form to that of France but it is based on a much more conciliatory approach. The Duchy has a mixed system of employee representation at company board level, provided for under a law passed in 1974. It covers both private enterprises that employ 1,000 or more workers who have been with the firm for over three years and all other companies where the state holds at least 25 per cent of the capital or where the company has been given a state concession in its main field of activity. In the large private firms employee representation must account for a third of the board of directors in a unitary board. In the public sector where the state holds at least a quarter of the capital one employee is elected to the administrative board for every 100 workers employed. There must be a minimum of three employee representatives but no more than a third of the board can come from the workforce. White and blue collar employee directors must be selected separately and in proportion to the number employed in each group in the company. These directors must be appointed from among the company's employees who are working in the company for not less than two years. But the system is different in the iron and steel industry. In that sector the most representative national trade unions are entitled to directly appoint three directors but they must not be employed by the company. The worker directors have the same

rights and obligations as their fellow directors and their length of tenure remains the same as well. However, they may find have their representation revoked by employees or in the case of the iron and steel industry by trade unions. Workers directors are not allowed to be members of more than two company boards at the same time. Luxembourg, like most European countries, also has a well-developed system of enterprise employee committees in establishments employing 15 or more workers.

LUXEMBOURG (Employee Representation at Workplace Level)

Depending on the size and structure and private or public nature of the enterprise, workplace representation in Luxembourg takes place through: employee committees (in all private-sector enterprises with 15 or more employees and also in the public sector where there are 15 or more employees employed under a private-law contract), with special safety representatives designated by and from their members; joint works committees (in larger private enterprises with 150 or more employees); and board-level employee representatives (in companies with 1,000 or more employees). See also young workers' representative.

LUXEMBOURG (Joint Work Committee)

In terms of employee representation at workplace level, alongside the employee committee, whose function is predominantly one of protecting employees' rights, Luxembourg legislation requires the establishment of a joint works committee possessing co-determination rights in all private enterprises with at least 150 employees. This committee, which is chaired by the head of the enterprise or a delegated representative, is composed of equal numbers of employer and employee representatives. The latter are elected by the employee committee(s) on a proportional representation basis from the manual worker and white-collar worker members of the workforce. Any category representing at least 10 per cent of the total workforce must be represented. In many cases the unions exert an indirect influence in that they propose lists of candidates who are often successfully elected.

The joint works committee has a threefold function: 1) it possesses co-determination rights over company policy on recruitment, promotion, transfer and dismissal, employee appraisal, works rules, health and safety matters, and the use of equipment to monitor employee performance; 2) it has *information and consultation rights* as regards management decisions on technical changes, working methods and the work environment, current and forecast labour requirements, vocational training and re-training, and the enterprise's economic and financial position, including an obligation on the employer to provide it with information, at least once a year, on levels of pay; and 3) it has the right to monitor and keep a check on company welfare facilities such as company housing. Responsibility for ensuring that the committee's rights are observed lies with the Labour and Mines Inspectorate.

In areas of co-determination, every decision of the committee which is backed by an absolute majority on both sides is adopted. In the event of failure to reach an agreement, the side that introduced the issue concerned may initiate the conciliation procedure and, where necessary, arbitration by the National Conciliation Service. For matters covered by consultation rights, joint opinions backed by an absolute majority are submitted to the head of the enterprise and are normally adopted; where the two sides disagree both opinions must be communicated to the company board.

Meetings of the committee are held during working hours, with guaranteed maintenance of pay for its members. The company must provide it with a suitable room and secretarial assistance. Advisers may be invited to participate in a consultative capacity. Committee members enjoy

special protection against dismissal (see protection against dismissal of joint works committee members) and their (renewable) term of office is five years.

Despite the legal rights of the joint works committee, the employer's control of the agenda and access to technical expertise may contribute to a situation where employee influence is in practice not great. The consequent lack of confidence in the institution and the tendency of the Labour and Mines Inspectorate not always rigorously to enforce the committee's rights mean that the institution may be far less powerful and widespread than the legislation might suggest.

LUXEMBOURG (Co-determination)

The forms of co-determination recognized in Luxembourg law consist in the rights over certain matters possessed by joint works committees, which were established by the Law of 6 May 1974, and the provision for board-level employee representatives introduced (despite considerable misgivings and heated debate among employers) by the same.

LUXEMBOURG (Board-Level Employee Representatives)

Under Luxembourg law, all public limited companies employing 1,000 or more employees for three successive years must have a board of directors with nine members, at least one third of whom must be employee representatives. The same applies, whatever the size of their workforce, to public limited companies established on Luxembourg territory in which the state has at least a 25 per cent, shareholding or which enjoy a state concession in regard to their main activity (this means, in fact, CEGEDEL (Grand Ducal Electricity Corporation), CLT (Luxembourg Radio and Television Corporation), Luxair (Luxembourg Airways) and SES (European Satellite Corporation)).

These employee representatives on the board of directors are elected by secret ballot, from lists of candidates based on proportional representation, by the company's employee committee(s). In many cases the unions exert an indirect influence in that they propose lists of candidates who are often successfully elected. However, in the case of the steel industry three of them are appointed by the most representative unions at national level (see representativeness of trade unions), after consulting the signatories to the collective agreement(s) applicable to the company concerned; they may be appointed from outside the workforce.

Candidates for appointment as worker members of the board must have been employees of the company for at least two years. Once appointed, their term of office is the same as that of other directors of the same company, and is renewable. They are jointly and severally liable with the other directors, and are liable for any torts committed in the course of their management. They may not sit on more than two boards of directors and may not simultaneously be directors of companies pursuing activities and objectives of the same kind. Nor are they permitted to perform work on behalf of another enterprise whose activities are of the same kind as those of the enterprise in which they are directors. Company directors covered by the relevant legislation, including worker members of the board, appoint by unanimous vote an independent auditor as one of the number of auditors prescribed by company law. (See also employee representation) (See Table 3)

MALTA (Industrial Relations)

Industrial relations in Malta are based on the British rather than on the European model. Indeed, Maltese trade unions have a workplace representative, known as a “shop steward”, who is the effective link between trade union officials and management. It is mainly through shop stewards that trade unions can monitor what goes on at the workplace, and by and large, Maltese trade unions tend to invest heavily in their informal and formal education. The culture of workers’ participation in the workplace is embodied in the functioning of the shop stewards rather than in a tradition of institutional representative bodies. Works councils are conspicuous by their absence. Even board-level employee representation is rather limited: at present there are only 14 worker directors in Malta, and, with the exception of the two in firms owned by the largest trade union, these worker directors are to be found in state-run or state-owned enterprises.

MALTA (Workers’ Participation)

In both spheres the legacy of Britain looms large: employee representation at the workplace seems to be more in line with the British than the European model. The main link between the trade union and the workplace is the shop steward on whom most trade union training programmes are targeted. There are 14 board-level employee representatives, all but two of whom are at state-owned or -run enterprises. Consultative bodies representing employees at the workplace are practically non-existent. Such is the lack of a culture of consultation at workplace level that a recent agreement between Air Malta and the four unions representing the various categories of employees to set up a works committee was hailed as a breakthrough in industrial relations. The current apathy regarding workers’ participation in Malta stands in sharp contrast to the situation in the 1970s. At that time the newly elected government was seeking to end the island’s ‘fortress economy’ mentality by making its economy dependent on its own initiative rather than on annual subsidies from the British government and its NATO allies aimed at maintaining the island as a fortress in the Mediterranean. To accomplish this self-reliance it pledged that while seeking new economic directions, it would also adopt a new form of industrial relations. Worker’s participation was earmarked to play a leading role in the new scenario. The government adopted a three-pronged approach to spread industrial democracy. First, it introduced workers’ participation in the management of enterprises in which the state had a controlling interest. The aim was to create a niche in the manufacturing sector run by workers. However, government, in order to upgrade economic performance and profitability, was constrained to seek partners from abroad for joint ventures. In this process government was forced to renege on its avowed principles and bow to the constraints of market pragmatism. Second, workers’ committees were set up in all parts of the public sector. Rather than engendering mutual trust, however, these workers’ committees ended up generating deep-seated suspicion between public sector employees and senior government officials. The trade unions, in dispute with the government, suspected that that these committees were being used as a tool to circumvent strike action. On the other hand, government accused the unions of

using the committees for self-aggrandisement rather than to enhance participation. Once their term of office ended no fresh elections for workers' committees were held. Finally, we might mention what happened at Malta Drydocks, Malta's largest employer by far. Drydocks was originally a naval dockyard for British warships and was converted into a commercial enterprise by the British colonial government. Four years after attaining independence in 1968, an Act of Parliament made the dockyard the property of the Maltese government. In 1971 the newly elected government set up a Board of Directors made up of three trade union officials representing the workers and three members appointed by government. The person of the chairman was agreed on by both sides. The industrial peace ushered in by this system enabled Drydocks to make a profit for the first time in its history in 1973–74. The prospects of a viable economic Drydocks induced the government to amend the Drydocks Act, to the effect that the enterprise was to be run by a board directly elected by the workers. By this amendment the Drydocks became a self-managed firm and for some time it appeared to be a textbook example of workers' participation. However, the profitable trading positions of the mid-1970s were not maintained and in the early 1980s the company plunged into loss. The losses became chronic and the enterprise had to rely on heavy government subsidies to survive. These subsidies, as the press continuously argued, became a burden on the Maltese tax payer. Two reports commissioned by government (one on the financial situation and the other on the management system) made damning comments on how self-management was operating. Following the publication of the two reports the participation system at Drydocks was dismantled. The reversal of this self-management system sounded the death knell of workers' participation. The euphoria surrounding workers' participation in the 1970s was ultimately not sustained among policy-makers, trade unions and workers. The high trust relationships which it sought to establish failed to materialise both in the public sector and at Drydocks. Perhaps the piecemeal and haphazard way in which it was introduced was its undoing. The way each side, driven by the self-interest of their individual members, tried to manipulate the system to its own advantage made workers' participation look more like a blatant struggle for power than a tool for improving working conditions. Of course, the system must also be analysed in the context of the economic constraints of a small, resource-poor island state, heavily dependent on foreign investment. Drydocks was a unique case. Had this commercial enterprise, which is socially owned, demonstrated that workers' participation is conducive to higher productivity and a sound financial position, then the case for workers' participation would have been stronger. This demonstration effect was not forthcoming.

In retrospect, the Maltese experience of workers' participation over the last 30 years has been a string of abortions and miscarriages. The current indifference towards transposition of the SE directive can be therefore be explained in the following terms: a) the absence of Maltese transnational companies with bases on the European mainland; b) the almost total dominance of foreign-based companies, most of which tend to be SMEs; c) the absence of a tradition of legally instituted bodies of workers' representation at the workplace; d) bitter failures to sustain workers' participation schemes: trade unions are wary that such schemes can be manipulated by managers to circumvent their actions, whereas employers, on the basis of past experiences, are afraid that such practices can be used to satisfy worker self-interest to the detriment of the firm. These factors all contribute to a situation in which at present a European Company incorporating the principles of workers' participation does not seem a viable option to any of the industrial relations actors. (See Table 3)

MANAGEMENT AND LABOUR

'Management and labour' is the English term used in EC law to refer to organisations representing workers and employers. The equivalent term used in other language versions is 'social partners'. This equivalence may be illustrated through EU Directive 97/81 concerning

the Framework Agreement on part-time work, concluded by UNICE (now BusinessEurope since January 2007), CEEP and the European Trade Union Confederation (ETUC), where the second Recital of the Preamble to the directive reads: ‘Whereas management and labour (the social partners) [...]’. Of particular importance, the term ‘management and labour’ appears in Articles 138-139, EC Treaty, as referring to those organisations at EU level entitled to initiate the European social dialogue, which may lead to contractual relations including agreements between them. The identification of organisations claiming to fall within the meaning of the ‘management and labour’ raises numerous potential difficulties.

MANAGEMENT PREROGATIVE

Management (or managerial) prerogative refers to the right of management to take and act upon decisions affecting the business or organisation. The scope of management prerogative is broad, from the level of product or service strategy to day-to-day operational issues. It is bounded by legal regulation, collective bargaining and other agreements with employees and their representatives. Such boundaries need not fundamentally challenge management prerogative, but rather subjects the process of decision-making to a requirement to acknowledge the interests of other stakeholders, including employees.

MEXICO (Union Presence in the Enterprise)

Within the Mexican legislation several unions may exist in one enterprise or establishment; each of them may celebrate their own collective labour contract or, in the case of a previous agreement, a common accord may be carried out as long as they are guilds in concordance. The Federal Labour Law (Art. 388) permits for various guilds and enterprise or industrial unions to concur, as long as the number of the members of guilds is larger than the number of workers of the same specialty belonging to an enterprise or industrial union. All types of unions may also be present, but if they do not represent a majority they can not participate in a collective contract. Strictly speaking, the participation of unions in enterprises or establishments is determined by the criteria of the majority, excluding the intervention of other unions in the internal regime of enterprises. In Mexico the union with the majority exercises an absolute exclusivity in managing collective interests.

Union presence in an enterprise or establishment is determined by the executive board in the case of unions, and by delegates in the case of guilds or industrial unions. There are no applicable legal rules concerning the individual, but procedures are generally stipulated in collective agreements. However, the delegates' powers are usually sufficient only in resolving minor issues. For more important matters, the executive committees usually intervene.

MEXICO (Mixed Boards)

The problems of the enterprises permit *in situ* solutions; on the contrary they must resort to labour courts. The latter supposes excessive delay and it is a general principle that lingering justice is not justice. Thus, the law attempts to create immediate solutions within the same enterprise and propagates the formation of mixed boards, which in reality are two-party organisms formed legally or conventionally by collective agreement and whose purpose is to solve the most urgent problems. These mixed boards, generally formed on the basis of parity, i.e. with an equal number of representatives from each party, may be constituted as a requisite of the law or as a decision of those interested. Among the boards of legal origin are: the board that determines the participation of each worker in the profit-share of the enterprise: art. 125-I, of 1970 Federal Labor Law (FLL, Ley Federal del Trabajo, as subsequently amended); the one that annually forms the scale of seniority by the classification of each occupation or profession

(Art. 158); security and hygiene boards (Art. 509); and boards of qualification and training (Art. 135-I, FLL). The first two are temporary while the last two are permanent, although boards of qualification and training are not always constituted, but rather depend upon collective agreements. Mixed boards, integrated by the decisions of the parties are multiple. Among the most frequently formed are those of debate and discipline. However, according to the importance of the industry, they can generally function much more in relation to the specific benefits of the collective agreement. Others that can be mentioned are those that inspect fringe benefits (dining roomed sports and cultural activities, stores, etc.), which to some extent solve problems of common interest (organisms of technical joint management, for example) and others. For the legislator, the formation of mixed boards is very important, because these boards constitute a means of adequate solution to miner problems. Thus, it has been established that their decisions will be executed by the conciliation and arbitration boards 'wherein both parties declare them obligatory' (Art. 392).

MEXICO (Joint Management)

Joint management has not developed in Mexico. There are many reasons for this; first of all, the low level of education of workers in general, although frequently some have vocational and university studies; and secondly, the strong resistance of the business sector to this possibility. There have been cases wherein, inclusive in the same Constitutional Art. 123, upon regulating workers' participation in profit sharing, it is said that the authority to intervene in the management or administration of the enterprise does not apply' (paragraph A, fraction IX-f). However, a certain type of joint management has been determined by some collective agreements, frequently resolved with the intervention of a union representative on the board of directors; or, in some cases, mixed boards have been constituted for technical issues. With changes in union management, as a consequence of the economic crisis and the modification of the strategies of struggle, a development of joint management organisms has surmised through awareness, with the right of the unions to be heard in technical decision-making that may affect their employment, although not to the degree that their points of view are totally fulfilled.

MEXICO (Three-Party Organisms in the Labour System)

In a narrow relationship with traditional corporation in Mexican labour relationships, the three-party system has assumed particular importance. Its' first manifestation is undoubtedly in the formation of conciliation and arbitration boards, which by constitutional decree (Article 123, fraction XX, paragraph a) are in charge of solving the differences or conflicts between capital and work, and are formed 'by an equal number of representatives of both workers and employers plus a government representative'. As a derivation, they have been used for many other activities, some of which are related to labour relations in a strict sense (boards to determine minimum wages and a national commission to determine workers' profit share), and others in the narrow vicinity of employment rights. Thus, we have a three-party integration of government institutions such as the Mexican Institute of Social Security and the National Dwelling Fund. The three-party system has gone further, functioning also from a political perspective. The National Three-party Board, created in 1971 by President Luis Echeverría, took an important part in attempting to solve diverse national problems, and, from the efforts of its Fifth Commission, a FLL reform was derived concerning dwelling issues that served to create the National Dwelling Fund (INFONAVIT). A three-party system, perhaps more formal than real, has supported the creation of social pacts such as National Solidarity Pact of 1983, Economic Solidarity Pact of 1987 and Stability and Economic Growth Pact of 1988.

NETHERLANDS (Workers' Participation)

In the Netherlands participation has developed mainly through systems created by law, such as works councils, the right of investigation and direct employee consultation on work. The process by which employees have a voice in arriving at collective agreements is not usually regarded as participation. There are various reasons for this. First there is the fact that, historically, participation law has developed independently of law on collective bargaining, which had already been in existence for some time. Second, the voice which employees are given through each of these two approaches relates to a different domain: in the case of collective agreements influence is exerted on terms and conditions of employment for individual employees, whereas participation mostly relates to matters which concern employees as a group, such as the establishment of an occupational pension scheme or the relocation of an enterprise. Lastly, in the case of collective bargaining employees' interests are represented via an agency external to the enterprise (externalized bargaining), whereas participation through works councils is specifically effected via council members who are employees of the enterprise. Although this latter process may also be described as taking place through representatives, works council members are elected directly by the employees themselves. Nevertheless, the distinction between participation via works councils and via the unions is not always a clear one, since the unions also concern themselves with internal matters affecting a collective group of employees, such as working hours or a company merger, and works councils increasingly have a say in decisions on terms and conditions of employment. Participation serves the ends both of the employees -dispersion of power, with employees gaining more personal responsibility and the promotion of interests becoming more evenly matched- and of the enterprise: prior consultation helps to ensure that a decision will be accepted more readily and hence implemented more quickly. In the Netherlands, the works council has its current legal basis in the 1979 Works Councils Act. This Act makes it compulsory for a works council to be set up by all employers who employ either 100 or more employees, or at least 35 employees for more than one third of normal working hours (in which case the council has slightly more limited powers). In enterprises with fewer than 35 employees, a works council is not compulsory but the employer is required to hold consultations with the workforce at least twice a year on the state of affairs in the enterprise and any particularly important matters that arise. The Act applies both to the market sector and to institutions in the non-profit-making sector. (See Table 4)

NETHERLANDS (Works Councils)

In Netherlands works council has increasingly evolved from being a channel for co-operation between employer and employees into a body that represents the interests of the workforce. In the first Works Councils Act (WCA, 1950) the employer was still a member of, and the chair of, the works council, which was regarded as furthering the interests of the enterprise. With successive amendments of the WCA (1971 and 1979), the works council was given more and more powers and responsibilities and its role as a forum for representing employees' interests

gained growing importance. The works council may be seen as a compromise between the consultation function and the representation function. Works council members are elected directly, by secret ballot, from lists of candidates drawn up by employees within the enterprise either in consultation with the unions or not. The works council may form standing and ad hoc committees for the purposes of fulfilling its functions. The employer is obliged to provide the council and its committees with facilities for consultation meetings and time for training. In addition, since 1979 the dismissal of works council members has been prohibited in order to prevent their suffering any disadvantage as a result of occupying this position. The council possesses various powers. The most far-reaching is the right of consent. Under Article 27 of the WCA, the employer must obtain the council's consent for any decision introducing, amending or withdrawing the rules on labour-related matters specified in that Article. These include rules on working hours and holidays, payment systems and job evaluation schemes, health and safety at work and the enterprise's works rules. The council's consent is not, however, required in cases where the matter concerned is already regulated by a collective agreement. Other powers are the council's right to prior consultation on economic matters, covering circumstances such as transfer of control of the company and the retrenchment, expansion or significant alteration of its activities, together with the right to regular consultation meetings with the employer and the right to information. A duty of secrecy may be imposed on the council in respect of certain types of information supplied to it. Lastly, a works council that is attached to a "structured" company possesses the power to nominate candidates for the supervisory board and in certain cases may lodge an objection to the (re-)appointment of a (new) board member. Disputes may arise between the council and the employer over the application of the WCA. For the purposes of resolving any such disputes, the Act contains a provision whereby both the council and the employer may, if earlier mediation by a Joint Sectoral Committee has failed, apply to the courts for a ruling on the issue. In cases where an employer has ignored the council's advice on management decisions as referred to in Article 25 of the Act, the council possesses a right of appeal to a special court, the Companies Division of the Amsterdam Court of Appeal. So far, councils have actually been set up in 90 per cent of Dutch enterprises with 100 or more employees and 60 per cent of those with 35-99 employees. (Since these enterprises for which a works council is mandatory are not obliged to have a safety committee as required in smaller enterprises, in the respectively remaining 10 per cent. and 40 per cent. of enterprises still without a works council the sole form of protection as regards working conditions is external enforcement by the Labour Inspectorate. The works councils appear to concern themselves mainly with labour-related, organizational and technical production matters and less with financial and economic aspects. Also, they monitor the employer's policy rather than make proposals of their own. Employers appear to give the council's views serious consideration in their decision-making.

NETHERLANDS (Right of Investigation)

Term referring to the right, regulated in Articles 344-359 of Book 2 of the Civil Code, to request the Companies' Division of the Amsterdam Court of Appeal to institute an investigation into the management and financial affairs of an enterprise (more specifically, a private limited company, public limited company, co-operative society or mutual insurance association). The request may be submitted by a group of shareholders or by a trade union. Before an investigation is applied for, the enterprise's management and supervisory board must be informed in writing and the works council must be given the opportunity to express its opinion on the application. Where the Companies Division suspect mismanagement, it may order such an investigation to be carried out. Should this then reveal evidence of bad management, the Companies Division may, among other things, dismiss members of senior management or overturn decisions that have been made.

NETHERLANDS (Direct Employee Consultation on Work)

Term used to refer to a systematic and regulated form of consultation between the head of the enterprise and the workforce which enables employees to participate in decision-making relating specifically to their work and working conditions. It provides them with the opportunity to voice any criticisms or difficulties, to which the employer can then respond directly. The underlying intention is that this should increase employees' motivation. Both the Works Councils Act and the Working Conditions Act contain provisions designed to promote the practice of direct employee consultation. Studies carried out in the past decades showed that it existed in around 30 per cent. of the enterprises surveyed, with large enterprises appearing to be more active in this respect than smaller ones. The use of quality circles is a specific form of such consultation, which may also exert an influence on the organization of work by way of work structuring or job rotation.

NETHERLANDS (Employee Consultation on Health and Safety)

The Working Conditions Act (WCA, 1980) replaced the 1934 Safety Act (*Veiligheidswet*). Unlike the Safety Act, the WCA is not confined to the protection of employees against health and safety hazards: its objective is broader, *i.e.* the promotion of humane working conditions (quality of work). Given this breadth of scope, the WCA Act takes the form of a framework law, with many of its Articles requiring more detailed implementing regulations to be enacted to give them practical meaning. In the earlier Safety Act, the employee had been viewed as a passive object of protection. By contrast, the current Working Conditions Act takes as its starting point the principle that the employer must involve employees in the formulation of health and safety policy within the enterprise. To this end, employers are under an obligation to consult the works council in advance on the policy to be followed. In practice, this consultation is often conducted through a health and safety committee of the works council (*commissie voor veiligheid, gezondheid en welzijn*).

NETHERLANDS (Board Level Employee Representation)

In 2004, a law on Supervisory Boards (SB) in larger companies has brought considerable changes in the field of employee board-level representation. The SB nominates candidates when a vacancy arises. Candidates can be put forward by both the general meeting of shareholders and the works council. The general meeting can reject a candidacy, after which the procedure starts again. The works council has an 'enhanced' right to nominate candidates up to a maximum of one-third of the seats on the supervisory board: that is, the supervisory board is in principle obliged to accept these nominations. In the Netherlands, there is an ongoing debate on a range of issues in company law, codetermination and corporate governance. One way of grouping these debates is in terms of the different mechanisms that can be used by shareholders to control management. These mechanisms are: a) direct supervision (e.g. by a supervisory board); b) takeovers; c) voice (e.g. shareholders go to court to challenge management decisions); d) management remuneration; e) external control (e.g. accountants). Most of the issues/mechanisms (arguably with the exception of external control) are clearly also of relevance to workers and their representatives. (See Table 3)

NETHERLANDS (Supplementary Pension Schemes)

Collective pension schemes for particular groups of employees or self-employed persons, providing a supplement to the basic pension provided under the General Old Age Pensions Act. Occupational pension schemes (*bedrijfspensioenregelingen*) are the major example. These are based on the assurance by employers of pension cover for their employees, which under the

1952 Pension and Savings Funds Act must be done by joining an industry-level pension fund (*bedrijfspensioenfond*s), setting up a company pension fund (*ondernemingspensioenfond*s) or taking out pension insurance for employees with an insurance company. Employers are in principle free to choose whether or not to arrange pension cover, but may be obliged to do so under a collective agreement or the Act concerning compulsory membership of an industry-level pension fund. In addition to such occupational pension schemes, various professions have their own forms of pension provision and government personnel are similarly covered by separate pension arrangements, accumulating a pension in the General Civil Pension Fund. In the private sector, the costs of supplementary pension schemes are financed either wholly by employers or partly by employers and partly by employees. Public servants pensions are financed partly by the government and partly from contributions paid by public servants themselves.

NEW ZEALAND (Institutionalized Relations)

During the 1990s institutional relations between employers' associations and unions became increasingly less frequent as industry and occupational collective bargaining gave way to enterprise bargaining and the political atmosphere of the time discouraged most forms of employer-union co-operation. The extreme hostility displayed towards unions by the then Employers Federation as well as regional associations meant that cooperative relationships were extremely unlikely. Tripartite cooperation was also extremely rare given the then government's strong antipathy towards unions. In addition, it was not until the late 1990s that both unions and employers' associations had themselves gone through a period of internal restructuring and realignment, a process focused more on internal problems rather than relationships with other organizations.

NEW ZEALAND (Institutionalized Relations at a National Level)

By the end of the 1990s it had become increasingly apparent that a degree of cooperation was needed between unions and employers organizations. Problems in the labour market such as skills shortages were seen as requiring a much greater degree of collaboration. The passage of the Employment Relations Act 2000 ("the ERA") takes as its principal objective the building of productive employment relationships "through the promotion of good faith in all aspects of the employment environment and of the employment relationship." Productive employment relationships are seen as essential for the social and economic well-being of the country, as well as for the well-being of workers and employers. It is intended under the ERA that good faith infuse the entire employment relationship, a term defined to include not only the relationship between employer and employee, but also the one between employer and union. It is significant that the good faith obligation expressly and specifically applies beyond the bargaining table to "consultation" between union and management. The ERA, with its emphasis on good faith, also saw a much greater emphasis being placed on bipartite and tripartite cooperation. For example the scheme of employment relations of education leave set up under Part 7 of the ERA requires all courses to have ministerial approval. This approval in practice is given by a committee made up of some independent members but which also includes representatives of both the Council of Trade Unions (NZCTU) and the Business New Zealand (BNZ). Similarly in developing a code of good faith under Part 5 of the Act the Minister must appoint a committee which, in addition to independent members, must include equal numbers of employer and union representatives. At a less formal level there has also been a considerable increase in both tripartite and bipartite policy development. For example Part 6A of the ERA, which was enacted as part of the 2004 amendments, deals with continuity of employment if an employer's business is restructured. This Part of the Act was largely

developed through the work of a tripartite committee that considered a wider range of options relating to continuity of employment. This increasing cooperation (of the Minister, NZCTU and BNZ) is also seen at a number of levels outside the formal governmental processes. Such cooperation has become more apparent at industry level between the relevant industry unions and the industry associations.

NEW ZEALAND (Institutionalized Relations at the Workplace Level)

Legislatively mandated institutional relations at the level of the workplace are relatively rare. Generally speaking the policy of the government is to allow employers and employees to develop such relations as is appropriate to their particular position. As recent surveys report, more than 30 per cent of employees covered by collective agreements are covered by an agreement that includes some form of union-management consultative structure. The only formalized legislative requirements are found in relation to safety and health. Part 2A of the Health and Safety in Employment Act 1992, which came into effect in May 2003, has the objective of requiring the participation of employees in processes relating to health and safety in their place of work. This Part of the Act requires employers to develop an employee participation system. The system is left far the parties, including any relevant union, to develop but if there is a failure to agree a mandatory participation system is set out in Schedule 1A of the Act. Similar schemes are required in some circumstances as part of the ACC system, in particular where employers choose to self-manage accident compensation and rehabilitation.

NORWAY (Board Level Employee Representation)

The Norwegian model resembles in principle the single-tier structure, but the provisions relating to the corporate assembly contain elements of a double-tier system: a corporate assembly (which must not be the board) must be established in companies with more than 200 employees. The general assembly elects two-thirds of the corporate assembly's members, while one-third of members are elected by the employees. Employees or trade unions comprising two-thirds of all employees may demand that observers and deputies be elected. The corporate assembly elects all board members. Under the law one-third or at least two board members are elected by the employees. The corporate assembly's competences are far-reaching (i.e. in addition to its right to elect the members of the company board). On the basis of board recommendations it may make decisions in cases involving: i) significant investments; ii) rationalisation or restructuring which will significantly affect the workforce (normally covering 10 per cent of the workforce or more).

Employees in both the private and the public sector have the right to nominate employee directors (up to one-third). The legal basis for employee board-level representation is formed by a number of laws. As a rule, if the company is a legal entity in its own right (in both public and private sectors), employees will enjoy board representation. The Act on limited companies (Norwegian public limited liability companies act [Public Limited Liability Companies Act] Updated as per 1 January 2008), provides the basis for representation arrangements: a) in companies with less than 30 employees, the representation rights of employees can be established on a voluntary basis in the company statutes; b) in companies with 30 to 50 employees, two-thirds of the workforce may demand one representative on the board, together with an observer and two deputies, regardless of the size of the board; c) in companies with more than 50 employees, one-third of board members must be elected by and from among the employees. Regardless of size of board, employees are entitled to at least two representatives; d) if the company has more than 200 employees and a decision has been made not to establish a corporate assembly, employees are entitled to elect one board member or two observers in addition to their entitlement as companies with more than 50 employees. A general assembly

may decide to allow employees to elect more members and/or observers than is stipulated in the Act(s). (See Table 3)

NORWAY (Employee Directors)

Employee directors are elected by and from among all employees. The underlying principle in Norway is election by and from among all employees. Workers' representatives must have been employed full- or part-time in the company for at least one year prior to election. They may not be members of the corporate assembly, nor employee representatives in several companies at the same time. This rule is not applicable to positions on different decision-making bodies in a group of enterprises.

Employees have to ask for the implementation of board-level representation: Employee board-level representation is not automatic: employees must request application of this legal right. These demands must be presented to the employer in writing. It is required that: a) a formal request is signed by half the employees concerned, or b) a majority of employees vote in favour; such a vote may be initiated by the works council or by one or more company-level trade unions. The right implies a duty on the company's part to implement board representation when the legal preconditions are met, that is, they may not refuse employee representation on company boards.

Employee directors have basically the same rights and duties as the other board members. As a rule, there are no differences between employee board representatives and other representatives, with one important exception: employee representatives may not be removed/dismissed by the general assembly. Their term of office is two years, like the rest of the board, and their mandate is renewable. Employee directors enjoy special protection against dismissal in the Basic Agreement. However, there are a few provisions which limit the influence of employee representatives on boards in parts of the public administration, primarily in relation to the employers' preparations for negotiations and/or industrial disputes with employees/employee organisations. In the state sector there are also provisions that allow employees board participation on particular matters (that is appointments). Employee directors receive the same remuneration as other board members. It is not uncommon, although no figures are available, for employee representatives to donate (part of) their board fee to the local trade union. Employee directors have been elected in the majority of the companies employing more than 30 people (estimate). Approximately half of private sector employees work in companies with more than 30 employees. There is no official information on how many of these are represented on company boards. Size, collective agreement and public ownership seem to be the most important variables for estimating whether or not you may find Employee directors on the board. We do not have any reliable estimates concerning the boards of public sector enterprises/companies. Here we assume (among other things on the basis of collective agreement coverage in this sector) that employees will be represented on most boards where the legal framework or collective agreement provides such rights. Our assumption is that there is employee board representation in most of the larger groups and companies in Norway.

Problems faced by employee directors. The following are among the most important considerations in relation to employees' influence through board representation: a) the competence of the board: representation in subsidiary companies may often be merely formal if the most important decisions are taken elsewhere; b) coordination among the different trade unions in relation to elections and the distribution of representatives and between representatives from different trade unions. If representatives fail to establish alliances their influence will be considerably weakened; c) coordination and exploitation of board representation as an intrinsic part of employee participation and codetermination.

Conclusion. Norway has a good system of employee participation and influence. The regulatory framework has remained stable (legal framework as well as collective agreements) and there have been only minor changes to rights connected to social partner cooperation in the last 30 years. Around 30 per cent of employees in unionised enterprises are or have been representatives on joint social partner bodies at the workplace. The level of disputes is low, and managers and shop stewards are by and large content with relations at company level. A majority of employees are satisfied with their influence vis-à-vis their own work situation, and well-being at work is rated highly. On the other hand, individual rights connected with appointments, dismissals, sickness benefits, and so on, are increasingly under pressure, and relations between the social partners at the central level and under the present government are tense. Modernisation and reform of the public sector have generated significant conflict.

NUMMI (New United Motor Manufacturing Inc. - USA)

The factory “Nummi” was an old General Motors plant in Fremont, California, and then a joint venture between GM and Toyota. When it reopened for production in 1984, it was the first automotive joint venture plant in the USA. GM saw this joint venture as an opportunity to learn about the ideas of Lean Manufacturing from the Japanese company, while Toyota gained its first manufacturing base in North America and a chance to implement its production system in an American labor environment: the plant was operated in accordance with Japanese principles though many of the managers were Americans and most of the old GM employees, dismissed on 1982, when the plant had been shut down, were rehired. The union was recognized. For Toyota, it was a chance to learn whether the Japanese approach would work in the United States; for GM it was a chance to learn how these principles worked in practice. The emphasis was on work teams. Teams were made responsible for planning job rotation, balancing work assignments to equalize work loads, and engaging in *kaizen* ("continuous job improvement"). Team leaders remained union members but were selected on the basis of recommendations from a joint union-management team. Workers were systematically rotated from job to job, thus providing training and relieving muscular strain. Beyond this, there were numerous joint union-management "off-line" teams. And each work-team was given a cubicle where team members could have lunch, hold meetings, and post family pictures. By the time full production was reached in 1986, NUMMI's quality and productivity was as high as any plant in the GM system and close to Japan's best. Yet the basic technology and degree of automation remained unchanged. Under GM management, it took 48.5 man-hours to assemble a car; under NUMMI this dropped to 19.6. The absenteeism rate (including for illness) fell to 4 percent, half the GM average. Part of the success was due to the fact that working conditions were much improved and the new jobs actually made use of workers' brains. Additionally, those who had accepted transfers to the Midwest could now work at home. During its early days, NUMMI received much attention from scholars and the press. Today it is largely ignored. Nevertheless, as new models are brought in, there is still some opportunity for *kaizen*. Further, NUMMI workers were treated with more "decency and respect" than in most other plants. Though NUMMI was primarily an exercise, in direct participation, the plant ranked high in the tier of unionized plants.



OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (Disclosure of Information)

The OECD Guidelines for Multinational Enterprises (MNEs) are recommendations to enterprises, made by the Governments of OECD Member countries and annex to the OECD Declaration on International Investment and multinational enterprises. They are recommendations providing voluntary (legally non-binding) principles and standards for responsible business conduct for MNEs operating in or from countries adhered to the Declaration. Their aim is to ensure that MNEs operate in harmony with the policies of the countries where they operate. These voluntary standards cover the full range of MNEs' operations. Originally the Declaration and the Guidelines were adopted by the OECD on 1976 and revised on 1979, 1982, 1984, 1991 and 2000.

Basic elements. The Guidelines cover business ethics on: employment, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition and taxation. According to the OECD Council decision, each adhering country has to set up the National Contact Point (NCP). NCP is a government office responsible for promotion of the Guidelines on a national level. NCP handles all enquiries and matters related to the Guidelines on adhered country. The OECD Investment Committee is the OECD body responsible for overseeing the functioning of the Guidelines and implementation of all OECD investment instruments. The Committee consists of member states' senior officials from treasuries, economics, trade and industry, and foreign affairs ministries and central banks. All OECD member states are members of the Investment Committee. Argentina, Brazil and Chile are observers while Estonia, Israel, Latvia, Lithuania, Romania and Slovenia participate in the work of the Committee on issues related to the Guidelines.

Disclosure of information. Enterprises should, having due regard to their nature and relative size in the economic context of their operations and to requirements of business confidentiality and to cost, publish in a form suited to improve public understanding a sufficient body of factual information on the structure, activities and policies of the enterprise as a whole, as a supplement, in so far as necessary for this purpose, to information to be disclosed under the national law of the individual countries in which they operate. To this end, they should publish within reasonable time limits, on a regular basis, but at least annually, financial statements and other pertinent information relating to the enterprise as a whole, comprising in particular: a) The structure of the enterprise, showing the name and location of the parent company, its main affiliates, its percentage ownership, direct and indirect, in these affiliates, including shareholdings between them; b) The geographical areas where operations are carried out and the principal activities carried on therein by the parent company and the main affiliates; c) The operating results and sales by geographical area and the sales in the major line of business for the enterprise as a whole; d) Significant new capital investment by geographical area and, as far as practicable, by major lines of business for the enterprise as a whole; e) A statement of the sources and uses of funds by the enterprise as a whole; f) The average number of employees in

each geographical area; g) Research and development expenditure for the enterprise as a whole; h) The policies followed in respect of intra-group pricing; i) The accounting policies, including those on consolidation, observed in compiling the published information.

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (Representative Workers' Right to Information)

A relevant chapter of the OECD guidelines for multinational enterprises addresses employment and industrial relations, where enterprises are encouraged to respect employees' rights to representation, refrain from unfair influence in labour negotiations or during organizing campaigns, and to negotiate constructively on employment conditions. Enterprises are also encouraged to provide reasonable notice of changes in operations that would have major effects on employees and to co-operate to mitigate these changes' adverse effects. In particular, enterprises should: respect the right of their employees to be represented by trade unions and other bona fide organizations and engage in constructive negotiations with them on employment conditions; provide assistance and information to employee representatives; provide information for a true and fair view of the performance of the enterprise; [...]; enable authorized representatives of their employees to conduct negotiations on collective bargaining or labour-management relations with management representatives authorized to take decisions on the matters at hand.

OUTSOURCING

Outsourcing (or contracting out) may be defined as the delegation of non-core operations or jobs from internal production to an external entity (such as a subcontractor) that specializes in that operation. Outsourcing became a popular concept in business and management in the 1990s. Outsourcing can be used for a variety of reasons: to save money, improve quality, or free company resources for other activities. A subset of the term (off shoring) also implies transferring jobs to another country, either by hiring local subcontractors or building a facility in an area where labour is cheap.

OUTSOURCING (EU legislation)

Where outsourcing involves the transfer of an undertaking, it is subject to Directive 77/187 of 14 February 1977, on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (as amended by Directive 98/50 of 29 June 1998; consolidated in Directive 2001/23 of 12 March 2001). Under that directive, rights acquired by employees with the former employer are to be safeguarded when they, together with the undertaking in which they are employed, are transferred to another employer, the contractor. An example of a case involving such contracting-out was the decision of the European Court of Justice in *Christel Schmidt v. Spar- und Leihkasse der früheren Ämter Bordesholm, Kiel und Cronshagen* (1994, Case C-392/92). Although subsequent decisions have disputed whether a particular contracting-out exercise constituted a transfer of an undertaking (see, for example, *Ayşe Süzen v. Zehnacker Gebäudereinigung GmbH Krankenhausservice*, 1997, Case C-13/95), in principle, employees of an enterprise outsourcing parts of its activities in which they are employed may benefit from the protection offered by the directive.

PARTICIPATION (Concept of)

Workers (or employee) participation (WP) may be defined as any workplace process or mechanism that allows employees to exert some influence over their work and the conditions under which they work. This definition includes a wide spectrum of practices from consultation of employees concerning aspects of the production process or workplace environment, to co-determination in decision-making by employee representatives, or even the supplanting of management to some extent by full workers' control (such as in cooperatives). Broadly speaking, formal processes for WP can be divided into three approaches which may also co-exist in the same workplace: a) representative or *indirect participation* through employee representation (works councils, consultative committees, trade unions, and employee representatives on boards of management); b) *direct participation*, practised face-to-face or individually between employees and managers or through teams, quality circles, and semi or fully autonomous work groups; and c) *financial participation*, through employee shareholding, encompasses different schemes under which employees can benefit from the organization's economic performance. To employee participation on boards of management refers Directive 2001/86, supplementing the European Company Statute with regard to the involvement of employees. Article 2(k) defines *participation* as 'the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of the right to elect or appoint some of the members of the company's supervisory or administrative organ; or the right to recommend and/or oppose the appointment of some or all the members of the company's supervisory or administrative organ'.

PARTICIPATION IN UNDERTAKINGS (ILO Resolution Concerning WP and its Follow-up)

The Preamble of the Resolution of 1966, entitled: "Resolution concerning Workers' Participation in Undertakings", referred to the development of workers' participation in various parts of the world, notes that: "in various countries with different economic and social structures, efforts and experiments have been made and are being made to enable workers to participate in decisions taken in their undertakings, especially when such decisions affect their employment and their conditions of life and work". In its operative part, the resolution requested the Director-General of the ILO to focus the Office's action in three major areas: a) to study the various methods of workers' participation used throughout the world; b) to convene workers' education seminars to discuss the problems involved; and c) to consider placing the question of workers' participation on the ILO Conference agenda. In addition, it was understood that the discussion by the Conference might then lead to the adoption of international labour standards in the form of one or more instruments. In 1967, to give effect to this resolution, the ILO convened a Technical Meeting. Among the experts who attended this meeting there were workers', employers', governments' representatives as well as several academics. It was the first time that the ILO specifically discussed the notion and implications of workers' participation. The agenda included the item: "methods used throughout the world

to enable workers to participate in decisions within undertakings". In the report submitted to the meeting, the ILO secretariat had described various forms of workers' participation, using a broad interpretation, including such methods as consultation, provision of information, negotiation and bargaining, and workers' representation in managerial bodies. The final report adopted by the meeting contained international and comparative conclusions about workers' participation which are still valid and relevant today. The meeting findings somehow are still of interest to those interested in the topic of workers' participation. In this regard, it is worth while to recall some of them. At the beginning of its deliberations, the Meeting considered the question of whether it was possible to arrive at an internationally agreed definition of the term "participation", in order to elucidate what was meant by the expression "participation of workers in decision within undertakings". After a series of complex and long discussions, it found that it was not possible to reach a common definition. In fact, the term "participation" was interpreted differently by different categories of people in different countries and at different times. In addition, several experts expressed the view that, taken in its widest possible sense, workers' participation might be so all-embracing that it tended to become almost meaningless. In the report, one could also find arguments according to which the expression "participation of workers in decision within undertakings" was a general frame of reference which had the advantage, for the purposes of international comparison, of placing the emphasis on the various types of decisions which had to be made within the undertaking in any economic system and on the degree of influence which the workers might have on the making of these decisions according to the nature of the problems, rather than on the very different types of institutional machinery through which this influence might be exercised. In other words, seen in this perspective, the expression "participation of workers in decisions within undertakings" allowed a comparison of the influence of workers on the preparation, making and follow-up of decisions taken at the enterprise level on various matters, such as fixing of wages and conditions of work, welfare services and safety, discipline and employment, vocational training, introduction of technological change and organization of production as well as their social consequences, investment and planning, and so on. Based on this broad definition, the Technical Meeting believed that "participation of workers in decision within undertakings" was distinct from, and therefore wider than, the concept of workers' participation in management". This broad definition of workers' participation still reflects the meaning which the ILO recognizes and today when dealing with this specific notion reference is made to the above mentioned meaning. One direct consequence of the meeting's conclusions was that the subject of workers' participation was not ripe for discussion by the International Labour Conference with a view to drawing up an international standard. Such an outcome demonstrates a maxim of great importance. In fact, it should be noted that international labour standards and principles can be developed only for those notions (concepts) on whose meaning a large measure of international agreements already exist (for example, collective bargaining). Concepts and notions which are understood differently in different countries (for example, workers' participation) will continue to lack international standards until an international consensus is reached. In the years, no attempt was made to place the item of workers' participation on the International Labour Conference agenda. However, a number of Conventions and Recommendations deal with particular forms and aspects of workers' participation. Among others, mention should be made of Recommendation No. 94 on Cooperation at the Level of Undertaking of 1952; Recommendation No. 129 on Communications within the Undertaking of 1967; Recommendation No. 130 on the Examination of Grievances of 1967; Convention No. 135 on Workers' Representatives of 1971 and its accompanying Recommendation No. 143; Convention No. 158 on Termination of Employment of 1982 and its accompanying Recommendation No. 166. All these international standards have a common denominator: workers representation should be associated in one way or another with certain types of decision-making. In order to elucidate this common

denominator, let us examine, albeit in a succinct manner, the content of these international instruments which are of direct relevance for the debate around workers' participation.

PARTICIPATIVE MANAGEMENT

Participative Management (PM) addresses the relationship between the organization and its workers and stakeholders. It addresses fundamental issues of governance within organizations and the role of employees and external stakeholders in all levels of organizational decision making.

PARTICIPATIVE MANAGEMENT AND EMPLOYEE INVOLVEMENT (Mechanisms and Strategies)

A number of specific mechanisms, programs, and strategies have been developed, especially in north-American organizations, to provide participation opportunities for employees, typically in traditional bureaucratic hierarchical organizations. Initially, they were generally introduced singly or in groups, often in a small section of the organization. Recently, greater attention has been given to the interactive nature of these mechanisms and the need to consider the introduction of Participative mechanisms in a more systemic way. The most common participative mechanisms and strategies include: a) Democratic management; b) Information sharing forums; c) Joint labour-management training programs; d) Safety and health committees; e) Quality circles; f) Quality of work life programs; g) Employee participation teams other than quality circles; h) Total quality management teams; i) Team based work structures with a variety of responsibilities; j) Gain-sharing and profit-sharing plans; m) Employee ownership programs; k) Worker representation on corporate boards of directors; l) Survey feedback; m) Job enrichment or redesign initiatives; n) Union-management quality of work life committees; o) Mini-enterprise units; p) Self-managing work teams (autonomous work groups, semiautonomous work groups, self-regulating work teams, or even simply work teams); q) Site-based management; r) Knowledge management programs; t) Business process re-engineering (but some don't consider this a participative mechanism); u) Open-book management; v) Theory Z.

PHILIPPINES

The Industrial Peace Act of 1953 provided the original basis for the Philippines industrial relations system. It aimed to promote collective bargaining within a regulatory framework largely derived from the United States system under the National Labour Relations Act. The legislation protected freedom of association with a Court of Industrial Relations exercising jurisdiction over labour practices. This produced a highly legalistic system. The US enterprise bargaining model also lacked viability in an economy where small, often family based, enterprises were dominant. Many of the unions which grew from the 1950s were small and weak, with successful organization confined mainly to larger corporations. The unions were also divided especially by political differences, although the banning of the left-wing federation pushed Philippine unions towards American-style 'business unionism'. Following the declaration of martial law in 1972 under the Marcos regime, major restrictions on unions were enacted in the Labour Code of 1974 after a period of growing strike activity. Strikes were banned, unions were required to affiliate with a government controlled Trade Union Congress, and compulsory arbitration of disputes was introduced under the National Labour Relations Commission which replaced the court.

A new era of industrial relations followed the return of democracy in 1986. The Constitution of 1987 explicitly enshrined rights of collective bargaining for unions and 'collective negotiation'

for unorganized workers at the enterprise level. The state adopted a tripartite social partnership model of industrial relations at the national level and promoted labour–management co-operation programs at the enterprise level. Union membership density and coverage of collective bargaining agreements remain low, however. Union membership has remained limited by the large informal sector and the remaining predominance of small enterprises as employers. Employees only account for about half of the workforce, with a high proportion of self-employed or unpaid family workers in the informal sector or rural areas. Half of the private sector formal labour force is employed in small enterprises of 10 or fewer employees where unions rarely reach, and in larger firms union avoidance strategies are common. In the public sector restrictions on strikes and political activity remain and management interferes in union matters. The unions also remain highly fragmented. For all of these reasons union membership density in the formal labour force reaches only about 7 per cent but collective bargaining agreements only cover half that proportion of workers.

This environment has fostered the development of LMCs at the enterprise level. The Labour Code of 1974 gave non-unionized employees or groups of employees the right to ‘present grievances to their employer’, largely as an alternative to unions in the martial law environment. From 1981 all collective bargaining agreements were required to include provisions for labour–management co-operation in improving productivity and quality of working life. The Department of Labour and Employment (DOLE) had responsibility for promoting co-operation schemes (Labor Code 1974, Articles 273-277, as amended 1981). The 1987 Constitution actually included a clause giving employees the right to participate in decision-making processes in their workplace, including ‘collective negotiation’ by non-union bodies. Amendments to the Labor Code in 1989 under Republic Act No. 6715 enacted this right by providing for the establishment of Labor–Management Councils (or committees: LMCs) with elected employee representatives in both unionized and non-unionized enterprises, inspired by European models. DOLE was charged with promoting, facilitating and monitoring LMCs (Labor Code as amended 1989, Articles 255, 277). DOLE strongly promotes LMCs, with annual showcase awards for ‘Outstanding LMCs’, all of which have gone to large domestic corporations. It estimates that 915 LMCs have been established to February 2005, mostly in unionized enterprises. DOLE credits the growth of labour–management cooperation through LMCs with the 96 per cent decline in strike activity since 1986 (*DOLE News* 2005).

However, the modest growth in LMCs is less likely to be responsible for the decline in strike activity than the 1990s Asian economic crisis, which weakened unions and fuelled one of the highest Asian rates of unemployment, reaching 13.9 per cent in 2000, and still at 11.3 per cent in January 2005, with an underemployment rate of 25 per cent in 2000 and 16.1 per cent in January 2005 (National Statistics Office 2005). The continued predominance of small-scale enterprise militates against widespread creation of LMCs as well as union membership. Unions and employees often have been suspicious of employers using LMCs to undercut unions, not without reason given the aims of the original 1974 Labour Code and the continued use of LMCs as covert forms of union avoidance in many cases. On their part, management sometimes has been reluctant to concede potential threats to their prerogative, and slow to embrace official state policy of social partnership. Confined mainly to the small unionized sector, LMCs have not moved far beyond offering an extra avenue for workplace union activity. Their jurisdiction may cover a wide range of workers’ rights and benefits so long as they are not subject to collective bargaining agreements, but in most instances they focus on non-controversial welfare and communication issues.

POLAND (Employee Representation in the Undertaking)

The trade union structure in Poland is fairly decentralized. In order to have a real say in matters affecting employees, branch or national trade unions must establish company organizations. On

the other hand, employees often form single-company trade unions that cover the operations of only one employer. Workplace representation generally takes place through local trade unions (*single channel*). However, in the majority of workplaces (especially in smaller companies) there is no representation at all. Until recently, participation in management by non-union bodies took place only in the absence of trade unions at the workplace. The participatory rights of non-union representatives could thus be described as subsidiary. The most important situations in which non-union representation may represent employee interests are the conclusion of an agreement on planned collective redundancies, the conclusion of an agreement on the employee pension scheme and codetermination with an employer of the internal regulations on the social benefits fund. The trade unions' monopoly in the workplace may to some extent be broken by the Law on information and consultation of employees, implementing EU Directive No. 2002/14 of 11 March 2002, establishing a general framework for informing and consulting employees in the European Community. The Law provides for the creation of works councils which are to be informed and consulted in relation to the most important decisions concerning the establishment which affect employees' interests. The obligation to set up 'national' works councils applies to commercial employers who employ at least 50 employees. Information to be provided to works councils by the employer includes: activities and economic situation of the employer and any foreseen changes in that, as well as the present state and structure of employment. Consultation with works councils shall take place in relation to foreseen changes in employment and measures taken to keep employment at the present level, as well as measures which may significantly affect work organization or contractual relations. The works councils are conceived as representation of all the employees and as separate from the trade unions. However, according to Polish law, representative trade unions have priority in selecting its members. If there is a representative trade union organization in the establishment, this organization nominates the members of the works council and informs the employer about the result. If there is more than one representative trade union organization in the establishment, all the organizations nominate works council members by common accord. Should the representative trade union organizations be unable to reach agreement on the membership of the works council within 30 days of commencing negotiations, the selection of works council members shall be done by the employees on the basis of trade union nominations. Only in non-unionized establishments may the members of the works council be selected from candidates proposed by the employees. The privileged position of trade unions in setting up 'national' works councils is the result of the trade unions' efforts to prevent employers from promoting the establishment of 'union-free works councils' in order to weaken the position of the trade unions in the company. It must be also noted that Polish legislation lays down the legal basis for employee involvement in European Companies created under Polish law (Law on the European Economic Interests Grouping and European Company of 4 March 2005). The same employee guarantees are provided for in the Law on European Cooperative Society, of 22 July 2006, which enters into force on 18 August 2006. The Polish Law on European Works Councils of 5 April 2002 lays down the rules for the setting up and functioning of EWCs under Polish law, as well as for the selection of Polish members of SNBs and EWCs regulated by other member state legislation. (See Table 4)

POLAND (Employees' Participation at Companies' Board Level)

In Poland, the forms of employee involvement at board level differ according to economic sector (public or private). The Commercialization and Privatization Act (CPA: 1992, 1996) introduced a right of employee representation on the supervisory board for former state-owned enterprises transformed into commercial companies, with the State Treasury as single shareholder (commercialization). According to CPA, the employees in such companies nominate two fifths of the supervisory board members. Once the State Treasury has sold more than 50 per cent of the shares, the number of employee representatives on the board can be

reduced. However, as long as the state remains a shareholder the company is obliged to keep a minimum of employee representatives on the board (2–4 members depending on board size). Polish legislation foresees a two-tier structure for joint-stock companies, whereas limited liability companies are only required to establish a supervisory body if their starting capital exceeds Euro 125,000 and the number of shareholders is greater than 25. The supervisory board monitors all aspects of the company's operations. The powers of the supervisory board also include suspension (on good grounds) of some or all members of the management board. Supervisory board members are appointed and removed by the general meeting. Employee-nominated supervisory board members are elected in a general and direct ballot by the employees. As the law does not distinguish between different kinds of supervisory board members the rights of employee representatives are the same as those of other board members (including remuneration). If a 'commercialized' (privatized) company has more than 500 employees, the employees are entitled to elect one member of the management board, in addition to representation on the supervisory board (this right is retained by the employees even after more than half the shares have been sold by the State Treasury). It is worth noting that in the period 1990–2005 more than 7,000 state-owned enterprises (that is, 80 per cent of all state-owned enterprises as of 1990) underwent privatization. At the end of 2005, there were over 1200 commercially active single-shareholder companies of the State Treasury (with the state being the only shareholder). Added to that should be the (difficult to estimate) number of entities in which the State Treasury retains shares or stock. The right to elect representatives to the supervisory board was intended partly to compensate employees for their loss of participation rights before companies underwent commercialization. The remaining state-owned enterprises are governed by the 1981 Act on workers' self-management, introduced in reaction to the disastrous results of enterprise management under the planned economy. The Act grants extensive rights to employees, mainly through an employees' council (elected by the employees) which has fairly extensive controlling rights and also appoints the manager of the company. As the number of state-owned enterprises is continuously shrinking, so too is the number of enterprises with worker self-management. In enterprises other than state-owned or 'commercialized' (formerly state-owned) companies until recently there were almost no legal grounds for non-unionized employees to claim participation rights in the management of their workplace, with the exception of some specific circumstances. Also, in companies that underwent 'direct privatization' (that means where all assets were sold directly) the new (private) owner was not obliged to introduce board-level participation. Moreover, when companies were taken over entirely by new owners the newly acquired rights to board-level participation were often abolished. Nevertheless, in so-called 'welfare pacts' signed between trade unions and the new private owners, the unions were in some cases given the right to delegate representatives to the supervisory board. In the private sector, employee involvement takes place mainly through the trade unions. (See Table 3)

PORTUGAL (Workers' Commission)

The Constitution confers on Portuguese employees the right to create commissions at enterprise level with wide-ranging powers, thus placing Portugal among the few countries in which employees possess such rights and extensive powers to participate in and monitor enterprise management. These constitutional provisions clearly make the workers' commission an institutionalized form of representation within the enterprise, with members elected by employees, who also draw up their standing rules. The commissions themselves are empowered to exercise the rights conferred on them by law, directly linked to their institutionalized aims or objectives. The manner in which a commission is created was not left to the autonomy of employees: the Workers' Commissions Act imposes a special electoral procedure. In contrast to trade unions, workers' commissions are not associative in nature; they

are the legally representative bodies for an enterprise's entire workforce (a single commission for each enterprise).

The rights granted to workers' commissions (Article 54 of the Constitution, Articles 18, ff., of the Workers' Commissions Act) are as follows: the right to information; scrutiny of management; the right to manage or co-manage company welfare facilities (*obras sociais*); the right to have regular meetings with the enterprise's management bodies; the right to promote the election of employee representatives to sit on the management bodies of state enterprises or other public bodies; the right to be consulted on the reorganization of production units; the right to participate in the preparation of sector-level economic and social plans; and the right of participation in the drafting of labour legislation. In addition to these fundamental rights, others relate more particularly to the functioning and internal running of the commissions and cover: the right to use of premises and other facilities; time-off rights; the right to legal protection for their members; the right to distribute information and display notices; and the right to organize meetings in the workplace.

In enterprises with a number of establishments in different geographical locations, workers' sub-commissions may be created for each, empowered to exercise delegated functions and act as a link to the enterprise-level commission. Lastly, the Act provides for the creation of co-ordinating commissions, which unite the workers' commissions of different enterprises with the objective of ensuring "improved intervention in economic restructuring".

The law requires that elections should be democratic and commissions should be representative. It imposes election by direct and secret ballot, rejecting the view of those who asserted a principle of sovereignty of self-organization. In fact, the imposition by law of basic democratic processes such as voting by direct, secret ballot is manifestly a means of guaranteeing the greatest possible measure of democracy in the elections and so cannot be seen as an attack on autonomy. The legal provisions facilitate voting (in the workplace and during working hours), thereby helping to ensure that voting is *de facto* universal as well as direct and secret. The law also stipulates the principle of proportional representation, with election from lists of candidates put forward directly by the enterprise's employees and supported by at least 100 (permanent) employees or 10 per cent of the workforce. This system expresses an implicit right to form factions, making the existence of a single commission for each enterprise compatible with the pluralistic representativeness of its composition. The importance of the workers' commission, nowadays much reduced, was crucial during the revolutionary period, when there was an explosion of forms of employee intervention in the enterprise which were almost always on the margin of the trade union movement. Today, however, the significance of workers' commissions is very small, firstly because they are tending to disappear, and secondly because the unions have major influence even in areas of intervention which are formally allocated to the commissions.

PORTUGAL (Right to Information)

Article 54(5a) of the Portuguese Constitution (see: Lei Constitucional n° 1/2005), grants workers' commissions the right to be provided with information, and exercise of this right is regulated by Articles 23, ff., of the Workers' Commissions Act (Lei 99/2003, Comissões de trabalhadores; Lei 35/2004, Comissões de trabalhadores: constituição, estatutos e eleição). The matters covered by such disclosure of information are very wide-ranging, comprising key aspects of company policy and practice and a range of performance data. A duty of secrecy is imposed on the members of the workers' commission in regard to such information, and violation of this duty is a punishable offence. In addition to this right to the disclosure of information, which derives from the legal status of the workers' commission, Portuguese law

also makes it compulsory for the employer to give employee representatives particular types of information in certain situations such as layoff and collective dismissal.

PORTUGAL (Co-determination)

Forms of employee participation implying recognition of some co-responsibility of employees in the management of enterprises are recognized in only very limited terms by Portuguese law, since in the drafting of the Constitution in 1975 the idea prevailing was that priority should be given to scrutiny of management [Article 54(5b)], to the detriment of forms of participation which could have given employees some measure of joint responsibility for the management of the enterprise. Only a limited form of participation is provided for, through the right of workers' commissions to promote the election of employee representatives to sit on the management bodies of public enterprises (Article 54(5f) of the Constitution, Article 30(1) of the Workers' Commissions Act). In addition, Article 31 of the Workers' Commissions Act states that employees possess the right, in the case of these public sector enterprises, to elect "at least one representative to sit on the respective management body". In private sector enterprises, to which the Constitution makes no reference, employees participate in management bodies only where this is collectively agreed between the parties (Article 30(3), Workers' Commissions Act). In practice, however, these provisions (which provide room for co-determination in the Portuguese system) have never yet been applied, and the unions themselves appear to be uninterested.

In contrast to participation in enterprise management, participation in the management of company welfare facilities ("obras sociais") is enshrined in the law in far more extensive terms and does occur frequently in practice.

PORTUGAL (Scrutiny of Management)

The right of the workers' commission to scrutinize and monitor management at enterprise level, as enshrined in Article 54(5b) of the Constitution and regulated in Article 29 of the Workers' Commissions Act, is expressed in its empowerment to perform various functions such as: assessing and giving an opinion on the enterprise's budgets and economic plans; ensuring that the enterprise makes proper use of its technical, human and financial resources and complies with legal and statutory rules; advocating measures for the improvement of production to both management bodies and employees; making suggestions, recommendations or criticisms regarding apprenticeship, re-training and further training and improvements in health and safety arrangements; and reporting the occurrence of unlawful acts or facts. Under Article 27 of the Act, exercise of this right is prohibited in certain core state activities such as scientific and military research, public postal services and telecommunications, and activities which are of relevance to national defence or which involve, directly or by delegation, the prerogatives of the Assembly of the Republic, the Government and other bodies of national sovereignty and of the Regional Assemblies and Regional Governments.

PORTUGAL (Participation in Management Bodies)

Article 30 of the Workers' Commissions Act stipulates that, in the case of public enterprises, workers' commissions shall appoint or promote the election of employee representatives to sit on the management bodies of these enterprises. The number of employees to be included and the particular management body on which they sit are as laid down in the byelaws of the enterprise concerned. In the case of private sector enterprises, the Act merely leaves available to the parties the possibility of agreeing on such participation. In practice, this right has

remained without effect. There are no known significant instances of enterprises integrating employees into their management bodies. (See Table 3)

PORTUGAL (Corporate Governance)

Corporate governance in Portugal is based on the model of a single company board which is responsible to shareholders. There is no law on the country's statute book that provides for employee representation at board level in privately owned companies. In theory the workers commission, the Portuguese equivalent of a works council, may agree as a social partner to negotiate representation on a company board. But in practice this has never happened. Employee representation on the boards of wholly state-owned enterprises and other public entities is guaranteed, however, under the 1976 constitution. This was followed by the introduction of specific legislation that was passed in 1979 and 1984 and gave employees the right to elect one representative to the Board of Directors and the Council of Auditors. Worker directors must be elected by a majority of employees in the company and all employees have the right to participate in the vote. The candidates must be employed by the firm in question. They must be nominated by the workers commission (a form of works council) and/or by 10 per cent of the labour force or 100 workers. The worker directors hold their positions for three years but there is nothing to prevent them from standing again for re-election. Their rights and duties as board members are exactly the same as those of all the other company directors. However, this legislation on employee board-level representation in the public sector has never been implemented. As a result of this very few workers directors have been installed in reality. In the early years of democracy in the 1970s the Portuguese government carried through a vast programme of nationalisation of the country's industrial base. But since 1989 many of the public corporations have been moved into the private sector by successive governments. Finally, in 1999 further legislation was passed that abolished the right for employee representatives to be elected to the boards of public owned enterprises. As a result there is no comprehensive legal entitlement in Portugal any longer for employee company board representation. The limited character of employee representation at company board level reflects the general outlook of the trade unions. At present they prefer to strengthen their role through the development of autonomous workplace institutions like the workers' commissions rather than by insisting on employee representation on company boards.

PORTUGAL (Participation in the Public Service)

Article 9(1) of the Public Service Collective Bargaining Act grants employees in the public service a right to participate which is to be exercised through their trade unions. In expressly mentioning the unions as intermediaries in the exercise of this right, the Act significantly excludes other forms of organization, *i.e.* workers' commissions. The right is exercised in various areas, such as the drafting of legislation connected with the general system or the special system regulating the public service and the administration of social security institutions and other organizations intended to meet the interests of employees.

PORTUGAL (Participation in Decision-Making)

Employee representative organizations are granted the right to participate in the taking of certain decisions and the exercise of certain state functions, under both the Constitution and ordinary law. In the majority of cases, however, this participation is confined to being given a formal voice in the matters concerned. For instance, workers' commissions are granted the right to be consulted on the reorganization of production units, to participate in the preparation of sector-level economic and social plans being contemplated for their particular sector, and to

participate in the management of company welfare facilities ("obras sociais"). Trade union organizations possess the right to participate in the administration of social security institutions and other organizations intended to provide for employees' interests, to participate in monitoring the implementation of economic and social plans, and to have seats on social concertation bodies. Unions are also granted the right to participate in the organization and coordination of the social security system and in the definition of agricultural policy. (See Table 3)

PROFIT-SHARING

Profit-sharing (PS) includes a family of schemes, such as French *intéressement*, British Performance-Related Pay and various forms of *Gewinn-* or *Erfolgsbeteiligung* practised in Germany, under which employees receive a sum dependent on overall firm performance in addition to their (fixed level) wage. The scheme may simply define a certain percentage of profit that is to be attributed to employees annually, perhaps conditional upon profit reaching a certain minimum level. In other cases, the employees' share of profit is computed according to a more complex formula involving other performance measures such as productivity gains or quality indicators. In France, the UK and Japan, the measure of performance most commonly used for PS schemes is accounting profit, but a variety of other criteria such as productivity and quality indicators are also widely used in Germany and in Italy. In any case, the basis for calculating the employees' profit share is normally known in advance of performance figures. The corresponding sums may be paid cash to employees or released only after a period of several years (*deferred schemes*) to encourage employees to save and to stay with the firm. While some plans are restricted to certain groups of employees such as executives, we focus here on schemes that cover a majority of the firm's workforce (often called *broad-based schemes*). However, many broad-based PS schemes still exclude temporary and part-time workers. In certain countries, excluding part-time workers can mean that women are less often eligible than men to participate in a scheme if a large proportion of the female labour force works part-time outside the home. Individual PS bonuses usually also vary among employees of the same firm according to wages, length of service, absenteeism, etc. In a minority of cases eligible employees all receive equal shares of the total. In principle, PS does not have to be *necessarily* associated with any form of employee input into company decisions at any level. However, certain schemes (e.g. French regulated schemes *intéressement* and *participation*) explicitly provide for informing employees regularly of firm performance and what determined it. In certain countries, like Germany, Japan and the UK, PS is often implemented by firms as part of a package of participatory measures including various forms of employee participation in control. Other important aspects of PS firms' human resource management practices and working conditions, such as job security or equal opportunities practices, also vary from one firm to another.

PROFIT-SHARING (Effects on Productivity)

Among Western European countries, differences in the magnitude of the productivity effects of profit sharing (PS) that were observed when identical specifications were estimated on data from the UK, Germany, France and Italy have been attributed to differences in participatory practices in firms with PS plans. Concerning the Japanese system, Japanese firms tend to regard financial participation schemes as part of a participatory "package" including various forms of participation in control. The participatory environment may be the reason why employee stock ownership plans have stronger effects on firm performance in Japan than in the US. In many western countries, PS plans tend to be implemented along with a range of forms of employee consultation and participation in control in the UK and Germany, where the

estimated effects were highest, whereas in France accompanying participatory practices are often limited to the information sharing prescribed by the legislation, and at the time of the study PS was viewed primarily as a variable pay system rather than a form of participation in Italy, where the estimated effect was the lowest. The focus of researchers' attention on these arrangements purporting to increase employee influence in the workplace has not been matched by research into the role played by the "natural" representatives of employees that is trade unions, in relation to financial participation. The very limited evidence available indicates that PS schemes may not have higher productivity effects in unionised firms in the US or may even have stronger effects in non-union than in unionised firms. Empirical studies indicate that in the US employee attitudes towards unionisation is not affected by employee ownership. Generally, it is likely that differences in industrial relations systems and union involvement in financial participation will produce very different situations across countries. At the level of the enterprise, the interaction between union action and financial participation may depend on whether the scheme was negotiated with trade unions in the first place, given that historically various forms of participation have been known to be introduced by certain firms as a barrier against union influence, whereas some schemes like the French or Italian profit-sharing plans are systematically negotiated. In France, both types of financial participation have strong productivity effects in large companies where trade unions are well established and industrial relations are very active. A number of other firm-specific factors such as the choice of technology and organisational change are likely to influence the way financial participation translates into improved organisational performance and productivity. Research in this area is still in infancy, although some studies show the share schemes to operate less successfully when it is associated with job and small batch production and with a wider package of organisational design. Besides participation in control in and of itself, differences in the choice of organisational structure and technology may explain that the effect of financial participation on productivity overall is greater in labour-managed firms than in participatory conventional firms, both for PS and employee ownership schemes. This means that there may be lessons to be learned from the labour-managed sector and that more serious consideration should be given to supporting and promoting this sector. Other elements of the firm's human resource policies may condition or affect the impact of financial participation on productivity, for example by influencing perceptions of fairness in the workplace, the proportion of employees effectively involved and the extent to which employees are allowed to have an impact on their work. The existence of firm policies to improve equality of opportunity and fight gender and ethnic discrimination together with control participation and employee share ownership schemes are generally associated with a productivity advantage over and above the separate effects of individual policies and schemes. The effectiveness of those participatory schemes seems to increase as female and ethnic minority employees are provided with more opportunities and incentives to contribute to performance.

QUALITY CIRCLES

Quality circles are small groups of employees, which meet regularly on company time with the goal of improving quality and productivity within their own work areas, and of addressing and solving quality or similar work-related problems. They typically are comprised of hourly employees and supervisors who receive special training in problem-solving techniques. The tasks performed by the quality circles are usually in addition to their regular work tasks and management may or may not implement the recommended solutions. Although quality circles usually lack authority to implement solutions without management approval, they provide workers with an invaluable opportunity to influence the manner in which their products are manufactured and designed.

QUALITY OF WORK-LIFE PROGRAMS

Quality of Work-Life (QWL) programs are also designed to improve productivity, but focus primarily on improving worker satisfaction. Unlike quality circles, which focus directly on product improvement, QWL programs are premised on the belief that making workers' jobs more meaningful will lead to gains in productivity. Techniques employed by QWL programs are intended to bring about fundamental changes in the relations between workers and managers and can include changing the decision-making, communication and training dimensions within an organization. Joint labor-management committees are frequently used (especially in USA) to coordinate and monitor QWL programs.

RESTRUCTURING (Employee Involvement in Restructuring: EU legislation)

‘Restructuring’ covers a multitude of different forms of re-organizing the activities of the enterprise, many of which have serious consequences for the workforce in terms of levels and terms and conditions of employment. The issue has become increasingly prominent with the substantial increase in corporate restructuring, particularly internationally, and because of significant national variation in the rights of employees in mergers and acquisitions and restructuring generally. The impact of corporate restructuring on employment and on industrial relations differs from country to country, not least as a result of different regulatory frameworks. The EU has already adopted a number of measures to provide protection to employees and information and consultation rights in the event of the restructuring of enterprises. Directives already concerned with restructuring cover collective redundancy, transfer of an undertaking, information and consultation, European Works Councils and employees’ involvement in the European company. In addition, Regulation 4064/89 (amended by 1310/97 and Regulation 447/98), requires the approval of the Commission’s competition authorities of concentrations with a Community dimension, and allows recognized worker representatives in the companies concerned, if they apply, to be consulted by the Commission during its assessment. Two further specific initiatives are relevant. The first relates to social dialogue: the European Commission began consultations with the EU-level social partners from January 2002, under Article 138(2) EC, about how to anticipate and manage the social effects of corporate restructuring, aiming at agreements on this issue at cross-industry or sectoral level. On 8 March 2002, UNICE (now *BusinessEurope*, since January 2007) issued a statement urging that regulatory constraints be avoided, but that ‘there could, however, be value in organizing exchanges of experience on companies’ practices for anticipating and managing change’. ETUC issued a statement on March 2002, that although social dialogue on best practice is important, it is not enough and the Commission and the Council should not give this responsibility to the social partners alone. The social partners subsequently agreed a joint text entitled ‘Orientations for reference in managing change and its social consequences’ (June 2003). It contains guidelines to be followed to ensure successful change management, covering transparency, good-quality communication, and information and consultation at different levels. Meanwhile, on October 2002 the Commission proposed a new draft directive on company takeover bids, following concerns expressed by the European Parliament about the perceived lack of protection for the employees of companies involved in takeovers.

RUSSIA (Workers' Participation through Workers' Representatives)

The workers' right to participate in the management of the enterprise (plant, establishment) directly or through their representative bodies is ensured by the Art. 52, of 2001 Labour Code (LC) of the Russian federation (RF), other federal laws, collective agreements and enterprise level regulations. Main forms of workers' participation are the following: a) taking account by the employer of the opinion of the workers' representative body in cases specifically envisaged in the LC or collective agreements; b) employer's consultations with the workers'

representatives on the matters concerning the adoption of the local normative legal acts; c) participation of the workers' representatives in collective bargaining; d) other forms provided for by the LC, collective agreements or enterprise level regulations (Art. 53). Under Russian labour law, the interests of employees may be represented by trade unions, as well as by other representative bodies. The legal status of trade unions (including the establishment, the role and structure) is quite clearly defined by legislation. The status, as well as the structure of other representative bodies is not directly followed from the legislation. They may be called differently (e.g. workers' counsels). The establishment and the structure thereof are mostly defined by their participants. The competence is followed from the legislation. In particular, the LC of the RF quite often makes reference to workers' representative bodies alongside with trade unions. It should be noted, that some spheres of regulation may be realized only with participation of trade unions, whereas regarding other spheres legislation does not have special requirement of the type of the representative which may participate. For instance, an employer issues local normative acts containing the labour law norms within the limits of its competence. In cases stipulated by the legislation, as well as by collective agreements an employer shall take into account the opinion of the workers' representing body (Art. 8 of the LC of the RF).

“SATURN” (General Motors Saturn Company)

A rather extreme form of “representative participation” could be exemplified by General Motors (GM) Saturn Company. In 1982 General Motors began discussions about using innovative design and manufacturing techniques to build a quality, cost-effective small car that could compete with foreign-made vehicles. The following year the United Auto Workers (UAW) was brought into the discussions and the Saturn Project was officially launched. A joint committee, including both top union and top management, formulated the company's strategy and designed its new plant in Spring Hill, Tennessee. The company's stationery and the signs on the plant gate gave equal prominence to company and union. Job security was guaranteed and pay was determined in part by a formula based on meeting goals for training and performance. As at NUMMI, there was substantial direct participation. According to the contract work teams met 47 minutes each week to discuss common problems. Team leaders were elected. More important, at higher levels, all decisions were made jointly. For each managerial position (except for the very top), there were two jointly selected co-managers, one from the union, the other from the company. The two shared the same offices, responsibilities, and authority. *Saturn* was at first almost a cult car. It was rated high on reliability and at first the plant was ranked high on productivity. But over time it lost popularity as GM continued to delay the introduction of a new model to replace the original while its chief rivals Honda and Toyota brought out new designs. As a result, its design was seen as outmoded. The widely circulated Consumers Reports downgraded it. Though plant management and the local union worked closely together, strains rapidly developed between both sets of local leadership on one side and their national counterparts on the other. Local union leadership attacked the national union for calling a strike against GM suppliers, which hurt *Saturn* productivity and union members' chances for profit-sharing bonuses. For its part, the national union opposed *Saturn's* plan to expand operations at a time when members at other divisions were out of work. National leaders, both union and management, saw Saturn as too independent and different in culture and work systems than the rest of GM. *Saturn* had its own contract, not the GM/UAW national agreement. At one point, the national union pressed the local union to increase the role of seniority in job assignments, make the grievance procedure more conventional, and reduce the power of teams to select their own members. Overall, it increased the role of rules and decreased workplace discretion. Gradually, top management and top union reduced the company's autonomy, moving it to the status of a division, reducing its freedom to select supplier selection in favor of GM sourcing to achieve economies of scale and also adopting platforms shared with other GM divisions, thus eliminating Saturn's distinctive designs. In 2006, GM gave to the *Saturn* union an ultimatum: abandon most of your special organization and accept the standard GM/UAW national contract and you will receive a sign-on bonus and a new product or future products; otherwise the plant's future will be in jeopardy. Reluctantly, the local union agreed. The facility in Spring Hill Tennessee still operates with teams but much of the governance arrangements are gone. So the experiment died; the environment was too hostile.

SELF-DIRECTED WORK TEAM

Self-directed work teams are groups of employees who are given control of some well-defined segment of production. Such teams are often responsible for their own support services and personnel decisions in addition to determining task assignments and production methods.

SEMI-AUTONOMOUS GROUP WORK AND TEAMWORK

Semi-autonomous group work and teamwork are both forms of on-line direct participation of shop-floor workers in work-related decisions, unlike the above-mentioned joint project group work, which is a form of off-line participation. The main difference between the two forms of participation lies in the degree of autonomy which the members of the team or group enjoy in organizing their work. Semi-autonomous group work was used extensively in Scandinavia, although recently there has been a move back to a more traditional approach; there have been experiments with it elsewhere in Europe as well. While experiments with semi-autonomous group work are generally declining, teamwork is spreading fast throughout Western countries. The degree of autonomy which a team enjoys varies widely from one company to another. Team structure also differs. In many countries, team leaders are usually appointed by management, but in a few countries (e.g., Germany) they are often elected by co-workers. Frequently, the creation of teams is accompanied by significant changes in the role of first-line supervisors; they tend to take on greater responsibility for advising team members and for both vertical and horizontal communication, but lose their supervisory role. Employers have shown increasing interest in teamwork because it tends to facilitate the upgrading of workers' skills and widens the range of workers' tasks, thus allowing greater flexibility in production processes. However, it is sometimes criticized by workers as a means of inducing them to work harder "voluntarily" by substituting co-workers' pressure for management control.

SLOVAKIA (Basic System of Workers' Participation)

All employees (in both the public and the private sector) have the legal right to participate in company decision-making either directly or through employees' representatives. Employees' representatives shall include the competent trade union body, works council or works trustee, as well as occupational health and safety representatives pursuant to special regulations. Employees shall participate through the competent trade union body, works council or works trustee in the establishment of fair and satisfactory working conditions by means of: a) codetermination; b) consultation; c) information; d. labour inspection. Employees have the right to engage in collective bargaining only through the competent trade union body. If a trade union organisation and works council operate alongside one another, the trade union organisation is entitled to conduct collective bargaining, monitor implementation of collective agreement provisions and information rights, while the works council has the right to codetermination, consultation, information and inspection. In addition to basic employee involvement which applies to all employers, under Slovak legislation state-owned companies and public limited companies (including SEs) are covered by specific legislation which grants elected employees membership of company organs. Employees' representatives selected in accordance with the provisions on basic workers' participation, and in particular trade union officials, participate directly in establishing these company organs (for example, in the election of employee representatives). At employers where there is neither trade union representation nor a works council the right to nominate candidates and to vote is exercised by employees directly. Workers' participation takes two forms: Participation in a: 1) monistic (single-tier structure with only a management board); 2) dualistic (two-tier structure with a management board and a supervisory board). Participation in state-owned companies: A supervisory board is established at every state-owned company, regardless of size and activity, with the exception

of state-owned companies whose basic activity (as specified in its articles of association) is Services of General Interest (SGI): for example, the railways and the postal service. Half the members of the supervisory board may be elected or withdrawn by the workforce or its delegates by ballot; if there is trade union representation at the company, one workforce representative is delegated by the trade union, the trade union statutes shall determine whether this member is nominated or elected by trade union officials or by a meeting of the trade union membership. Participation in private companies: In private companies, according to Company Law a supervisory board is obligatory only in public limited companies with basic capital of at least one million SKK. Size of the workforce determines how many employee representatives sit on the supervisory board: at a company with more than 50 full-time employees, one-third of the supervisory board members are elected by employees. However, the company statutes may set a higher proportion of supervisory board members to be elected by the employees. The board of directors organises the election of supervisory board members in cooperation with the trade union. If there is no trade union organisation in the company the board of directors organises the election of supervisory board members (elected by employees) in cooperation with the employees who are entitled to vote. The trade union organisation or employee groups comprising at least 10 per cent of authorised voters are entitled to propose to the board of directors the election or withdrawal of supervisory board members: for this purpose, proposals must be adopted by at least half the authorised voters or their delegates. The rules governing the election or withdrawal of supervisory board members by employees are drawn up and approved by the trade union organisation. Where there is no trade union organisation these rules are drawn up and adopted by the board of directors in cooperation with those entitled to vote.

Rights and duties of the supervisory board: 1) In state-owned companies the supervisory board: a) discusses the annual and extraordinary accounts and makes proposals concerning profits and losses; b) discusses basic issues of company development and business concepts; c) discusses management and economic issues related to the company; d) controls the accounts and other records; e) recommends the dismissal of directors; f) issues statements on the division, merging, or winding up of the company; g) submits interim (biannual) and annual financial reports; h) approves selection of the auditor; i) approves credit and loan provisions, transfer of company property, the use of company property by directors or other authorised persons, and appointments. A qualified majority of all board members is required to approve board resolutions; 2) At public limited companies the supervisory board: a) supervises the activities of the Board of Directors and management of the business; b) is entitled to view any documents and records related to company activities and to monitor company accounting, business practices, the company statutes and resolutions of the General Assembly; c) supervises the ordinary, extraordinary and consolidated accounts, makes proposals concerning profits and losses, and reports to the General Assembly; d) convenes the General Assembly in the interest of the company and proposes necessary measures; e) nominates persons to represent the company in law suits or in dealings with other organs. (See Table 3)

SLOVENIA (Employees' Participation in the Decision-Making Process)

Existing Slovene system of employees' participation in the decision-making process has been evolving in circumstances of transition, when old values turned up-side-down, when social function has been excluded from companies and the role of capital owners has prevailed. This situation has been extremely burdensome for Slovene workers, whose rights were blurred and put at the side-road. Slovenian law on employee involvement is based on Article 75 of the Slovenian Constitution of 1991, which guarantees workers the right of codetermination. On this basis, the Law on the Participation of Workers in Management (LPWM), passed in 1993, guarantees a variety of participation rights, individual and collective, in the form of

information and consultation rights, including participation at board level. According to the LPWM (Art. 2) workers have a right to: a) initiate proposals and to receive a response to these proposals; b) obtain relevant information; c) give their opinion and to receive a response; d) consultations with the employer; e) codetermination; f) veto employer's decisions; g) other forms of participation, if agreed between workers' representatives and the employer. Workers' participation in decision-making is, of course, most effective if workers' representatives participate in the company supervisory or management board. The Law provides that workers have a right to participate in the supervisory board, when there is one, providing that the workers are organised so as to exercise collective participation. According to the Law on companies (Article 261) the company statute determines whether the company should have a supervisory board or not; however, a board is obligatory in the following circumstances: a) when the company's subscribed capital is 410 million dollars (approx. 1.7 million Euros) or more; b) when the company employs more than 500 employees; c) when the company has been established progressively (the founders of the company must raise the necessary capital by selling shares); d) when the company's shares are traded on the stock exchange; e) when the company has more than 100 shareholders. The works council can elect (and recall) supervisory board members who represent employees' interests. The number of workers' representatives is determined by the company statute, but may not be lower than one third or higher than one half of all the members of the supervisory board (Article 79). The methods of election and recall are determined by the works council's rules of procedure. It must be stressed, however, that the president of the supervisory board is always a representative of the shareholders and has the casting vote.

SLOVENIA (Board Level Employee Representation)

Workers' representatives on the supervisory board have the same rights as representatives of the owners/shareholders and participate fully in decision-making. At the same time, they are accountable to the works council and, indirectly, to all the workers. By its very nature, the supervisory board is necessarily a forum for differing interests and views, on the basis of which it must reach the optimal solution. The works council is also entitled to propose a workers' director, who is a full-member of the management board. On the proposal of the works council the supervisory board (or in the absence of a supervisory board the shareholders themselves) appoints the workers' director. A workers' director is appointed at companies with more than 500 employees. In companies with fewer than 500 workers a workers' director may be appointed by mutual agreement of employer and employees. The workers' director represents employees' interests in human resource management and in social matters. As already said, the Law on the Participation of Workers in Management (1993) introduced elected employees' representatives, who exist in addition to trade union representations (regulated by the Law on trade union representation, of 1993). These two forms of representation are institutionally and functionally separate: while trade unions have a so-called "conflict function" (collective bargaining, infringement of rights), workers' representatives perform a "cooperative function" and are not entitled to resort to, for example, strike action. Theoretically, the Slovenian system of workers' participation is very advanced, guaranteeing workers a wide range of participation rights. In practice, however, the law has been implemented slowly, and infringements of workers' rights are still numerous, while workers are often unaware of their rights and of enforcement mechanisms. (See Table 3)

SLOVENIA (Implementation of the European Company Statute in Slovenian law)

In autumn 2004, when the draft of the Companies Act amendments was being prepared, the Slovenian "Manager" Association conducted a survey among Slovenian directors concerning

the proposed one-tier system. More than half of them were very satisfied with their supervisory boards, stressing that their role was not just supervisory but consultative. As many as two-thirds thought that the introduction of the one-tier option would be a positive development, but only one-fifth said that they would actually propose this option to shareholders. Slovenia is one of the few EU Member States regulating employee participation at board level. The process of EU accession, the establishment of the European Company and general globalisation trends have put the Slovenian workers' participation model "on probation". The debate on the one-tier and two-tier systems continues to be controversial. However, comparative law and practice indicate that both systems can work effectively, providing that they are well implemented. From the point of view of workers' representatives, the two-tier system has proved successful. On the other hand, the employers want more effective and faster decision-making and favour the option of the one-tier system. Consequently, the Slovenian legislator has the difficult task of enhancing the effectiveness and economic rationality of the current management system. However, since employee involvement is a constitutional issue in Slovenia it must be properly addressed.

SOCIAL DIALOGUE (ILO)

According to the ILO, social dialogue is designed to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policy. The definition and concept of social dialogue vary from country to country and from region to region, and they are still evolving. The enabling conditions for social dialogue are as follows:

- a) Strong, independent workers' and employers' organizations with the technical capacity and access to the relevant information to participate in social dialogue;
- b) Political will and commitment to engage in social dialogue on the part of all the parties;
- c) Respect for the fundamental rights of freedom of association and collective bargaining;
and
- d) Appropriate institutional support.

For social dialogue to work, the State cannot be passive even if it is not a direct actor in the process. It is responsible for creating a stable political and civil climate that enables autonomous employers' and workers' organizations to operate freely, without fear of reprisal. Even when the dominant relationships are formally bipartite, the State has to provide essential support for the parties' actions by providing the legal, institutional and other frameworks that enable the parties to act effectively.

Social dialogue takes many different forms. It can exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement. Concertation can be informal or institutionalized, and often it is a combination of the two. It can take place at the national, regional or enterprise level. It can be inter-professional, sectoral or a combination of all of these. Social dialogue institutions are often defined by their composition. They can be bipartite, tripartite or "tripartite plus". The key tripartite actors are the representatives of government, employers and workers. At times, and depending on specific national contexts, the tripartite partners may choose to open the dialogue to other relevant actors in society in an effort to gain a wider perspective, to incorporate the diverse views of other social actors and to build a wider consensus. Social dialogue can take a variety of forms, ranging from the simple act of exchanging information to

the more developed forms of concertation. The following is intended as a short-list of the most usual forms of social dialogue:

- a) Information-sharing is one of the most basic and indispensable elements for effective social dialogue. In itself, it implies no real discussion or action on the issues but it is nevertheless an essential part of those processes by which dialogue and decisions take place.
- b) Consultation goes beyond the mere sharing of information and requires an engagement by the parties through an exchange of views that in turn can lead to more in-depth dialogue.
- c) Tripartite or bipartite bodies can engage in negotiations and the conclusion of agreements. While many of these institutions make use of consultation and information-sharing, some are empowered to reach agreements that can be binding. Those social dialogue institutions that do not have such a mandate normally serve in an advisory capacity to ministries, legislators and other policy-makers and decision-makers.
- d) Collective bargaining is not only an integral – and one of the most widespread – forms of social dialogue, but it can be seen as a useful indicator of the capacity within a country to engage in national-level tripartism. Parties can engage in collective bargaining at the enterprise, sectoral, regional, national and even multinational level. Social dialogue takes into account each country's cultural, historical, economic and political context. There is no “one size fits all” model of social dialogue that can be readily exported from one country to another. Social dialogue differs greatly from country to country, though the overriding principles of freedom of association and the right to collective bargaining remain the same. Adapting social dialogue to the national situation is key to ensuring local ownership of the process. There is a rich diversity in institutional arrangements, legal frameworks and traditions, and practices of social dialogue throughout the world. This is well illustrated by the series of country studies published by the InFocus Programme on Social Dialogue between 2001 and 2005. Social dialogue plays a key role in achieving the ILO's objective of promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equality, security and human dignity.

SOCIAL DIALOGUE (EU legislation)

European social dialogue is the primary vehicle for the joint involvement of the organisations of management and labour in European policy-making. It is the term used to describe the consultation procedures involving the European social partners: UNICE (Union of Industrial and Employers' Confederations of Europe; now *BusinessEurope*, since January 2007), CEEP (Centre européen des entreprises à participation public et des entreprises d'intérêt économique general – the European Centre of Enterprises with Public Participation) and the European Trade Union Confederation (ETUC). The dialogue was started by the European Commission in 1985, and Article 138 of the EC Treaty (as amended by the Single European Act) formally requires the Commission to develop it. It encompasses discussions, joint action and sometimes negotiations between the European social partners, and discussions between the social partners and the institutions of the European Union.

In its broadest interpretation, the concept of ‘European social dialogue’ refers to the institutionalised consultation of the social partners by the Commission and other Community institutions. There is tripartite concertation among management, labour and Community institutions, for instance, in the context of the European Employment Strategy. The bipartite dialogue of the social partners may lead to European collective agreements. In addition to this involvement at the European level, the social partners also play an important role in implementing European policy at national level. Thus, Article 137(4) EC provides that directives can be implemented at national level through agreements between management and labour. In its more restrictive interpretation, the European social dialogue refers only to the

bipartite dialogue between management and labour organised at European level. This dialogue can take place through the procedure established in Articles 138-139 EC, but also independently from any Community initiative, based on the autonomy of the social partners. 'Autonomous' or 'independent' social dialogue is used to describe various forms of the bilateral engagement of the European social partners in the conception and implementation of social policy at EU level, within or without the framework of Articles 136-139 EC. Both the European Commission and the social partners use the expression, although it is not to be found in the treaties. Since the founding of the European Coal and Steel Community, there had been a long-standing range of formal machinery incorporating representatives of the trade unions and employer organisations in EC policymaking. The development of the European social dialogue was supported by experience, but also by principle and pragmatic expediency. The Commission was most involved and active in establishing consultation bodies at EC level, maintaining regular contact with the representatives of workers and employers, actively encouraging the development of Community-level worker and employer organisations, and offering such groups the opportunity to engage in extensive negotiations on Community employment proposals. The emergence of the European social dialogue in the 1980s was the outcome of a crucial initiative taken by Jacques Delors, the incoming President of the Commission, in January 1985, who felt that the launching of the Single European Market programme should go hand in hand with the organisation of a European social area, with social dialogue accorded a central place. Delors invited the chairpersons and general secretaries of all the national organisations affiliated to UNICE, CEEP and ETUC to meet at the castle of Val Duchesse outside Brussels on 31 January 1985. At this historic meeting, these organisations agreed to engage in furthering the European social dialogue. However, despite what Article 118B EC characterised as 'relations based on agreement', the Val Duchesse dialogue led to some 'joint opinions' but did not result in real agreements. European social dialogue received its first crucial formal recognition through the insertion into the EC Treaty by the Single European Act 1986 of a new Article 118B EC: (see now Articles 138(1) and 139(1) EC): 'The Commission shall endeavour to develop the dialogue between management and labour at European level, which could, if the two sides consider it desirable, lead to relations based on agreement'. The negotiations at Maastricht produced the Treaty on European Union, which included a Protocol incorporating an Agreement on Social Policy, the fruit of negotiations between the European social partners. With few modifications, this agreement was adopted by 11 Member States (excepting the United Kingdom) and incorporated as the Protocol and Agreement on Social Policy attached to the Treaty of Maastricht. The Agreement on Social Policy broadened EU social competences and provided a particular procedure for European social dialogue. By the Treaty of Amsterdam of June 1997, the Agreement on Social Policy was incorporated into a revised Social Chapter of the EC Treaty. Articles 138-139 of the new Social Chapter of the EC Treaty, as amended by the Treaties of Amsterdam and Nice, formally establishes a role for management and labour in the legislative process of the EU, including the making of binding agreements through social dialogue at EU level. This outcome has been of outstanding importance for Community regulation of employment and industrial relations. Negotiations between employer and worker organisations at EC level have become a cornerstone of the European employment and industrial relations system. The 'European social dialogue' is formally recognised in Article 139(1) EC.

SOCIAL REPORTING

Non-financial data covering staff issues, community economic developments, stakeholder involvement and can include voluntarism and environmental performance.

SOUTH AFRICA (Labour Relations Act)

The purpose of Labour Relations Act (LRA, 1995), subsequently amended in the following years, is to "give effect to section 27 of the Constitution" by regulating organizational rights of trade unions, promoting collective bargaining, regulating the right to strike and the recourse to lockouts, as well as providing mechanisms for dispute resolution and the establishment of Labour Court and Labour Appeal Court as superior courts, "with exclusive jurisdiction to decide matters arising from the Act". The act also addresses employee participation in decision-making, and international law obligations in respect to labour relations. The Workplace Forum system, introduced by the 1995 Labour Relations Act (LRA) represents something of a compromise between competing agendas, between the desire to promote South Africa's global competitiveness and to secure a long term role for organized labour. Workplace Forums are consultative bodies, focusing on practical issues such as the organization of work, but not on areas which normally fall within the ambit of collective bargaining, such as wage and wage related issues. In addition, they have a joint decision-making role in areas such as disciplinary and grievance proceedings, unless otherwise regulated by a collective agreement. From the union's point of view, it was hoped that the forums could serve as a new focus of shop-floor organization, given the effects of the above-mentioned brain drain. Forums can only be established through an application to the relevant authority by a representative trade union in a workplace with 100 employees. Workplace Forums are generally popularly elected by employees, with seats being allocated according to the occupational distribution of the workforce (*Government Gazette 16861*; Pretoria 1995). This ensures that workers who are not members of the union -in the absence of a closed shop agreement- also have a say on the Forum. On the one hand, this may lead to demarcation disputes. In other words, employees who, on account of their non-union membership, believe that they are being excluded from the collective bargaining process may use the Forum as a means of airing their grievances over substantive issues such as pay. This can lead to the Forum exceeding its brief, or bitter internal disputes over what it should actually be doing. By the time the 1995 LRA was implemented, many employers had already begun to experiment with a range of new production concepts involving enhanced employee participation. Of course, mechanisms specifically tailored to the needs of individual plants are inherently more flexible, and may give management a freer hand in reshaping the organization of work. This, and the fact that sections of the union movement remain uncertain as to the relationship between the Forums and existing bargaining structures, has resulted in the new system getting off to a rather slow start. At the time of writing, only a handful of Forums have been established in South Africa, few in core areas of the manufacturing sector.

SOUTH AFRICAN WORKPLACE FORUMS

The 1995 Labour Relations Act (LRA) encourages the establishment and/or maintenance of Bargaining Councils in individual industrial sectors, inter alia by providing a firm legal foundation for any agreements reached and dedicated mechanisms for dispute resolution. However, this is by no means obligatory. Moreover industry level bargaining often only sets basic sub-minima, which are then topped up by second or third tier bargaining. In other words, Workplace Forums in South Africa will have to co-exist with formalized plant level bargaining (allowing considerably more room for demarcation disputes). Workplace Forums embody both union desires for the real democratisation of the workplace, and employer pressures for the creation of more effective channels of communication and the joint assumption of responsibility, with the specific aim of enhancing flexibility and productivity.

Structure: Workplace Forums are, in most cases, popularly elected by employees, with seats being allocated according to the occupational distribution of the workforce (*Government Gazette 16861, 1995:94*). This will, of course, ensure that workers who are not members of the

union-in the absence of a closed shop agreement-also have a voice on the Forum. On the one hand, employees who, on account of their non-union membership, believe that they are being excluded from the collective bargaining process, may use the Forum as a means of airing their grievances over substantive issues such as pay. On the other hand, the Forum may serve to promote internal communication amongst different sections of the workforce, who otherwise, for historical reasons, may have been hostile to each other. Forums have not only consultative powers, but also joint decision making ones. Employers are legally bound to consult with the Forum over the restructuring the workplace (including changes in work organization), the introduction of new technology or techniques of production, mergers/transfers of ownership or plant closures, retrenchments, and export promotion (Government Gazette 16861, 1995: 98-101). Of course, many of these areas will directly impact on productivity, and, it was hoped, through consultation and better communication, employees will be more aware of the reasons behind painful decisions such as down-sizing and be in a position to come forward with proposals to minimise the impact thereof. In addition, Forums have joint decision making powers in areas not immediately related to actual work performance, such as disciplinary codes and procedures (*ibid.*). However, they only have these powers in the absence of a collective agreement-such as, most commonly, a recognition agreement-covering such matters. Employers are legally obliged to recognize a representative trade union in terms of the 1995 Labour Relations Act. In terms of the Act, Forums should hold regular meetings with the employer, with regular report backs being given to the workforce at large. The employer is legally obliged to disclose its financial and employment situation and performance to the Forum. Similar disclosures should be provided on an annual basis to the entire workforce. All these measures are in addition to any obligations contained in a collective agreement. Any representative trade union in a workplace with more than 100 employees may apply to the Commission for Conciliation Mediation and Arbitration (CCMA) for a Forum to be established. In this case a representative trade union constitutes one that has over 50 per cent membership in a particular workplace (Government Gazette 16861, 1995: 98-101). This issue reveals some of the contradictions of the system although there are supposed to be benefits for both management and labour, only unions can initiate Forums. Of course, managers can initiate unofficial participative structures more closely tailored to suit their specific needs in a particular context, and, hence, are unlikely to place pressure on the relevant union to take such a step. In the end, then the initiation of a Forum will depend on an individual union, and whether participating in the system fits into its overall strategic vision. The CCMA will, wherever possible, play a facilitating and supportive role in the initiating phase, in encouraging the employer and the union to reach their own collective agreement governing the establishment of the Forum. If both sides fail to reach an agreement the CCMA has the power to unilaterally establish a Forum at the workplace. Clearly a union would not apply for a Forum if it believed it would duplicate existing bargaining functions or dilute its role. A trade union already party to a recognition agreement may apply for a Trade Union-Based Forum (Government Gazette 16861, 1 995:94-101). In such a case, Forum members are simply selected by the union from among the ranks of its own shop stewards. Workplace Forums are specifically intended to supplement, but not replace, existing collective bargaining structures. Indeed no Forum can be established in the absence of a representative union (Government Gazette 16861, 1995:92-101). This makes the Forum system very different from mechanisms for employee participation existing in other countries. By the time the 1995 Labour Relations Act was implemented, many employers had already begun to experiment with a range of new production concepts involving enhanced employee participation. Of course, mechanisms specifically tailored to the needs of individual plants are inherently more flexible, and may give management a freer hand in reshaping the organisation of work.

Conclusions. Reflecting its origins, the Workplace Forums system represents something of a compromise between competing agendas. They embody both a desire to promote South

Africa's global competitiveness and to secure a long term role for organized labour; between the promotion of employee participation to boost productivity and the engendering of workplace democracy in the interests of greater equity. The system has had a limited success. It seems that managers have preferred to experiment with forms of participation that are more specifically geared to promoting flexibility, and which are tailored to suit the needs of individual workplaces. The success of the Workplace Forum system depends on unions taking the initiative in making formal applications to the CCMA for their establishment individual workplaces-employers cannot do so. However, in practice union approaches to co-determination have been largely reactive. The reluctance of unions to promote the Forums reflects fears of demarcation disputes and (it seems well founded) concerns that they may rode their traditional role. There remains a deeply entrenched culture of non-collaborationalism within the union movement. Given the persistence of high levels of grassroots militancy, union office-bearers have little room for manoeuvre when dealing with management at factory level. Forged by almost two decades of struggle against the former apartheid government, the identity of the COSATU (Confederation of South African Trade Unions) unions provides both a source of organisational vigour and a blockage on the development of new policies. Above all, this would greatly hamper the emergence of new micro-level strategies for dealing with management, aimed a revising the traditional roles of capital and labour. Moreover, in many instances unions retain the power to reshape (or even veto) managerially-initiated forms of participation. Again, they have often managed to expand existing rights and privileges in a more comprehensive (and, to members, more transparent) fashion through non-statutory firm-based participative structures, than would have been possible through the Forums. Given these limitations, it is perhaps not surprising that few Workplace Forums have been established. Indeed, this reflects the limits of a labour relations regime that is based on negotiated compromise, and, in many areas, depends on the goodwill of both management and unions. Factory level co-determination in South Africa remains largely founded on localised deals between management and unions, and centres around non-statutory structures.

SPAIN (Workers' Participation)

In its broadest sense, in Spain this term covers ways in which workers participate in ownership of the enterprise or in its financial results (employee share ownership, profit-sharing), and what is known in Spain as "external participation", which does not include worker involvement in the enterprise's management bodies or procedures. The main channels of workers' participation under the Spanish industrial relations system are collective bargaining (the typical form of external participation); the rights to information and consultation granted to trade unions and workforce and trade union representatives; and the various forms of co-determination and monitoring of management which the most representative trade unions are entitled to operate under the Agreement on Workers' Participation in Public Enterprises of 1986. Workers' participation in public enterprises in the iron and steel sector has been extended under further agreements during the 1990s. (See Table 4)

SPAIN (Workers' Representative in Enterprise)

The basic structure, regulated by the Employees' Statute (Estatuto de los Trabajadores, ET, 1980, 1995) has two components: a) the shop stewards (*delegados de personal*) and, b) the enterprise or work centre council (*Comité de empresa*). An institution regulated too in the ET, which appears for the first time in Spanish labour law, is the employees' meeting in the work centre (*asamblea*), also a lesser component of the entire system. Whether shop stewards or work centre councils (actually a council of stewards) shall exist depends of the number of employees. The 1995 Labour Risk Prevention Act (Ley de Prevencion de Riesgos Laborales:

LRA) gives rules on information and consultation rights of employees' representatives in safety and hygiene matters.

Functions: it is important to distinguish, within the very wide jurisdiction of the council, between what may be called 'general' functions and 'specific' or concrete functions. The same is applied to shop stewards.

General Functions: The following should be mentioned as most important: a) the council shall be informed at least once every three months by the employer about the current situation and future prospects of employment, production and sales of the enterprise. Presumably the council may deliberate upon this information, giving its advice and/or proposing some measure on its basis; b) the council shall have at its disposal the balance sheet and the same documents as the shareholders are entitled to (if the company is a corporation). Other council's obligations are as follows: c) to collaborate with the employer on sustenance and improvement of productivity in the enterprise. This is a very extensive function, referring to very different subjects of the enterprise and employee's activity; d) to watch over the performance by the employer of labour, social security and employment laws; the council can initiate legal proceedings before the employer and before administrative and jurisdictional organs; e) to inform the employees of the enterprise about the subjects of its own jurisdiction, in the measure that they affect the enterprise labour relations; f) the council participates in the direction of the enterprise's social facilities. Attention should be called to the fact that within its jurisdiction the council reports, advises or proposes, it does not decide. Nevertheless, there is a strict duty on the employer's side to submit answers to these questions to the council. The council is obliged to know them and deliberate about them; if it does not do so, it becomes liable by quitting its functions.

Specific Functions: There is a whole series of these included in the ET, the most important ones being the following. The council negotiates collective agreements in employer and work centre bargaining units. Needless to say this really adds a discussion of conflicting interests to the conception of the council as an organ of co-operation. On any proceeding for total or partial lay-offs due to technological or economic causes, the council can negotiate an agreement with the employer on the solution of the crisis situation. In any case it shall report on the situation that provokes those lay-offs. The council shall report on work-time reductions, transfers of the work centre, professional training plans, piece-work rates and productivity bonuses, control of productivity systems, etc. The council shall be informed over absenteeism, work-connected accidents and professional illnesses statistics; and shall be informed over sanctions imposed by the employer in the case of serious faults. The council shall report over any complaint of the employee about his professional classification within the enterprise; over flexible working hours; and wages' payment by cheque or bank transfer. The council bargains with the employer on modifications of essential conditions of work proposed by the latter; and on transfers of employees from one to another work centre of the same enterprise. Since 1994 the law has considerably extended the cases of bargaining between employer and employees' representatives. Generally speaking those changes look forward to obtain a higher level of flexibility on conditions of work in the enterprise, adapting these conditions to the changing economic and employment circumstances. The extended possibilities offered to these agreements, between the two parties mostly, supposes a consequent restriction or limitation of the law on regulating the affected conditions of work. The results which can be attributed to the council's intervention or lack of it, in the previously mentioned matters obviously differ from one to another. In the cases where an agreement between the council and the employer is required, obviously the agreement does not exist without the presence of the council. When a previous report is required, a general rule must be the nullity of the decision which is taken without it. When a report to the council is obligatory and the employer does not provide one, there is an infraction and administration can sanction the employer.

Proceedings: The council writes up its procedure rules, where there are specifications about the calling of meetings, deliberations and resolutions. A Chairman and a Secretary are elected from among its members. The council shall hold an ordinary meeting once every two months and as many extra meetings as needed, provided the meetings are called by one-third of its members or by one-third of the employees. The employer must put at the service of the council an adequate place in the work centre for its normal activities and the best communication between the representatives and the employees.

Guarantees and Facilities: Members of the council -and shop stewards- have a special statute of protection of their delicate position as employees' representatives. This statute includes guarantees regarding the employer's behaviour and facilities for a better performance of their functions. Among the guarantees, the employee cannot be dismissed or sanctioned because of his legal activities as such a representative during the four-year mandate and up to one year afterwards. In the case of common, serious breaches of the labour contract, the employer must follow a 'contradictory proceeding', with the hearing of the employee himself and of the rest of the representatives. In addition to this, the law expressly forbids discriminatory decisions of the employer on remuneration or professional advancement of the employee because of his representative functions. The employee has the right to express freely his opinions about the matters concerning these functions; decisions of the Constitutional Court have conditioned this right to the basic employer interests, the veracity of the information and the *bona fides* principle. Among the privileges, every member of the council disposes of a number of hours every month, to exercise the function of his representation: the ET fixes a scale which begins at fifteen hours in work centers or enterprises with less than one hundred employees, and ends at forty hours in work centers or enterprises with more than seven hundred and fifty employees. This number of hours is remunerated and can be accumulated by collective agreement on one or more of the representatives. In addition to the adequate place which must be put, by the employer, at the disposal of the council, a notice board must also be put at its service for communications to the personnel. The ET fixes an important limit to the representative office: shop stewards and members of the work centre council have a duty of secrecy on reserved information provided by the employer, and this for the full four-year mandate and after it.

An Act of 24 April 1997 (No. 10/1997), has transposed in Spanish Labour Law the Directive n. 94/45 on European Works Councils. In order to regulate the number and designation system of employees' representatives in enterprises and groups of enterprises with their central board in a different Member State of the EU, in principle, these representatives are designated among the shop stewards, members of the work centre council and work centre unions' representatives. These employees' representatives at the European level have the same guarantees as the 'national' ones and some additional hours yearly to exercise their special representation.

SPAIN (Work Centre Unions Representatives)

The 1985 Trade Unions Act (Ley Organica de Libertad Sindical) (TUA) establishes that employees' members of a union can create a Union Section (*Sección Sindical de empresa*) in the enterprise or work centre. As union members, they can meet in assembly (meetings obviously different to these general meetings of employees, mentioned above), collect union fees and distribute union information. Sections of the more representative unions and of the unions that have obtained at least one of the representative places of the work centre council have several additional advantages: a notice board for union communications to the personnel, an adequate place to fulfill its activities in the work centre, the right to collective bargaining at plant or enterprise level. In work centers with more than 250 employees, the Union Section of the unions that have obtained at least one of the representative places of the work centre council call appoint a 'Union Delegate' (*Delegado sindical*), actually a new type of shop steward, with representative functions. Up to four of these delegates can be appointed in work

centers with a higher number of employees. Union Delegates must receive from the employer the same information as the work centre council and shop stewards; they have the right to sit without vote in work centre council meetings; they shall report in the case of employer's collective measures that touch employees' interests, especially when these ones are members of the union. Union Delegates have the same guarantees as shop stewards and members of the work centre council. They have the same duty of secrecy. The 'Unions delegates' (*Delegados sindicales*) coexist with shop stewards and work centre councils in a certain number of enterprises or work centres, these of a higher number of employees, where unions can create Union sections. The distribution of functions between these two types of representations of the employees is not always decided by the law in a very clear way, what probably means that that the decision on which of them will actually act is merely a practical one.

SPAIN (Representatives on Safety and Hygiene Matters)

The LRA gives some important rules on information and consultation rights of employees' representatives in the enterprise on safety and hygiene matters. Shop stewards and members of the work centre council choose between themselves a number of representatives with specific functions on the matter (*delegados de prevenció*n). The employer must consult them on conditions of work, health and safety matters; and they have a right to watch over the effective application of prevention rules in the enterprise. Collective agreement can establish a different system of designation, provided the authority to designate belongs to the employees' representatives or to employees directly. A council on safety and health (*Comité de seguridad y salud*) must be created in every work centre with 50 or more employees. This specific council is integrated by the *delegados de prevenció*n and by the same number of employer's representatives. Its functions cover the ordinary and periodical consultation by the employer on health and safety matters. It has also faculties on planning and application of Detention rules, on promotion of more effective means of prevention, receiving from the employer the necessary information.

SPAIN (Board Level Employee Representation)

Spain's system of employee representation in corporate governance has been shaped by the experiences of General Franco's authoritarian regime which ran the country between 1939 and 1976. Although a worker participation law was passed in 1962, it was widely criticised as 'pure propaganda'. The corporatist structures that dominated Spain's industrial relations tended to ensure that power and authority in the workplace remained exclusively in the hands of employers. Certainly the promotion of trade union and individual worker rights were not part of the Franco workplace agenda although a rigid, corporatist system was imposed on employers and employees. The 1962 law established 'the participation of personnel in the administration of enterprises which were legally corporations' and had other requisites. There should be one employee representative on the Board for every six other Board member, a minority representation therefore. In practice, this representative had little importance. Spain's 1978 democratic constitution that followed the end of the country's dictatorship makes it clear that the state is under an obligation 'to promote the participation of all citizens in economic life', but no new regulation exists on this matter. The ET has abolished the Act regulating this special type of representation of the employees, and has established no similar one. In 1986 and 1993 two agreements between the most representative unions and representatives of State administration were reached; among other things, was established a representation of unions in the board of directors of corporations shared by the State employing more than 1,000 workers. Although, there is not a general provision on this matter, certain branches know a specific regulation. This has been the case of Saving Banks and Cooperatives, where respectively two

Acts of 1985 and 1999 have introduced employees' representatives in the direction boards: the two most representative trade unions, CCOO and UGT, are entitled to send one representative each to sit on the boards of the banks.

No legal provision exists in Spain requiring a permanent presence of employees on company boards in the private sector. Nor are there any co-decision rights in the firm between employer and employees, except for the fixing of holiday periods. Any moves to worker representation in corporate governance have to be made through collective bargaining. Under this agreement unions can participate in management either through holding minority representation at board level or through the creation of an information and control committee where management and unions hold equal representation. The private sector companies in Spain are firmly under the control of either shareholders or family owners. Trade union efforts to advance the cause of worker participation at board level in private firms failed to make much progress during the 1980s. (See Table 3)

SPAIN (Staff Councils)

Under the Representation of Public Servants Act of 1987, staff councils must be set up in all public administrative bodies, except in local bodies with fewer than 50 public servants, where the workforce is represented by workers' delegates. Their powers and responsibilities and the facilities and guarantees for workers' representatives granted to them are the same as those of workers' committees, on which their regulation is modeled.

SPECIAL NEGOTIATING BODY (EU Legislation)

A special negotiating body (SNB) is a body comprising employee representatives from a number of Member States responsible for negotiating (a) an agreement establishing a European Works Councils (EWC), under the terms of the Directive 94/45 (as amended by Directive No. 2009/38, of 6th May 2009), or (b) a similar representative body in a European Company (SE) and in European Cooperative Society (SCE), as stipulated by Directive 2001/86 (supplementing the European Company Statute) and by Directive 2003/72 (supplementing the European Cooperative Statute) with regard to the involvement of employees. In the case of the EWC, once the EWC is established and a meeting convened, the SNB 'shall have the task of determining, with the central management of the enterprise, by written agreement, the scope, composition, functions, and term of office of the European Works Councils or the arrangements for implementing a procedure for the information and consultation of employees' (Article 5(3)). Article 6(1) provides that 'The central management and the SNB must negotiate in a spirit of cooperation with a view to reaching an agreement'. Where no agreement is made, or if the parties so choose, requirements stipulated in an annex to the directive will come into force. However, the thrust of the directive is to enable and encourage central management and the SNB to agree on the form and operation of the EWC themselves. In the second case (the SE and the SCE) an agreement between the SNB and the management of the SE (or the SCE) is concerned to set up a 'representative body' similar to an EWC or an information and consultation procedure. If they decide (and this is compulsory in some cases), the agreement may also set out the rules for board-level participation. In SEs (and in SCEs) established by transformation, the agreement must provide for at least the same level of employee involvement as existed within the company being transformed. If no agreement is reached, or the parties so decide, a statutory set of 'standard rules' applies providing for a standard 'representative body'.

SWEDEN (legal sources on participation)

The key statute in Swedish collective labour law is the 1976 Co-Determination Act (*Medbestämmandelagen*, MBL; short for Act on Employee Consultation and Participation in Working Life). The rules in the Act, covering both the private and public sector, can be divided into two main groups. The first group deals with provisions on the system of collective regulation in the labour market, carried over more or less unchanged from earlier legislation and covering the right to organize, general right to negotiate and mediation, together with collective agreements and their legal effects such as the peace obligation. Rules are also given on damages and other remedies for breach of collectively agreed or statutory provisions and on negotiation on grievances. The second group of rules concerns participative employer representation (with no equivalent in previous legislation) whose “introduction signalled what was essentially new in the Act”. Their characteristic feature is that the rights to participate in employer decision-making are mainly confined to trade unions that have concluded a collective agreement with the concerned employer following the LO-SAF Basic Agreement from 1938, the so-called *Saltsjöbadsavtalet*. MBL was completed in 1982 by the so-called Development Agreement (*utvecklingsavtalet*) between SAF, LO and PTK, the negotiation cartel for the white-collar trade unions. This is a basic agreement partly containing a participation agreement called the Development Agreement.

These rules on industrial democracy did not overturn the long-established principle that, unless prescribed or agreed otherwise, management and the right to direct work rest in the hands of the employer. However, the Act seeks to help the unions to limit the scope of that principle. The primary route to participation envisaged is regulation by collective agreement (see participation agreement, residual right to take industrial action), but even where no participation agreement is established the employee side is given several possible ways of influencing decision-making. The rules, which are sanctioned by liability in damages, impose in particular an obligation on the employer to take the initiative in negotiating with an established union before deciding on any major change to the business or to the employment and working conditions of the union's members (see participation agreement, residual right to take industrial action). Other forms of employee influence opened up by the Act consist in an established union's right to be provided with business information and, in the event of certain disputes, right to decide *ad interim* on the interpretation of contractual matters such as a member's duty to work. They also include rules on a union right of veto with respect to an employer's plans to contract out work to an independent contractor. The Act is applicable in both the private and public sectors, although the scope for concluding agreements and, to some extent, negotiation is more limited in the public sector. Since its enactment in 1976 the Co-Determination Act has undergone only a few amendments, most importantly in connection with the implementation in Sweden of European Directives on collective dismissals (No. 75/129 as amended by No. 92/56, now consolidated in No. 98/59) and on transfers of undertaking (No. 77/187, as amended by No. 98/50, now consolidated in No. 01/23). Another amendment (2000) relates to mediation.

SWEDEN (Works Council)

The workplace-level body for co-operation between labour and management was instituted in Sweden in 1946 under an agreement between SAF and LO. The background to the agreement was the call for industrial democracy which followed the Second World War. However, neither the 1946 agreement (revised in 1964) nor a 1975 agreement between SAF, LO and PTK on economic committees and independent experts resulted in any real employee rights to involvement in decision-making. This was one of the reasons underlying the introduction in 1976, by way of the Co-Determination Act, of more extensive employee participation. The adoption of the Act was accompanied by the termination of the works councils' agreement, and

no subsequent agreement has ever been concluded. Today, there are no works councils in Sweden other than European Works Councils. Employee consultation and participation are channelled through the established unions and exercised by way of employee representation on the board and negotiation on managerial decisions.

SWEDEN (Negotiation on Managerial Decisions)

Under the Co-Determination Act (1976) negotiation on managerial decisions is often referred to negotiations, subject to the peace obligation, chiefly aimed at giving the employee side some kind of voice in issues relating to the conduct of business at workplace level. They also serve as a forum for keeping the employee side informed on the progress of the business (see business information). In most cases the initiative in commencing negotiations lies with the employer. In the main, only an established union (that is, a union which has concluded a collective agreement with the employer) has the right to take part: where there are several such unions, the employer must enter into negotiations with all those affected by an issue. Although the employer's obligation to negotiate relates initially to the local union, in the event of disagreement the employee side can call for negotiation at sectoral level (see business information). If an employer is not bound by any collective agreement at all, negotiations must be carried out with all the unions involved in matters relating to redundancy and in transfer of undertaking situations covered by the rules in the 1982 Employment Protection Act implementing Directive 98/50 (formerly Directive 77/187). Otherwise, unions which have not concluded a collective agreement with the employer have a right to take part in such negotiations only in respect of matters which specifically relate to employees who are their members. Non-unionized employees have no such rights at all. The negotiations envisaged can, for all practical purposes, relate to all decisions at workplace level in which the employer ultimately has the final right of decision. Since this applies even to key issues of company management, nothing is protected as falling within the exclusive preserve of the employer. The Act also requires such negotiations to be initiated at the earliest possible stage, to enable them to represent a natural and effective element of the decision-making process and give employees the opportunity of truly meaningful participation. Despite all this, the obligation on the employer is essentially nothing more than an obligation to engage in negotiations (see business information). If no agreement is reached, the employer unilaterally makes a final decision against which there is no appeal. Any breach of the employer's obligation at least to engage in such negotiations can, however, be contested before the Labour Court and incurs liability to pay non-pecuniary damages.

SWEDEN (Priority Right of Interpretation)

Principle determining whose construction of the proper meaning of a statute or agreement is to prevail *ad interim* where a dispute arises on the matter. In the last resort such a dispute can be settled by the courts, but before this happens it may be necessary for the issue in dispute to be regulated provisionally in some way. For example, the dispute may concern whether under the relevant collective agreement there is an obligation on the workforce to work overtime on a particular Saturday. In Sweden the tradition has been for the employer's interpretation to prevail; employees were subject to an immediate duty of obedience and could only contest the matter at a later date. In modern-day labour law, however, the established union concerned is given a priority right of interpretation in certain cases, although it does not embody a right of veto since the employer can always then obtain a binding judicial decision. This priority right of interpretation is confined to disputes of rights and can be exercised only by the established union concerned, not by an individual employee. Rules conferring a priority right of interpretation on the employee side are laid down in the 1976 Co-Determination Act (mainly as

regards issues relating to the employee's contractual or collectively agreed duty to work and as regards pay disputes), in the 1974 Workplace Union Representatives Act and in the 1974 Study Leave Act.

SWEDEN (Participation Agreement)

The 1976 Co-Determination Act recommends that it should be supplemented by collective agreements on participation rights for employees. The subject-matter for such agreements is the widest imaginable and coincides with the scope of section 32 rights. The advisability of establishing agreements needs to be viewed in the light of the fact that the Act merely gives employees a basic right to participate, essentially in the form of negotiation on managerial decisions. No requirements are laid down on the actual content of agreements: it is left to the parties to determine their substance and emphasis. Such agreements can therefore comprise differing degrees and forms of participation rights for the employee side, ranging from real decision-making rights to co-operation in joint bodies. Although the Act attaches certain legal effects to participation agreements, and in particular a priority right of interpretation for the employee side, the parties can draft agreements in such a way that these legal effects are pre-empted, which is often the case. Participation agreements exist in all sectors of the labour market, *e.g.* the Development Agreement in the private sector, the Utveckling-92 agreement in the local-government sector and the Co-operation for Development agreement in the central-government sector. None of these agreements gives the employee side a right of veto or independent decision-making right of any importance. They focus on co-operation and development, with strong emphasis on decentralization, the role of the employee as an individual, the day-to-day work situation and equal opportunities. Far removed from a legalistic and ideological stance, they are marked by pragmatism and the spirit of co-operation. (See Table 3)

SWEDEN (Board Level Employee Representation)

The democratisation of working life in Sweden has a long history that goes back to the inter-war years. Its development has always reflected the impressive growth of a strong and progressive trade union movement in alliance with Social Democratic governments that have ruled the country for all but nine years since 1932. The elaborate system of managed social corporatism that was developed in Sweden through the highly centralised organisations representing employers and trade unions has tended to emphasise the importance of voluntary collective bargaining without resort to the use of prescriptive legal rights imposed by the state. It was not until 1973 and 1975 that legislation was passed that introduced company board representation for worker representatives. The shift away from voluntary negotiated agreements to the use of legislation marked an important change of direction in the industrial relations strategy of Sweden's trade union movement. It aroused considerable opposition from employers and it was only after 1982 that agreement was reached that began to put the legislation into action. But from the beginning the new laws – one for co-determination and the other on board representation – provided employer associations and trade unions with considerable autonomy and flexibility in the way that employee representation at company board level should be designed. A great deal is left to the initiative and creativity of local officials and company managers. Indeed, the open-ended nature of the worker participation laws has produced a considerable diversity in the range of structures and procedures. But the legislation was rewritten in 1987 as the Board Representation Act. The far-reaching measure is designed to provide employees with the opportunities for using their knowledge and influence in company activities. It covers not only limited-liability companies but also banks, mortgage institutions, insurance companies and economic associations who employ 25 or more workers.

Employees in such enterprises are entitled to two representatives on the board of directors and one alternate for each member. But companies that employ an average of at least 1,000 employees in Sweden are also required to have three worker representatives on their board of directors. The most common size of the board in Swedish companies is seven members, two of whom are employee representatives. Because all rights to co-determination, participation and negotiation at the workplace are distributed to the trade unions, which, by law, are responsible for the conclusion of collective agreements within the company, only the members of a trade union have the right to elect their representatives on the boards. The decision to appoint employees' board representatives is taken by a local trade union which is bound to the company by a collective agreement. If as many as 80 per cent of the employees covered by the collective agreement belong to the same trade union, that organisation can appoint all the employees' representatives. If this is not the case the two seats have to be shared among the most representative trade unions in the firm. In practice unions have little problem in reaching agreement on the appointment of employee representatives. But the law requires that those representatives are employees of the company concerned. It is very unusual for full-time trade union officials from outside the company to be appointed onto its board as employee representatives. Under the law an employee representative is allowed to serve a term that does not exceed four financial years. Only the body that has appointed the employee representatives can dismiss them. The law makes it clear that the employee representatives on the company board do not participate in the treatment of issues that concern the collective bargaining agreement. Nor are they involved in industrial action or other matters where a union organisation at the workplace has a material interest which may conflict with the interests of the company. Indeed, it is not an exaggeration to argue that the relative decline in the power and influence of Sweden's trade unions at the national level as social partners has been paralleled by a revitalisation of their organisations in the workplace. The development of joint decision-making in Swedish companies is in tune with the country's tradition of collective bargaining and social partnership. Moreover, the legislation of the 1980s was developed in line with the voluntary and negotiated approach to workplace change. Research does not suggest employee representation on company boards has altered the power relationship between managers and employees but it has helped in ensuring active cooperation and consent to work modernisation. (See Table 3)

SWITZERLAND (Workers' Participation)

Article 110, paragraph 1(b), of the Federal Constitution empowers the federal state to pass legislation on relations between employers and employees, especially about the regulation in common of questions concerning enterprises and trade. This provision was originally adopted in 1947 to meet the demands of the trade unions who wanted to introduce legislation on the 'trade community', although at that time they were not eager to introduce an 'enterprise community'. But, some years later, the trade unions changed their minds, and having seen the German legislation on *Mitbestimmung*, asked for a similar law in Switzerland. The Swiss Confederation of Trade Unions united, for the first time in history, in a common action with the two Christian trade unions, and the three federations started a constitutional initiative with a view to introducing into the Constitution a provision empowering the federal state to pass legislation on the participation of workers and their organizations in the decisions of enterprises and administrations. The trade unions held that the constitutional provisions then in force were not sufficient to bring in a law about participation in the decisions of the enterprise. But while they asked in their propaganda for the introduction of such participation, they restricted themselves in the constitutional initiative to asking for a mere extension of the competence of the federal state. The Federal Parliament opposed the initiative with a much more restricted counter-proposal, but proposal and counter-proposal were rejected by the people in 1976. For a long time no Act was passed in execution of Article 34 *ter* paragraph

1(b) of the Constitution (now Article 110). In 1993, with a view to approximating Swiss social legislation with that of the Directives of the European Community and despite the Swiss rejection of the accession of Switzerland to Europe, the Federal Assembly passed the Act on information and consultation of workers, commonly named the *Participation Act*.

SWITZERLAND (Participation Act)

According to the Participation Act (1993), in enterprises with at least 50 workers, the latter may elect representatives (Article 3). For smaller enterprises, workers themselves act as representatives (Article 4). The representatives have to be informed on all matters on which they need information in order to fulfil their tasks, and they have to be consulted on the following matters (Article 10): a) security at work and health protection; b) collective dismissals; c) transfer of undertakings. It must be said that this Act applies to private enterprises which permanently offer work in Switzerland (Article 1). The Participation Act is a framework agreement. It guarantees the minimum rights to information and of participation, in particular its procedural aspects. Thus, Article 15 provides that the Labour Courts are competent in case of disputes resulting from the application of the Act. In such a case, employers as well as workers and their associations can be parties (Article 16). It is not clear whether the representatives have the ability to take the case to court. Apart from its procedural rules, the Participation Act refers to other more specific rules. Article 10 stipulates that representatives have, regarding the fields mentioned above, particular rights of participation set out in the Code of Obligations (CO) (Articles 333 and 339 for the transfer of undertaking and Articles 335d to 335g for the collective dismissals) as well as those set out in the Accident Insurance Act (Article 82 for the security and the protection of health). In addition the Participation Act remains subsidiary to the collective agreements (Article 2).

SWITZERLAND (Information and Consultation Rights)

The Labour Act (LA) contains a provision about the possibility of constituting a representative body of employees in the enterprise. The employer in an industrial enterprise who is bound to set out work rules may either prepare these rules himself after consultation with his employees, or reach written agreement on the text of such rules with a freely elected workers' delegation (*see above*, paragraph 122). This delegation is deemed to have been freely elected when its election has been carried out in accordance with a collective agreement or analogous arrangement (Article 37 LA and Article 67 Ordinance I). The written agreement between the employer and the workers' delegation is not a collective agreement which has to be concluded with a trade union. But the possibility provided by Article 37 LA has not been used in practice. In other provisions of the Labour Act reference is made to the representation of the workers in an enterprise. The competent authority, when granting an hours-of-work permit, may, as an exceptional measure, make minor departures from the legal provisions if the application of such provisions would involve unusual difficulties and if the majority of the workers concerned or their representatives in the enterprise so agree (Article 28 LA). Furthermore, according to Article 48 LA) workers or their representatives must be informed and consulted by their employer about the issues relating to: a) health protection; b) the organization of working time and its schedule; c) specific measures linked to the night work (Article 17e). Workers or their representatives must be consulted by their employer before the latter takes a decision on the issues mentioned above. In cases of disagreement, workers have a right to know why their opinion has not been taken into consideration. In the Act respecting work in public transport enterprises and in the Ordinance for the execution of this Act, there are a number of provisions which refer to the obligation of the employer to consult the workers or their representatives, or

which even provide that some exceptions to the normal hours of work may only be made with the consent of workers or their representatives.

SWITZERLAND (Workers' Representation in the Administration of Provident Funds)

Provident funds in favour of employees have to be transferred by the employer to a foundation, co-operative society or public establishment (Article 331 CO). In the case of a co-operative society, the administration is elected by the beneficiaries. But, in general, the fund is transferred by the employer to a foundation, either constituted by him or which he has joined. In this case, the workers take part in the administration of the fund in proportion to their contributions; as far as possible they elect representatives chosen from among the employees of the enterprise (Article 89bis, Civil Code). According to the Act concerning the Occupational Pension Scheme of 25 June 1982, an employer whose workers are compulsorily insured under the terms of the Act must, if he is not affiliated to a provident institution, choose such an institution in agreement with his employees; if agreement cannot be reached the choice is made by an arbitrator. The institution is then administered by a body consisting of equal numbers of representatives of employers and of employees. This governing body has to establish the rules of the fund, to take decisions about the financing of the latter and about the investment of the assets. When employers' associations create equalization funds which take part in the administration of old age, survivors' and invalidity insurance, at least one-third of the members of the steering committee of the funds have to be nominated by the workers' unions. As regards accident insurance, workers who are not insured with the National Insurance Accident Institute have the right to participate in the choice of the insurance company with which they will be insured.

“THEORY Z”

“Theory Z” is the name applied to the so-called "Japanese Management" style popularized during the Asian economic boom of the 1980's. In contrast Theory X, which stated that workers inherently dislike and avoid work and must be driven to it, and Theory Y, which stated that work is natural and can be a source of satisfaction when aimed at higher order human psychological needs, Theory Z focused on increasing employee loyalty to the company by providing a job for life with a strong focus on the well-being of the employee, both on and off the job. According to Dr. Wiliam Ouchi, its leading proponent, Theory Z management tends to promote stable employment, high productivity, and high employee morale and satisfaction. Ironically, "Japanese Management" and Theory Z itself were based on Dr. W.E. Demings' famous “14 points”. Deming, an American scholar whose management and motivation theories were rejected in the United States, went on to help lay the foundation of Japanese organizational development during their expansion in the world economy in the 1980's. Characteristics of the Theory Z are: a) long-term employment; b) Collective responsibility; c) Implicit, informal control with explicit, formalized measures; d) Collective decision-making; e) Slow evaluation and promotion; f) Moderately specialized careers; g) Concern for a total person, including their family.

TOTAL QUALITY MANAGEMENT (TQM)

As defined by the International Organization for Standardization (ISO), "TQM is a management approach for an organization, centered on quality, based on the participation of all its members and aiming at long-term success through customer satisfaction, and benefits to all members of the organization and to society". TQM is the management of total quality. According to The American Society for Quality, the term TQM was first used by the U.S. Naval Air Systems Command "to describe its Japanese-style management approach to quality improvement". Management consists of planning, organizing, directing, control, and assurance. Total quality is called total because it consists of 3 qualities: Quality of return to satisfy the needs of the shareholders, Quality of products and services to satisfy some specific needs of the consumer (end customer) and Quality of life -at work and outside work- to satisfy the needs of the people in the organization. This is achieved with the help of upstream and downstream partners of the enterprise. To this, we have to add the corporate citizenship, i.e. the social, technological, economical, political, and ecological (STEPE) responsibility of the enterprise concerning its internal (its people) and external (upstream and downstream) partners, and community. Therefore, Total quality management goes well beyond satisfying the customer, or merely offering quality products (goods and/or services). "Total Quality Control" was the key concept of A. Feigenbaums's 1951 book, *Quality Control: Principles, Practice, and Administration* (released in 1961 under the title, *Total Quality Control*).

TRANSFER OF AN UNDERTAKING (EU Legislation)

The transfer of an undertaking refers to the transfer of a discrete economic entity to another party. The interests of employees in such a transfer is regulated by EU Directive 2001/23 of 12 March 2001, which applies to the ‘transfer of an undertaking, business or part of a business’ (formerly Directive 77/187 on the ‘approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of businesses’, as amended by Directive 98/50, of 29 June 1998). In the event of transfer of an undertaking, terms and conditions of employment in contracts and collective agreements are safeguarded; but employment itself is not always guaranteed. To avoid liability for dismissals, transferee employers may be tempted to persuade transferor employers to dismiss the workforce before the transfer, so as to be able to claim that the employees were not employed at the time of the transfer. The European Court of Justice has held that the directive’s provisions may still catch such dismissals before the transfer date, though the decision is for national courts to judge on the particular merits of the case. The definition of the ‘undertaking’ has also been the subject of controversy before the ECJ. For example, the possibility that a transfer of employees is of itself equivalent to the transfer of an undertaking was acknowledged in a leading case (*Jozef Maria Antonius Spijkers v. Gebroeders Benedik Abbatoir CV & Alfred Benedik en Zonen BV*, Case 24/85, [1986]). An attempt to take ECJ decisions into account was made in the amendment to the directive in 1998 (Article 1(1)). According to Article 7 (Information and consultation), the transferor and transferee are required to inform the representatives of their respective employees affected by the transfer of the following: - the date or proposed date of the transfer, - the reasons for the transfer, - the legal, economic and social implications of the transfer for the employees, - any measures envisaged in relation to the employees. The transferor must give such information to the representatives of his employees in good time, before the transfer is carried out. The transferee must give such information to the representatives of his employees in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment (Article 7. 1). Where the transferor or the transferee envisages measures in relation to his employees, he shall consult the representatives of these employees in good time on such measures with a view to reaching an agreement (Article 7.2). Member States whose laws, regulations or administrative provisions provide that representatives of the employees may have recourse to an arbitration board to obtain a decision on the measures to be taken in relation to employees may limit the obligations laid down in paragraphs 1 and 2 to cases where the transfer carried out gives rise to a change in the business likely to entail serious disadvantages for a considerable number of the employees. The information and consultations shall cover at least the measures envisaged in relation to the employees. The information must be provided and consultations take place in good time before the change in the business as referred to in the first subparagraph is effected (Article 7.3). The obligations laid down the Directive shall apply irrespective of whether the decision resulting in the transfer is taken by the employer or an undertaking controlling the employer. In considering alleged breaches of the information and consultation requirements laid down by the Directive, the argument that such a breach occurred because the information was not provided by an undertaking controlling the employer shall not be accepted as an excuse. Member States may limit the obligations laid down in paragraphs 1, 2 and 3 to undertakings or businesses which, in terms of the number of employees, meet the conditions for the election or nomination of a collegiate body representing the employees. Member States have to provide that, where there are no representatives of the employees in an undertaking or business through no fault of their own, the employees concerned must be informed in advance of: - the date or proposed date of the transfer, - the reason for the transfer, - the legal, economic and social implications of the transfer for the employees, - any measures envisaged in relation to the employees.

TRIPARTITE CONSULTATION (ILO)

ILO Convention No. 144 (1976) concerns effective consultation between the representatives of the government, of employers and of workers on international labour standards. The ratifying ILO Member State undertakes to operate procedures that ensure effective consultation between representatives of the three groups on:

- a) Government replies to questionnaires concerning items on the agenda of the International Labour Conference and their comments on proposed texts to be discussed by the Conference;
- b) Proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to Article 19 of the Constitution of the ILO;
- c) The re-examination at appropriate intervals of non-ratified Conventions and of Recommendations to promote their implementation and ratification as appropriate;
- d) Questions arising out of reports on ratified Conventions to be made under Article 22 of the Constitution of the ILO;
- e) Proposals for the denunciation of ratified Conventions.

The nature and form of such procedures shall be determined in accordance with national practice after consultation with the representative organizations of employers and workers, where these exist. These organizations shall freely choose their representatives for the purpose of these procedures. Employers and workers shall be represented on an equal footing on any competent bodies.

Consultations shall take place at agreed intervals, but at least once a year. When appropriate, the competent authority shall issue an annual report on the working of the procedures.

TRIPARTITE CONCERTATION (EU Legislation)

In their Contribution to the Laeken European Council on 7 December 2001, the *ETUC*, *UNICE* (which changed its name to *BusinessEurope* on 23 January 2007) and *CEEP* distinguished *tripartite* concertation between the social partners and European public authorities from *bipartite* work by the social partners. This was spelled out in detail in Section 3: “*tripartite concertation to designate exchanges between the social partners and European public authorities; consultation of the social partners to designate the activities of advisory committees and official consultations in the spirit of article 137 of the Treaty; social dialogue to designate bipartite work by the social partners, whether or not prompted by the Commission’s official consultations based on article 137 and 138 of the Treaty*”. A Council Decision (6 March 2003) formally established a new ‘Tripartite Social Summit for Growth and Employment’ to support reinforcement of the concertation between social partners and European institutions on economic and social policies. This institutionalizes meetings at least once a year, just before the spring European Council, between the social partners and the head of state or government of the present and two subsequent Presidencies of the Council and the Commission. The establishment of the Tripartite Social Summit by Council Decision sets European-level tripartite concertation within a new framework, with the Tripartite Social Summit acting as a bridge between the different processes of concertation. The aim is to ensure greater consistency in tripartite concertation, and to enable the social partners to contribute in an integrated way to the different components of the “Lisbon Strategy”. There are now four fields in which tripartite concertation takes place: macro-economics, employment, social protection and education and training. Each comprises both a technical and a political level. The macroeconomic dialogue, aimed at encouraging growth and employment, involves regular

exchange of views between the representatives of the Commission, the Council, the European Central Bank and the social partners. The tripartite dialogue on employment takes place along the lines of the macro-economic dialogue.

TURKEY (Participative Practices in Industrial Relations)

Employees influence management decision-making in Turkey through several channels and in varying degrees. These may be grouped into three categories: a) the law; b) shop-level practices implemented by the initiative of the employer, and, c) collective bargaining both in the private and public sectors.

TURKEY (Participation through Labour law Provisions)

Employees participate in various joint boards and committees in Turkey through several legislated arrangements among these may be cited the participation of employees' representatives in the 'annual vacation committee' as well as various other committees foreseen by the Act No. 4857. The occupational health and safety committees to be set up in certain establishments constitute an important form of participation in a legally defined area. Workers' representatives also sit on some of the high-level tripartite boards and general assemblies, such as the minimum wage board, the Supreme Arbitration Board and the General Assembly of the Social Insurance Organization. Another tripartite body with consultative functions is the Labour Council. The Labour Council, composed of representatives of the ministries concerned, universities as well as employees' and employers' organizations, is convened upon the request of the Ministry of Labour. It is an advisory ad hoc body whose task is to discuss items on new legislative proposals and other matters of interest to workers and employers, and as such it performs functions foreseen in ILO Convention No.144 ratified by Turkey. More recently in Article 114 of Act No. 4857 the formation of the Tripartite Consultation Board has been envisaged with a view to promote work on the adoption of legislation in conjunction with ILO Convention 144 as well as with the relevant European Union Directives. The Tripartite Consultation Board was established in line with Article 114 and has already initiated efforts along the lines set out in its respective Regulations. With a view to initiating the long-awaited top-level conservative mechanism, a declaration issued by the Prime Minister in 1994 and revised in 1995 and again in 1997 established the Economic and Social Council. Presently its legal basis is the Act No. 4641 (of 11 April 2001), on the Formation, Functions and Working Methods of the Economic and Social Council. It is composed of representatives of labour unions (in addition to Türk-İş, other confederations of labour and public servants' unions are also represented) and employers' (both private and public), government and other interest groups (i.e., chambers of commerce, industry and agriculture) to deal with general questions of concern to the national economy as well as to workers and employers in particular. The Economic and Social Council is a new experiment and its effectiveness has yet to be tested. So far certain criticisms have been levied against the composition of the Economic and Social Council which is very large, encompassing various interest groups and in which the government seems to be overrepresented. Established by Act No. 440 (1964) and put into effect by a specific law in 1966, a limited form of workers' participation in the management boards of state economic enterprises (SEEs) and their establishments was started by the government with a view to experimenting with new models and extending the outcome to the private sector if the results proved fruitful. After fourteen years of experience with this limited form of participation in the public sector, the Government of Ecevit in 1978 attempted to enlarge the scope of participation and prepared several draft bills to that effect. In line with the wording of the Social Contract which was signed by the government and Türk-İş in July 1978, a draft decree, aimed to create an employees'

participation scheme (as well as proposed legislation for enhanced job security) which was more comprehensive and broader in scope than the existing model, was prepared, but as a result of the change of power from the Ecevit to the Demirel cabinet in 1979 the above-mentioned proposals did not materialize. After the military intervention of 12 September 1980, the Parliament went even further in 1984 by abolishing the limited form of workers' participation in the management boards of the SEEs. But expanding the scope and effectiveness of participation first in the SEEs and then introducing similar schemes into the private sector became an on-going idea frequently voiced in union and pro-labour circles. Forthcoming work on EU-style 'works councils' or Information-Consultation systems envisaged by the pertinent EU directives is likely to revive interest in the Ecevit government's proposals of 1978.

TURKEY (Participative Schemes at the Shop Level)

In the recent years some enterprises in Turkey have addressed the use of employee suggestion systems as well as sophisticated labour-management cooperative efforts such as shop-level quality circles, team-building and team work, job redesign and job enrichment. Of particular interest in this category are the experiments of quality circle in the Sabanci group, and the human resource management practices in the Koç groups. The unions-including even the DİSK-affiliated Lastik-İş organized in BrisSa have been quite cooperative. Yet no union has so far been able to penetrate the ToyotaSa (the Toyota-Sabanci joint venture) which also conducts quality circle programs with a view to improving quality and productivity. Ironically, the introduction of similar practices in the glass industry was not possible due to the resentment of Kristal-İş, the union which was influenced by the ideology of the French CGT on this issue. Turk Pirelli, on the other hand, seems to have made significant contributions to quality through such efforts which in turn have helped to increase its share in world markets.

TURKEY (Participation through Collective Bargaining)

In the absence of a broad-based statutory participation system in Turkey, collective bargaining serves as perhaps the most effective method, albeit only in certain areas, whereby labour is able to influence management decisions in both the private and public sectors. In fact, influence on management decision making through collective bargaining by which workers' wages and conditions of employment are regulated by agreement between their representatives and employers can, of course, be extremely important, depending on the subject matter and the level of bargaining, as well as the binding effect of the collective agreements. In Turkey, the scope of participation through collective bargaining has been limited, however, to certain personnel and social matters, and high-level financial and economic decisions which are regarded as management prerogatives have generally been excluded from the union's impact. Most Turkish collective agreements endeavour to limit the right of management to hire, transfer and even promote employees without consulting the signatory union. Labour unions have also been successful, to some extent, in influencing the size of the workforce through collectively bargained provisions and, in some cases, have restricted the right of the employer to sub-contract work out although the rulings of the judiciary have wavered on this issue. Indeed, providing workers with job security had been one of the major goals of labour unions during the past decades. Most Turkish collective agreements provided for 'joint discipline committees' which, among other functions, aimed to restrict the employer's right to terminate or break the worker's employment contract. During the 1960s these committees were almost without exception headed by the employer or his representative. When votes were even, it was usually the chairman's (employer's) vote which determined the outcome. However, 1970s witnessed the increasing influence of employee representatives on discipline committees,

especially in cases concerning discharge and lay-offs. Although the opinions of the judicial organs wavered and were generally not favourable towards unions' attempts to provide their members with employment security in many of the more modern undertakings where managers exercised sophisticated personnel policies the decisions of such joint committees were respected. Later, albeit belatedly, the Court of Cassation seemed to be upholding the legal validity of such joint committees by ruling that the employer's ignoring the committee's decisions should be construed to mean 'unfair dismissal' for which increased compensation rates could be applicable, though not 'reinstatement'. These verdicts of the late 1990s seemed to reflect the already-felt impact of the ratified ILO Convention No. 158 despite the absence of enabling legislation - which could materialize only after the year 2001. Another form of 'collective bargaining-based participation' relates to the role played by shop-stewards in the grievance procedure. Most collective agreements provide for a full-fledged grievance and arbitration process-despite the legal possibility of filing suit with the labour courts. Thus, union-appointed shop-stewards function as the first step on the joint grievance committees which in some collective agreements are structured in conjunction with discipline committees and by which most rights disputes are resolved before having to be referred to higher or outside levels of dispute settlement mechanisms.



UNITED KINGDOM (Industrial Democracy)

The term *industrial democracy* was specifically associated, during the late 1970s with the proposals of the Bullock Report, which advocated trade union rights to representation on the boards of directors of large companies. Before and since then it has been loosely used to describe various forms of consultation, employee involvement and participation, but in the United Kingdom it tends to be associated primarily with union-based structures, as opposed to systems that operate independently of trade. The *Bullock Report* was a report proposing for a form of worker participation or workers control. A Committee of Enquiry into Industrial Democracy (chaired by A. Bullock) was set up by the Labour government of Harold Wilson in December 1975, in response to the European Commission's Fifth Directive, which sought to harmonize worker participation in management of companies across European Community. Its terms of reference started with the words: "Accepting the need for a radical extension of industrial democracy in the control of companies by means of representation on boards of directors, and accepting the essential role of trade union organizations in this process to consider how such an extension can best be achieved [...]" (Report of the Commission on Industrial Democracy, London, HMSO, 1977). The Report, published in January 1977, was not unanimous, as a majority report it was signed by Bullock and as members of the committee: three trade unionists, two academics and a city solicitor. A minority report was produced by the three industrialists on the committee. The Committee advocated a radical extension of industrial democracy through a requirement that unions be given the right in law to elect representatives to the board of directors of private companies employing more than 2000 employees. The key features of the recommendations were that union representatives should be equal in number to those of shareholders, with a smaller group of agreed "independent outsiders", and that, unlike in some continental European countries, they should be elected by trade union members, rather than by all employees. The response of British employers was universally hostile, and that of the unions ambivalent, since many were worried that the proposals might undermine established collective bargaining machinery. In the event, the return of a Conservative government in 1979 removed the issue from the dominant political agenda. The Labour Party remains committed to a form of industrial democracy, and proposals for employee participation emanating from European Community initiatives may reinvigorate debate on this issue. Developments during the 1970s made it clear that collective bargaining on its own could not cope with the ultimate power of management to close down an enterprise, to shift activities to other areas, or to introduce major changes; closer forms of participation were needed. This need was recognized by the TUC, which, in 1974, adopted a policy of pressing for legislative rights to board level representation for organized workers [TUC, *Industrial Democracy* (London 1974), revised 1976] and given impetus by proposals by the EEC Commission for worker participation in certain contexts. These developments led the then Labour government to appoint a committee of inquiry, under the chairmanship of Lord Bullock, which reported in January 1977. The majority made wide ranging proposals for employee representation, proposals which were only partly accepted by the then Labour government. But the election in 1979 of the Conservative government effectively put an end to

the debate about legislative change, that administration being implacably opposed to such legislation. A revival of the proposals made by the Bullock Committee is not envisaged. Under the Labour government in power since 1997, the approach which has emerged in respect of labour relations policy has been characterized by the government as one of 'social partnership'. The centrepiece of the new measures is conceded with collective bargaining at enterprise level, accompanied by the adoption of EC-wide measures on European Works Councils and information and consultation with employee representatives. Nevertheless, industrial democracy remains a live issue at European level, and has been so for the past three decades.

UNITED KINGDOM (Works Council)

In the UK the term works council does not have the same specific meaning as in other countries: in the UK it covers a wide range of committees at workplace level, possibly involving only trade unionists, joint committees of unionists and managers, and non-union committees of managers and employee representatives. In a unionized context works councils are sometimes seen as the bodies dealing with non- collective bargaining issues, such as recreational and canteen facilities.

UNITED KINGDOM (Workers' Participation)

In a widely sense, the term may be applied to all forms of workers' involvement in managerial decision-taking at any level that fall short of outright workers' control. Thus it may be used synonymously with forms of industrial democracy such as those advocated in the Bullock Report (*see above*), involving workers' representation on the board of directors; with various forms of joint consultation; and indeed with collective bargaining itself. It is usually held to mean workers' participation either in pre-existing managerial structures or in structures that operate within an overall context of managerial control.

As above said, trade unions have traditionally regarded collective bargaining as the primary way to extend collective control by workers of their work situation; secondly, participation has developed without institutional devices of the kind found in some other European countries, such as works councils. Before 1974, there had been no significant attempt to establish forms of worker participation additional to collective bargaining in the private sector. There were a few schemes of 'profit-sharing' or shareholding by workers, a few 'workers' cooperatives' and the 'partnership system' of a large retail organization. But the participation of workers in the enterprise had grown primarily through the shop steward system and collective bargaining. With the decline in the proportion of the workforce whose pay is determined by collective bargaining, the question arises whether the centrality of collective bargaining is being overtaken by other structures such as joint consultative committees. Studies and researches report that during the 1980s, such committees were to be found in 34 per cent of all workplaces; throughout much of the 1990s, the percentage stood at 29; moreover, consultation via consultative committees tends to complement rather than displace collective bargaining, with trade unions playing a positive role in those structures. explanation for the fall in the number of consultative committees in the 1990s have focused primarily on 'the changing population of workplaces' in the public sector and changes in management policy, often arising out of a change of ownership. In recent years, there has been an increase in the number of 'higher level consultative committees', operating in multi-establishment organizations encouraged, it is said, by the European Works Council Directive. In 1990, 48 per cent of workplaces belonging to a multi-establishment organization reported the existence of a higher-level committee in their organization; that percentage has risen to 56 in 1998. However, throughout the period in question, only around two-fifths of such workplaces had a representative on the higher-level committee. A CBI survey of 673 private sector employers in

June 2001 found that almost half of them had introduced consultation arrangements for employees. Even among smaller companies, 40 per cent of those employing fewer than 40 employees had done so, with a further 11 per cent stating that they intended to do so soon (*Financial Times*, 15 June 2001). After the implementation of the Council's Directive on Information and Consultation (No. 2002/14), the British workers have the basic right to consultation [see the Information and Consultation on Employees (ICE) Regulations 2004]. This new law requires companies with 50 or more employees to regularly inform on the enterprises' economic situation and to consult with workers on key decisions regarding the organization's future. These include situations where jobs are threatened and where any anticipatory measures, such as training, skill development and other measures increasing the adaptability of employees, are planned. Consultation is also compulsory for decisions that are likely to lead to substantial changes in work organization or in contractual relations. In the UK, since 2005, this law applies to those organizations with 150 or more workers, from 2007 for those businesses with over 100 workers and from 2008 for those with more than 50 workers.

UNITED KINGDOM (Employees' Consultation)

Consultation is a process of discussion and debate between unions and employers, or between employers and employees, usually distinguished from collective bargaining and negotiation in that it does not imply a process of bargaining, compromise and joint agreement but is rather a means through which employers seek views before deciding on action. For this reason many trade unionists reject consultation in favour of negotiation where they are strong enough to do so. In practice, despite the above distinction, consultation and negotiation are processes that merge into one another and are thus difficult to distinguish. The law (especially legislation implementing EU Directives) requires that employers must consult with recognised trade unions in respect of proposed redundancies, impending transfer of the undertaking, health and safety and pension schemes. In relation to the first two categories employers may, alternatively, consult employee representatives for dismissals and transfers. In these two contexts consultation must be undertaken by the employer with a view to reaching agreement.

UNITED KINGDOM (Safety Representatives and Safety Committees)

Before 1975 safety and health issues were generally not regarded as matters of active 'worker participation'. However, the *Health and Safety at Work, etc. Act* (HSWA, 1974), embodying the proposals of the Committee of Inquiry under the chairmanship of Lord Robens', empowered the Secretary of State to make regulations for the election by employees of safety representatives from amongst the employees to represent employees in consultation with employers. The underlying philosophy was that employees and employers have a common interest in a self-regulating system of industrial accident prevention. The Employment Protection Act 1975 amended the HSWA by limiting the trade unions the power to appoint safety representatives, so clearly embodying the philosophy of collective bargaining, namely that health and safety should be a matter for negotiation between trade union representatives and management. At the same time, the dependence on recognized trade unions meant that employers who refused to recognize unions were permitted to sidestep their obligations under the Act.

The HSWA (lastly amended in 2008) defines general duties on employers, employees, contractors, suppliers of goods and substances for use at work, persons in control of work premises, and those who manage and maintain them, and persons in general. The HSWA enables a broad regime of regulation by government ministers through Statutory Instrument which has, in the years since 1974, generated an extensive system of specific provisions for various industries, disciplines and risks. It established a system of public supervision through

the creation of the Health and Safety Commission and Health and Safety Executive, since merged, and bestows extensive enforcement powers, ultimately backed by criminal sanctions extending to unlimited fines and imprisonment for up to two years. Further, the HSWA provides a critical interface with the law of the European Union on workplace health and safety.

The Act lays down general principles for the management of health and safety at work, enabling the creation of specific requirements through regulations enacted as Statutory Instruments or through codes of practice. For example, the Control of Substances Hazardous to Health Regulations 2002 (COSHH), the Management of Health and Safety at Work Regulations 1999, the Personal Protective Equipment (PPE) at Work Regulations 1992 and the Health and Safety (First-Aid) Regulations 1981 are all Statutory Instruments that lay down detailed requirements. It was also the intention of the Act to rationalise the existing complex and confused system of legislation.

Since the accession of the UK to the EU in 1972, much health and safety regulation has needed to comply with European Union law and Statutory Instruments. The UK provisions are augmented and strengthened by the EU Directive 89/391 (adopted on 12 June 1989) on workers' representatives' rights to information, consultation and participation about health and safety, in the workplace. In particular, the Act is the principal means of complying with the Council Directive 89/391. Following a ruling by the European Court of Justice that the EC rules in respect of information and consultation with employee representatives in the case of collective redundancies and transfers of undertakings were not satisfied where consultation depended on the will of the employer whether or not to recognize a union', (Cases C-383/93 and C-384/93, *Commission v. United Kingdom* (1994) IRLR 392, 412) the Health and Safety (Consultation with Employees) Regulations 1996 were made. These give the employers the choice of consulting employees directly or of consulting elected representatives of employee safety. As a result there are now two sets of regulations. The Safety Representatives and Safety Committees Regulations 1977, as amended, apply where the employer recognizes an independent union. These regulations empower a recognized trade union to appoint safety representatives from among employees in all cases where one or more employees are employed by an employer by whom it is recognized. The employer must be notified in writing of their appointment before they are entitled to exercise their statutory functions, and to make inspections of the workplace and to be provided with documents and information. The Health and Safety (Consultation with Employees) Regulations 1996 apply only where groups of employees are not covered by union safety representatives appointed under the 1997 regulations. Safety representatives are entitled to time off with pay during working hours to perform their statutory functions and to undergo reasonable training. If at least two safety representatives request the employer in writing to establish a safety committee he or she must do so within three months, after consulting with those representatives and with representatives of recognized trade unions whose members work in any workplace in respect of which the committee is to function. The Health and Safety Commission has issued Codes of Practice giving guidance on the establishment and duties of representatives and committees. A breach of the Codes is relevant in any proceedings. A contravention of the regulations may result in the issuing of an improvement notice by the Health and Safety Executive, or criminal proceedings giving rise on conviction to a fine, or possibly to an action for civil remedies. In practice it is likely that disputes will usually be resolved through voluntary procedures.

UNITED KINGDOM (Board Level Employee Representation)

There is no legal requirement in the UK, either in legislation or a formalised code of practice, that the country should have a two tier structure for companies, including a supervisory board. The vast majority of British companies have a single Board, including both executive and non-

executive directors. The role of Boards varies widely in the UK, as does the extent to which it appears directly to influence a company's behaviour, rather than acting simply as a ratification machinery. Research cited in the Bullock Report suggested that boards had responsibility for senior managerial appointments, for setting objectives and strategic plans, for controlling financial affairs, for agreeing the broad organisation, for considering take-overs and mergers, for performance evaluation, and for setting guidelines on employment and personnel policies. All enterprises in UK are formed and managed for the explicit benefit of shareholders alone. Under existing company law the directors run the firm in the shareholders' interest. No formal position exists in law that entitles employee representatives to have seats on the company board. However, British companies are legally required to inform and consult employee representatives under EU regulation although this falls far short of worker participation on company boards. A recognised union is entitled to prior information from an employer if it involves a company dismissing 20 or more workers within 90 days. It has a similar legal right in cases of health and safety and occupational pension schemes. But in its 2003 briefing document on the European Company Statute, the Department of Trade and Industry argues that it is quite lawful to establish such a company structure that involves direct employee representation under current legislation. What limited law there is in UK concerns only the right of workers to information and consultation, and that is mainly limited to questioning which is directly related to employment, collective redundancies and transfers of undertakings from the public to the private sector. But even that practice is not widespread in the country. In a white paper on modernising company law published in 2002 the government went no further than suggesting firms should recognise that they had a need to foster relationships with their employees, customers and suppliers, as the circumstances required. (See Table 3)

UNITED KINGDOM (Financial Participation)

Under the prompting of the Finance Acts of 1978, 1980 and 1984 employee shareholding schemes have grown in the United Kingdom. As recent surveys show, just over 20 per cent of public and private companies practised at least some form of employee share ownership, although not necessarily for all their employees. Extension of employee share ownership has been a much publicized feature of the recent privatization of some public sector corporations, such as British Telecom. Although seen by some as a form of workers' participation and industrial democracy, in most cases the numbers of shares involved are small, providing workers with no real shareholder power, and in some cases may involve the allocation of non-voting shares only.

Employee Share Ownership Plan (ESOP): An idea brought into UK from America which provides a way for employees to obtain an equity stake in the company for which they work that they would not otherwise be able to afford. A trust is established which purchases shares on behalf of employees, using money borrowed from a financial institution. The dividends on the preference shares are used to pay off the loan and the shares are then gradually released to the employees. They are still held in trust but, if the scheme so allows, the employees can sell them. ESOPs have been used in connection with management and employee buy-outs of companies when new shares are acquired at the buy-out price.

Profit Sharing Scheme: This form of financial participation has a long history but has received renewed attention in the last decade because of legislative encouragement and tax advantages. Approved profit sharing (APS) schemes involve distribution of shares to employees free of charge. The shares are purchased by a trust established by the company and financed from company profits. The shares are allocated to individual employees and held by the trustees on their behalf for a minimum of two years. Another scheme with tax advantages is SAYE (save-as-you-earn), where an employee enters into a savings contract with the option to purchase shares at the end of the contract period at a price fixed previously. Both types of scheme must

be open to all fulltime employees who have been with the company for at least five years. There are also non-approved schemes which do not enjoy the tax advantages. *Profit-related Pay (PRP)*: An element in the total pay package which is related by some formula to the profitability of the company (or a unit thereof). As with profit sharing, there are tax advantages for employees where the scheme is approved by the Inland Revenue, same character as the others. The intention of a profit-related pay scheme is that part of the employees' pay will move up or down according to the profits made by the company, thus making pay more responsive to company performance. As well as being seen as a way of improving individual performance and motivation through giving employees a direct interest in the success of the business, and as a means of fostering commitment to the company, profit-related pay is argued by its supporters to have employment implications in that labour costs will be automatically reduced when the company runs into difficulties (through the profit-related element), thus minimizing the risk of layoff and redundancy. These claimed advantages of profit-related pay have yet to be substantiated by research findings.

Companies which have introduced financial participation generally express relatively long-term objectives such as making employees feel they are part of the company, increasing employee commitment and making employees profit conscious. Among the arguments raised against financial participation are: the double risk it involves for employees in tying their jobs and savings to the success of the same organization; the recruitment inhibiting effects which may result from existing employees attempting to maximize their proportion of the profits; and the fear that employees, through their representatives rather than as shareholders, may demand a greater say than management is prepared to concede in the strategic decisions which can affect the company's profitability and consequently their pay. (See Table 4)

URUGUAY (Joint Commissions for Administering the System of Leave)

Law No. 12.590/1958, reorganizing the system of annual vacations, accepted certain methods in the granting and enjoyment of this benefit, to be introduced by 'duly approved collective agreements'; but Art. 6 imposed in such cases the introduction of joint commissions. A special chapter regulating this aspect of the law is found in the Decree of 26 April 1962 (Arts. 43 to 50). According to these rules, the joint commissions working at plant, and sometimes at enterprise level, established in collective agreements on vacations are obligatory if there are at least 15 workers employed (Art. 6 of Law No. 12.590/ 1958). The commissions are integrated following the guidelines of the corresponding agreements; but where no guidelines are found, the decree ordains that they shall be constituted of two members representing employers and two members representing the workers. One of the employer's representatives shall be chairman, responsible for the keeping of documents and minutes; and a representative of the employees shall be secretary (Arts. 44 and 48). The regulating decree also states that the problems of personnel (office workers, plant workers, etc.) not represented on the commission must be investigated with the participation of a member of the group concerned, which shall be summoned for this purpose. This person does not vote (Art. 47). The appointment of workers' delegates must be made (Art. 45 of the Decree) by direct election which, should it be questioned, must be repeated under the supervision of a Labour Inspector. These proceedings are subject to what the parties may agree when constituting the joint commissions. The commissions are, of course, competent in all matters relating to vacations arising in each establishment - especially those referring to the dates on which vacation is to be enjoyed by each worker. However, many other areas of competence may be attributed to them by the agreements (Art. 43). On this point, Uruguayan doctrine accepts that they might be charged with social work within the establishment or the enterprise; with the supervision of industrial security; with collaborating in the control of the enforcement of agreements and of social legislation in general, and even with taking part to some degree in the management of the

enterprise. The decree itself expressly charged joint commissions with participating in the control of discipline within the establishment. Taking into account the fact that days not worked, by causes imputable to the worker, do not generate the right to vacation (Law No. 12.590, Art. 8), the commissions must determine whether or not the cause for not working is imputable to the worker (Art. 43-B), especially when not working is a result of disciplinary measure (Art. 50). Management must provide the Secretary with daily detailed information of disciplinary measures taken: and the Commissions may summarily obtain further information on the facts motivating the measures, and hear the worker concerned. These proceedings do not lead to a final decision; it is established that they shall be public and that, *ex-officio* or on demand of the parties, they shall be taken before the General Inspectorate of Labour. Joint commissions must necessarily be installed only where there are agreements concerning the taking of vacation.

URUGUAY (Joint Councils in Enterprises with Public Service Leases)

The Law No. 10.913/1947 prescribed joint councils for private enterprises providing public services, integrating them into the procedure for the prevention and resolution of labour conflicts. These councils are competent, on request, in all questions affecting personnel in dismissal, transfers, disciplinary measures and other disputes which may arise; and also in all problems relating to work organization and industrial security. A Decree of 24 May 1955 also declared that joint councils instituted by Law No. 10.913/1947, were competent, at the request of the parties concerned, for organizing the shift scheme for paid holidays, in terms of the needs of public services enterprises. For this reason, some additional aspects of the working of these councils may be examined here. Article, 3 of the regulating Decree of 29 August 1947, specifies that, lacking agreement within the parties, the Executive, when summoning elections to joint councils, shall determine the establishment of special councils for plant workers and service personnel and for the employees or administrative personnel of each enterprise. A delegate of workers in any category must have at least three years' service in the enterprise (Article 4). Regular meetings must be held at least once a week. They may be held during or after working hours in appropriate meeting places which the enterprise must provide (Article 6). The parties may at any moment call for special meetings; and if these meetings are hindered in any way, any delegate may demand the intervention of a Labour Inspector (Article 7). Meetings of joint councils require the presence of at least two members of each delegation (Article 8). The Decree of 1949 acknowledges the right of councils to prepare and submit to the Executive a proposal for their internal regulation regarding their functioning and deliberations. As has been frequently pointed out in previous chapters the regime instituted by Law No. 10.913 which was always strongly opposed in the syndical movement, has fallen in disuse.

URUGUAY (Commissions Representing Personnel in Autonomous Government Agencies)

Article 65 of the Constitution (1952) established that the law may allow the installment of commissions representing personnel in autonomous government agencies. Article 65 also expressly determined that these commissions shall collaborate with the directors of the agencies on the following points: a) Complying with the rules established in the Civil Service Statute; b) Budget planning; c) Organizing services; d) Regulating work; e) Applying disciplinary measures. In the discussion preceding this constitutional amendment, the fact that this scheme represents more security for public officials and at the same time 'more general responsibility in the public service', was insisted upon. The enforcement of the amendment required a regulating law which up to now has not been passed. However, some state agencies applied the plan, through internal rulings, and obtained auspicious results. The system of

participation later received the approval of some representative sectors of the trade union movement in the public sector. It was even included in the improvements campaigned for by civil servants. This means that the lack of legal regulation does not arise solely from the traditional opposition of trade unions to the institutionalizing of participating mechanisms which might limit or reduce their field of action. It may be that the failure to regulate the amendment, which directly prevents it being enforced, is principally caused by the fear of institutionalizing by law a mechanism which might alter the system of hierarchy of administrative agencies or affect their internal discipline.

USA (Employee Involvement)

A workplace program often referred to synonymously with quality of working life, quality circles, and labour-management participation teams, which seeks 'to improve organizational performance through increased involvement of employees in organizational decisions'. On the one hand it may be defined as a structured, systematic approach to the involvement of employees in group decisions affecting work and the work environment with goals that include reducing product cost; improving product quality, facilitating communication, raising morale, and reducing conflict, leading ultimately to a worker/union-management partnership. On the other hand, it may be defined as long-term comprehensive processes that are developed to enable workers to participate more fully and effectively in problem-solving and decision-making through structured and institutional changes in many aspects of the work environment. The beginning of employee involvement is traced to the formation of the National Civic Federation in 1980, which sought to reduce industrial conflict by bringing the disputing parties to a conference table. The establishment of labour-management committees during World Wars I and II, the Hawthorne experiments at Western Electric which led to the human relations movement; the work of organizational behaviorists, to develop more effective organizations, the development of area labour-management committees as the key to economic development, the passage of the National Labor-Management Cooperation Act (1978), to support the area committees and quality of work life efforts, and the automobile agreements incorporating 'quality of work life language in 1973 and the General Motors/Auto Workers experiment at Tarrytown, New York, in response to workplace problems and eventually to economic decline of the auto industry are representative programs in the history of employee involvement efforts. The United Auto Workers, one of several unions active in employee involvement programs, in 1979 signed the first agreement with the Ford Motor Company "to support an effort to increase employee participation on the shop floor". Through the years, there has been an increased belief that people have a right to be involved in making decisions that affect their lives. This is matched by a belief that people who are involved in making decisions have a greater stake in carrying out those decisions than those who are not involved. In addition, many studies and researches assert that participatory management is widely perceived as an attribute of socially responsible companies, with participation in decision making at the workplace seen as central to the democratic vision and basic to the good society.

In the USA there is no legislation providing for works council-type structures or board-level employee representation. Nevertheless, a survey conducted by the Dunlop Commission on the 'future of worker-management relations' (1995) found that 75 per cent of large employers had some form of employee involvement. These types of involvement vary considerably, ranging from teams that deal with specific problems for short periods to groups that meet for more extended periods. They include 'direct' forms such as quality circles and self-managed work teams, and not necessarily (or indeed at all) the indirect or representational forms common in the EU Member States. It appears (according to the HR Policy Association, an organization of senior human resources managers) that many participation arrangements are limited in their scope, or have been curtailed, due to fear of breaches of labour law. This is because the

National Labor Relations Act (NLRA, 1935) prohibits the formation of an employer-dominated 'labour organization' or 'employee representation committee' which deals with management over pay, working time or conditions of work; the original purpose of this provision, was to prevent employers from controlling company unions. However, as interpreted by the National Labor Relations Board (NLRB), the law results in severe restrictions on the formation of non-union teams or committees that address 'terms and conditions of employment' which is taken to include a wide range of matters such as pay, training, productivity/efficiency rewards, work assignments, job descriptions/classification, workloads/quotas, recruitment and dismissal. However, a number of recent NLRB decisions (notably the *Crown Cork & Seal* case in 1998) may indicate some relaxation of this position. The 1995 report of the Dunlop Commission recommended that this restriction on employee participation programmes in non-union workplaces should be lifted (though with protection for union representation). A Teamwork for Employees and Managers (TEAM) Act was subsequently passed in Congress, which would have allowed teams of employees in non-union workplaces to work with management to address workplace issues of mutual interest. However, the legislation was vetoed by the President of USA. If enacted, the TEAM Act (H.R. 743, 104th Congress), would have amended the NLRA, to permit labor-management cooperative efforts that now constitute unfair labour practices.

USA (Participation through Collective Bargaining)

In the US tradition, collective bargaining represents an effective form of "representative participation". Furthermore, there are many process and problems involved in collective bargaining that affect other forms of representative participation as well. So is possible to learn from experiences with collective bargaining. One possible argument for ignoring collective bargaining is that bargaining is openly adversarial or distributive while other forms of participation are presumably integrative or cooperative. But this argument is not convincing. Representative participation involves a great deal of bargaining as various experiences of work councils' illustrate. Indeed, most such participation involves what we could call "mixed motives". It is part integrative and part distributive. The *NUMMI* case involved bargaining both between union and management but also between union factions and presumably between Japanese and Americans in management. Similarly, *SATURN* can be understood as involving endless bargaining between union and management at Spring Hill and their counterparts nationwide. Although representative participation clearly involves a good deal of bargaining; there have been few, if any, studies of dynamics of the bargaining process involved, the ups and down in relationships as the parties either resolve or fail to resolve their problems over time. Research of this sort requires close observation and careful analysis of the pressures faced by the various interested parties.

USA (Safety and Health Protection)

According to the Occupational Safety and Health Act (1970), passed to assure every working man or woman in the nation safe and healthful working conditions, employers are legally obligated to provide employees with a safe and healthy environment. The Act offers a positive solution to improve workplace safety, while preserving the workers' rights to be involved in decisions that affect the quality of their lives. This increased employee participation can be viewed as a double cure to the ethical problem of workplace safety, and to the social responsibility of managers to improve the morale of the organization requiring employers to provide workplaces free from serious recognized hazards and to comply with occupational safety and health standards. The Occupational Safety and Health Administration (OSHA) wants every worker to go home whole and healthy every day. The agency was created by

Congress to help protect workers by setting and enforcing workplace safety and health standards and by providing safety and health information, training and assistance to workers and employers. The OSH Act grants workers important rights. Workers have a vital role to play in identifying and correcting problems in their workplaces, working with their employers whenever possible. Often, employers will promptly correct hazardous conditions called to their attention. But workers also can complain to OSHA about workplace conditions threatening their health or safety. The Occupational Safety and Health Act requires employers to provide a safe and healthful workplace free of recognized hazards and to follow OSHA standards. Employers' responsibilities also include providing training, medical examinations and recordkeeping. The OSH Act gives employees or a workers' representative the right to accompany an OSHA compliance officer (also referred to as a compliance safety and health officer, CSHO, or inspector) during an inspection. The labour union, if one exists, or the employees must choose the representative. Under no circumstances may the employer choose the workers' representative.

USA (Information and Consultation in case of Collective Dismissals)

In the USA there is no legislation requiring employers to inform, consult, or negotiate with employees over restructuring, with the exception of the stipulation in the Worker Adjustment and Retraining Notification Act (WARN Act, 1988) that larger companies must give 60 days' notice of plant closures or mass redundancies. The general deregulatory climate, coupled with the widespread positive perception of restructuring (see above) means that changes to this general picture seem unlikely at present. In terms of collective bargaining, a handful of collective agreements contain agreed procedures related to company restructuring, relocation and closure, but these tend to be the exception to the general rule. Rather more widespread are collectively agreed provisions on some aspects of job security. Research from the Bureau of National Affairs (BNA) indicated that around 95 per cent of current collective agreements in early 2001 contained provisions designed to enhance workers' employment security, such as extended 'recall rights', subcontracting restrictions, or advance notice of shutdowns. In terms of other types of employee involvement, there is no legislation in the USA on employee representation through works council-type bodies or any comparable arrangements. Where employee participation arrangements exist on a voluntary basis, they tend to be relatively restricted in scope.

WORKER COOPERATIVE

Business owned and controlled by its workers rather than outside shareholders. In some worker cooperatives each member worker has one vote at meetings, however many shares he or she owns. There are relatively few worker cooperatives in the UK; they are far more popular in other countries of Europe and in Japan.

WORKERS' HEALTH AND SAFETY REPRESENTATIVES AND JOINT COMMITTEES

Workers' health and safety representatives normally have the following rights: a) to have access to information on health and safety and the introduction of new technology; b) to be consulted on these matters; c) to be involved in monitoring workplace conditions; d) to accompany inspectors (sometimes called the “walkaround right”); e) to be involved in accident investigations and, f) to make recommendations to management on the improvement of working conditions. In some countries (especially EU State members, according to the European legislation) their powers go beyond this to include the right to engage in co-decision making, to initiate inspections and accident investigations and to review management's reports to government. Most importantly, some workers' health and safety representatives are empowered to order the shut-down of an imminently hazardous operation (also called “red-tagging”, for the marker placed on the spot), as in Denmark, Finland, Norway and Sweden. They are in certain instances, such as in France and some provinces of Canada, directly involved in the enforcement of health and safety regulations. Prior consultation of the joint committee is sometimes necessary before an employer can make any significant change in health, safety or working conditions (as in France and the Netherlands). In Belgium intercompany health services are under the control of a joint committee. In Italy the committees' role includes the promotion of prevention (as confirmed in the 2007-2008 legislation), and in Greece they can, with the employers' agreement, call for expert opinions on health and safety questions.

Workers' health and safety representatives necessarily enjoy protection from discrimination or retaliation in the exercise of their functions. They are entitled to at least some time off with pay, as well as to have the necessary means (the definition of which is often debated) to exercise their functions. In addition, while in office some are specially shielded from economic layoffs (redundancies) or given extra protection from dismissal (as in Belgium). Frequently, worker health and safety representatives have a right to receive specialized training (as in Denmark). The effect that workers' health and safety representatives and joint committees can have will of course depend not only on rights and duties set out in legislation or in a collective bargaining agreement, but on how they are exercised in practice. This is in turn influenced by factors that affect workers' participation generally. Such representatives and joint committees are no substitute for the effective government enforcement of health and safety standards or for what may be achieved by means of collective bargaining. However, most observers believe that (mandated joint health and safety) committees provide a more efficient regulatory regime

for safety and health than inspectorate or civil liability schemes. In any event, the trend is definitely towards greater workers' participation in health and safety matters, at least in terms of collective agreements covering larger enterprises and legislation. Where they operate as effective institutions, joint health and safety committees can be a valuable tool for identifying problems and raising awareness of hazards, thus potentially reducing the incidence of injury, disease and death on the job. The extent to which they are effective, however, depends on a large range of variables in the particular labour relations system and in the strategic approach taken to health and safety at the workplace.

The efficacy of the worker health and safety representatives and joint committees' activities depends also on the mechanism of their elections and on the links with other labour Relations institutions in the enterprise or in the country. In France, for instance, employee members of the joint health, safety and working conditions committees are appointed by a delegate elected from the works committee and staff representatives; in Germany, members designated by the works council will be among those serving on a joint health and safety committee. Works councils in the Netherlands may delegate their powers to a safety, health and welfare committee. A strong link, if not identity, between trade union representatives and health and safety representatives is usually seen as desirable [as in Quebec (Canada), Ireland, Norway and Sweden], but where trade union density is low this runs the risk of depriving large numbers of workers of representation rights in relation to health and safety. Speculation that joint health and safety committees might lead to extending greater workers' participation to other fields has remained largely unfounded.

WORKERS' PARTICIPATION (see: Participation)

WORKERS' PARTICIPATION (ILO)

The term "workers' participation", as used by the ILO, usually refers to the enterprise level. In the ILO language, the involvement of workers' organizations with policy making at the macro-level (that is to say the branches of economic activity that affect the national economy as a whole) is usually called "consultation and cooperation", not "workers' participation". In fact, the title itself of the ILO Recommendation No. 113 on Consultation and Cooperation between Public Authorities and Employers' and Workers' organizations at the Industrial and National Levels tells us exactly how the ILO uses this terminology. In addition, tripartite or bipartite consultation and cooperation in social and economic policy issues are integral elements of the ILO tripartite philosophy and structure. At a closer look, formal ILO language prefers the more precise and restrictive wording "workers' participation in decisions within undertakings" to "workers' participation". For the ILO, then, the linking of participation to decision-making is important because it excludes, for example, schemes of workers' participation (involvement) in the results of the enterprises such as the various forms of profit-sharing. In other words, when using the expression "workers' participation" for the ILO it is understood in the sense of "workers' participation in decision making at the enterprise level".

Throughout the years, in the debate on industrial relations at the international level workers' participation became a major topic in the 1960s, much later than "collective bargaining". The latter was a concept generally well understood before World War II. In the 1920s, workers' participation was more a fashionable idea and an objective in a limited number of European countries, such as Austria and Germany. During the late 1940s and early 1950s, it started spreading not only in Europe but also in other parts of the world, for example in India. The notion of workers' participation had also an impetus in some developing countries in Asia, Africa and Latin America. In the developing countries, workers' participation was seen by the political leaderships as a form of labour-management co-operation. In fact, in the interests of

national economic development governments expected workers' participation to overcome the traditional antagonism in the employee-employer relation, replacing it with a form of cooperation or partnership. In other parts of the world, for example, in the United States, workers' participation expanded through the introduction of new individual employment relationships which were characterized as "human relations", a sort of a pre-figure to what it is understood today to be "employee-involvement". Likewise, in the former communist countries of Europe, through works councils, trade unions' committees, or similar bodies, workers' participation supported the general trend towards an increasing voice of workers in the enterprise decision-making. At that time, the two national systems of workers' participation which were attracting the most attention were the co-management system of the Federal Republic of Germany and the workers' self-management system in Yugoslavia. The above mentioned developments boosted an influence on the industrial relations philosophy of the ILO.

WORKERS' REPRESENTATIVES IN THE ENTERPRISE (Protection and Facilities: ILO Convention No. 135 and Recommendation No. 143)

With Convention No. 135 and Recommendation No. 143, the ILO adopted international labour standards concerning the protection and facilities to be afforded to workers' representatives in the enterprise. These international instruments may be considered supplemental to the terms contained in ILO Convention No. 98 of 1949 on the Right to Organise and Collective Bargaining in matters concerning workers' representatives.

Under Convention No. 135, workers' representatives are those recognized as such under national law or practice. Such persons may be trade union representatives or freely elected representatives of the workers of an enterprise. The specific types of workers' representatives entitled to protection and facilities may be specified by national law, collective agreements, other legal rules, or court decisions. Convention No. 135 specifies the following types of protection and facilities to be provided to workers' representatives at the enterprise level:

- a) effective protection against any act prejudicial to them, including dismissal arising from their activities as representatives, union membership, or participation in union activities, insofar as their actions are in conformity with existing laws, collective agreements, or joint agreements (Art. 1);
- b) such facilities as may be appropriate for the prompt and efficient functioning of the representatives, in keeping with the characteristics of the industrial relations system of the country and the needs, size and capabilities of the enterprise, without impairing its efficient operation (Art. 2).

In the spirit of the Convention, appropriate measures should be taken to ensure that the existence of elected representatives outside trade union structures is not used to undermine the position of trade unions or their representatives, where both exist in an enterprise. Article 5 specifies that cooperation between trade unions and other types of representatives should be encouraged. In order to achieve such cooperation, any member State may apply the provisions of the Convention through national law, regulations, collective agreements, or in any other manner consistent with national practice. In addition, Recommendation No. 143 therefore includes detailed provisions that may serve as a guide for countries in implementing the facilities and protective measures that workers' representatives need to carry out their activities in a free and independent manner. In particular, it provides that workers' representatives should be given time off without loss in pay or other benefits, as necessary to carry out their representative functions in the enterprise. The elements of workers' participation have also to be found in other international labour standards. For example, after the adoption of Recommendation No. 119 in 1963, significant developments in law and practice occurred in

many countries regarding issues of employment termination. These developments were especially related to economic difficulties and technological changes which many countries began to experience.

Therefore, two further instruments were adopted in 1982: Convention No. 158 and Recommendation No. 166 on Termination of Employment.

"Termination of employment" is defined in these two international labour standards as termination at the initiative of the employer. The justification for termination should be based on a valid reason, connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service (Convention No. 158, Art. 4). Among the reasons that cannot be considered as valid for termination is the temporary absence from work because of illness or injury. In this regard, national practice is to determine a number of issues, including the definition of "temporary absence" from work, the extent to which medical certification shall be required and possible limitations on the application of the Convention.

The provisions of the Convention related to the period of notice of termination, the procedure of appeal against termination, severance allowances and other income protection are somewhat similar to those mentioned above. The rather new element in Convention No. 158 is that it includes supplementary provisions concerning termination of employment for economic, technological, structural or similar reasons in which workers' participation plays an essential role. For example, Article 13 of the Convention states that when the employer contemplates termination for reasons of an economic, technological, structural or similar nature, the employer shall:

- a) provide the workers' representatives concerned with relevant information in good time, including the reasons for the contemplated termination, the number and categories of workers likely to be affected, and the period over which the terminations are intended to be carried out.
- b) provide the workers' representatives concerned, in accordance with national law and practice and as early as possible, with an opportunity for consultation on measures to be taken to avert or minimize the termination, and measures to mitigate the adverse effects of any termination on the workers concerned (e.g. finding alternative employment).

It should be noted that the employer is requested by the Convention to notify the competent public authorities when it seriously contemplates the termination of the employment of workers due to economic, structural and technological reasons. This is important, especially in those areas where an enterprise will be severely affected. The public authorities should also receive all other relevant information, including a written statement of the reasons for the termination that includes the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out. Moreover, the employer shall notify the competent public authority of the terminations before carrying them out, and the period of notification should be specified in national laws or regulations.

WORKER PARTICIPATION IN ORGANIZATIONS (Theoretical Approach)

The Managerial Approach, inspired by productivity and efficiency goals (participation is organized at a lower level in order to relieve worker dissatisfaction and morale problems), reflects the emerging viewpoint that organizational design and management effectiveness can provide a significant competitive advantage. It gives considerable attention to issues of organizational design and organizational change, on the basis that entirely new work structures and ways of organizing work can lead to substantial gains in effectiveness (Lawler et al. 2001). A key issue in this approach is the extent to which management delegates or retains the power

to initiate, frame, and terminate participative processes. It also reflects management's view that the direct participation of workers undermines union power.

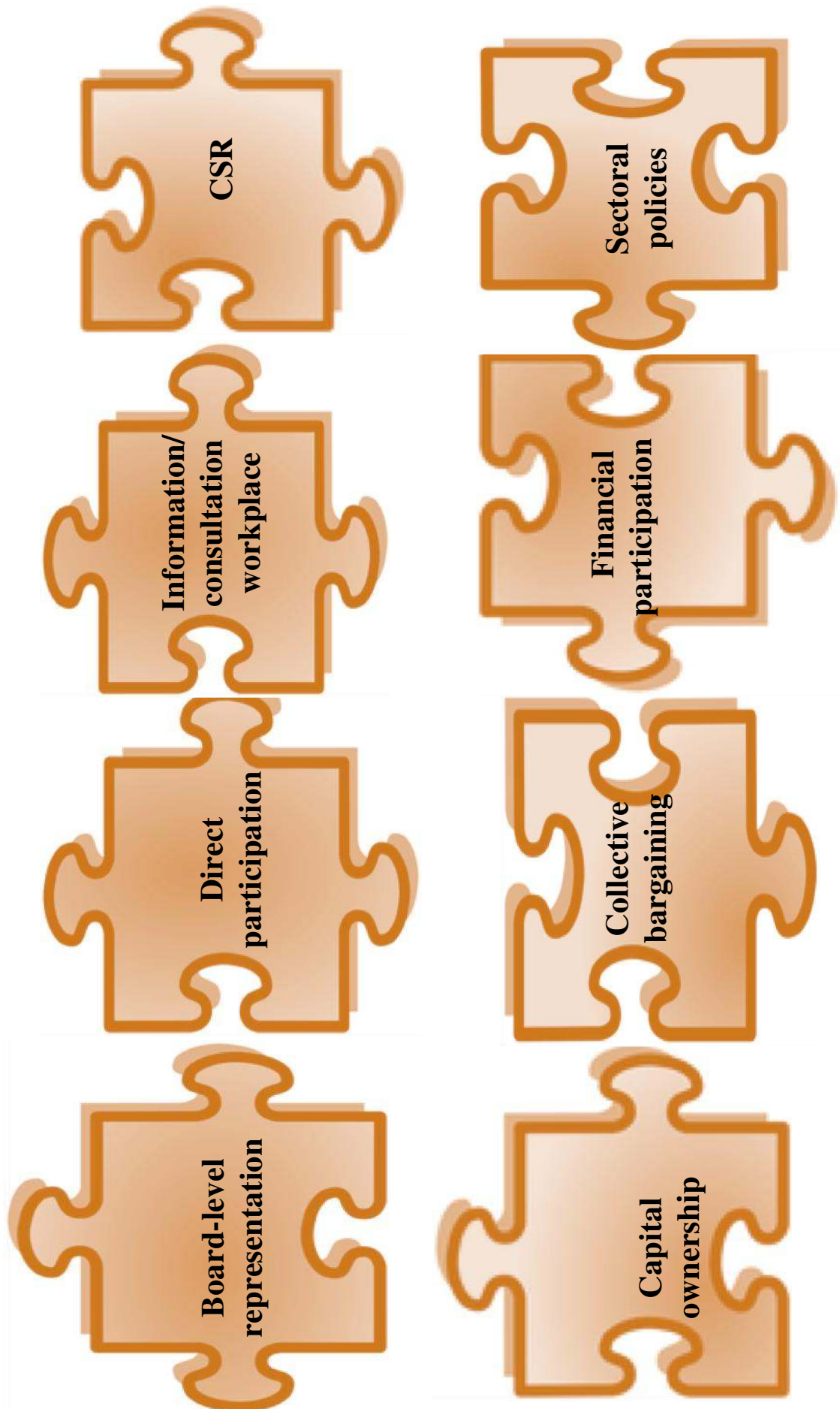
The Humanist Psychology Approach, inspired by human growth and development goals (participation as a way to enhance the well-being of the individual by promoting individual creativity, self-esteem, and ego strength), reflects the movement led by Elton Mayo, and followed by the work of Argyris (1957); Likert (1961); McGregor (1960); Mohrman and Lawler (1985); Cassar (1999); Massarik 1983; and Sagie (1997). It reflects a much more positive view of human nature and emphasizes the need to retrain managers to develop their participative leadership skills and unlearn authoritarian behaviours. It acknowledges the societal function of the workplace and the benefit of participatory restructuring of the workplace, given the central role it plays in the lives of most ordinary people (Pateman 1970).

The Industrial Relations Approach, inspired by democratic goals (participation is not only a means to an end in itself but also a way to create a strongly democratic society, characterized by active participative citizens), reflects the importance of the external environment to the organization (not highly recognized in bureaucratic, hierarchical organization design, but more widely recognized in organic, open-system designs). Participation in the workplace is seen as contributing to an effective and just society. The workplace is seen as a point of leverage from which to achieve a more egalitarian redistribution of power, leading to a greater democratization of the entire political process (Emery and Thorsrud 1969; Bachrach and Botwinick 1992; Pateman 1970; Matejko 1986).

The Psycho-Sociological or Anthropological Approach, inspired by synthetic, multidimensional goals (participation as a way of acculturation, of pushing workers to internalize the economic norms of the organization), emphasizes the fundamental aspects of human nature and how to get the best out of workers. It emphasizes the fundamental social interactions in the workplace and the role of participation in addressing issues of resistance, motivation, and engagement (Lewin 1947; Coch and French 1949; Bolle De Bal 1992a and b). This approach draws a clear contrast with traditional Taylorian and bureaucratic models, which attempt to exclude subjectivity and creativity. In this approach, subjectivity and creativity are integrated into the enterprise culture. It should be noted that not everyone subscribes to this positive view of participatory democracy or to the benefits of direct participation in the workplace. Unions, for example, argue that participative processes are actually detrimental to the welfare of workers, enabling management to capture the knowledge of workers and circumvent the protections provided by collective representation (Fantasia et al. 1988; Bolle de Bal (1992b), reflecting the generally more critical European perspective, notes that participation in the workplace has features that are not uniformly positive for all interest groups.

Workers' participation – Pieces of a still unfinished Jigsaw

Table 1



Theoretical framework

Table 2

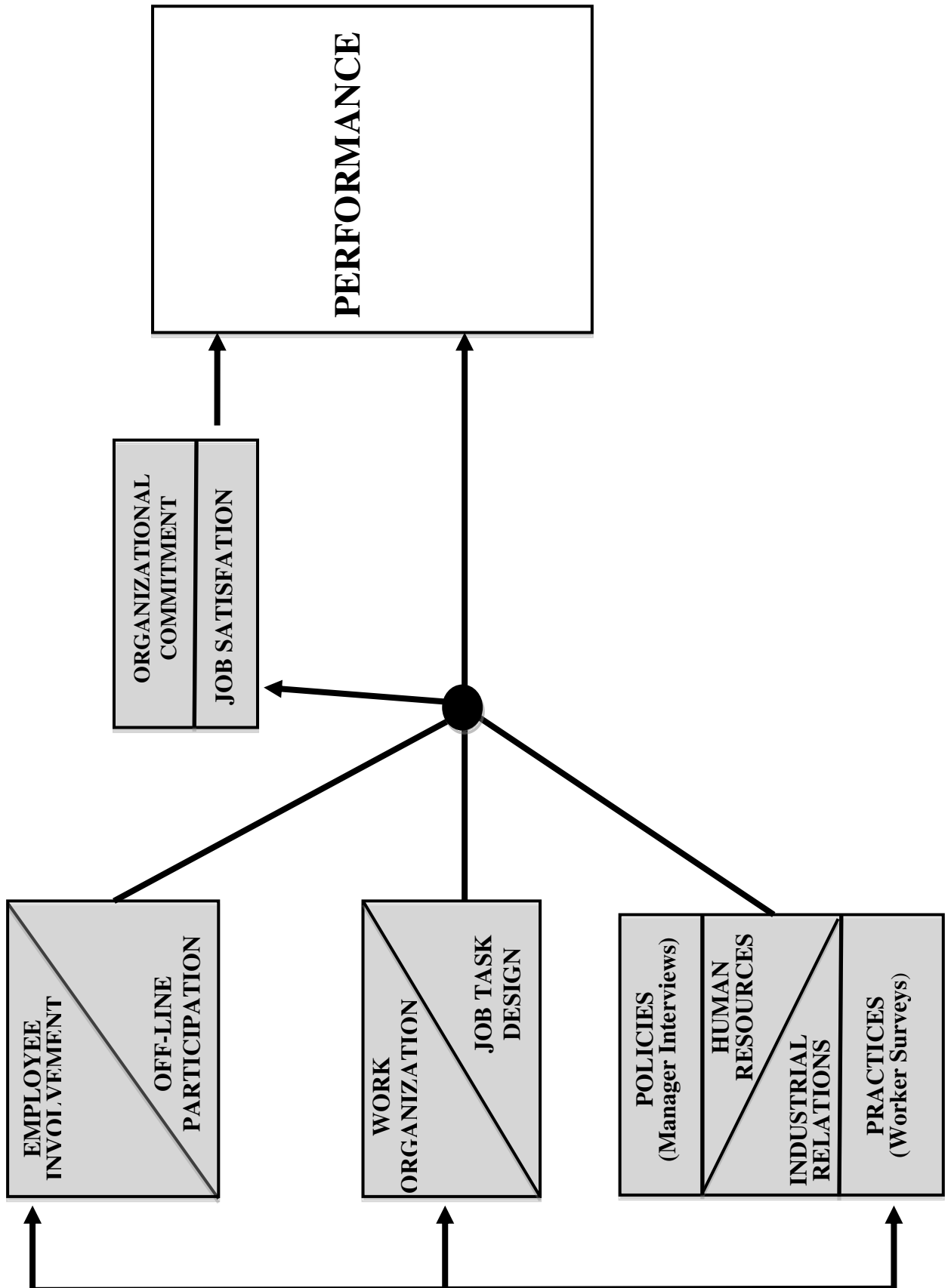


Table 3

Employee board-level participation in the 30 countries applying the European Company (SE) legislation								
	COMPANIES CONCERNED		PROPORTION OF BOARD-LEVEL EMPLOYEE REPRESENT.	SELECTION OF BOARD-LEVEL EMPLOYEE REPRESENTATIVES			ELIGIBILITY CRITERIA: ONLY EMPLOYEES	COMPANY BOARD STRUCTURES
	STATE OWNED	PRIVATE SECTOR		TU	BY WC	VOTE		
AT	●	●	1/3				●	D
BE								M
BG								M or D
CY								M
CZ	●	●	1/3				● in state-owned C	D
DE	●	●	1/3 – 1/2	● TU seats		● other seats	● except for TU seats	D
DK	●	●	1/3			●	●	D
EE								D
ES	●		2 members	●				M
FI	●	●	Agreement, Max. 4 members		● Personnel groups		●	M or D
FR	●	(●)	1/3 resp. 2-3 members			●	●	M or D
GR	●		2-3 members			●	●	M
HU	●	●	D: 1/3 M: Agreement	Must be consulted	●		●	M or D
IE	●		Mostly 1/3			●	●	M
IS								M
IT								M or D
LI								M
LT								M or D
LU	●	●	1/3	● TU seats in Iron/steel C	●		● except for iron/steel	M
LV								D
MT	●		1 member			●		M
NL	●	●	Max. 1/3		●		no E !	D
NO	●	●	Up to 1/3			●	●	M
PL	●		(mainly) 2/5			●		D
PT	●		1 member			●	●	M
RO	(●)	(●)	Min. 1 member (only advisory say)	●				M
SE	●	●	2 – 3 members	●			●	M
SI	●	●	D: 1/3 – 1/2 M: 1/5 – 1/3		●			M or D
SK	●	●	private C: 1/3 state-owned C: 1/2	1 seat in state-owned C		●	●	D
UK								M

Abbreviation: TU = trade union; WC = works council or elected workplace representatives; M = monistic structure (board of directors); D = dualistic model (management board and supervisory board);
* including privatised companies.

Source: ETUI-REHS and ETUC (2007) Benchmarking Working Europe 2007, Brussels: ETUI-REHS, p. 103.

Table 4
Varieties and spread of financial participation in Europe

Country	Profit Sharing	Spread of the most important profit-sharing elements	Equity participations	Spread of the most important equity sharing elements	Savings plans	Government promotional instruments
Austria	□	Government regulation of CPS ²	□	Tax relief of employee shares, ESO ⁹		ESO (capital market companies) or employee shares (Limited) are subject to tax benefit ⁹ PS: no state promotion ²
Belgium	□	Predominantly multinational companies and financial service providers ¹ ca. 10% of large companies ²	•	ESO and Stock options: predominantly multinational companies ¹ ca. 10% of large companies ⁷		ESO and other widespread participation schemes for employees ²
Denmark	□ □	ca. 10% of companies ¹	•	ca. 6% of companies		Promotion of profit sharing schemes as CPS, SPS or bonds ²
Finland	□	ca. 28% of companies ³	•	ESO: promotion of employee funds in connection with DPS schemes and employee shares ² Stock options: ca. 12% ⁷		Promotion of wealth formation through DPS schemes ²
France	□ □ □	ca. 53% of companies ³ ca. 27% of employees: legal (Participation) PS ca. 13% of employees: voluntary (Interessement) PS ²	•	ESO: ca. 7% of companies ¹ Stock options: ca. 5% of companies ⁷	Voluntary more than 117.000 employees from 12.000 enterprises ⁵	Profit sharing as DPS schemes (obligatory if E >50) and extension of ESO and SO schemes ³
Germany	□ □	ca. 13% of companies ¹	•	ca. 3 % of companies ⁶ Stock options: ca. 8% ⁷	(ca. 80% of employees in schemes, of which ca. 32% entitled to employees' savings bonus) ²	Widespread ESO schemes within the framework of capital accumulation (saving plans) ⁸ Tax benefits of option schemes CPS: not government regulated ¹
Greece	□	ca. 7% of companies ³	•	ca. 7% of companies ³		Up to 10% of share capital must be distributed as profit sharing or equity participation to employee ²
Ireland	□	ca. 8% of companies ¹ APSS: ca. 400 profit sharing schemes	•	ca. 4% of companies ¹	ca. 90 SAYE schemes for over 140.000 employees ⁹	Promotion of APSS, ESO, and SAYE schemes ¹
Italy	□	CPS: ca. 4% of companies ¹	•	ca. 3% of companies ¹ Tax exemption for equity participation held for min. 2 years ² State promotion of share acquisition within the framework of privatisation		ESO schemes promoted to a small extent ⁹ PS schemes: no state promotion ²
Luxemburg	□ □	CPS: ca. 26% of companies ²	•	Provision of employee shares in the case of new issues ²		ESO and PS schemes: no state promotion ²
Netherlands	□ □	ca. 13% of companies ¹	•	ESO: ca. 3% of companies ¹ Stock options: ca. 28% ¹		ESO and other widespread participation schemes for employees ⁸
Poland	□	No government support or regulation of profit sharing schemes ⁹	•	EBO (state): 1.335 companies with 162.000 employees ESO (private): ca. 330 companies with 270.000 employees (in total 15 million employees) ⁹	Pension saving plans 12 years after their introduction still not widespread ⁹	Promotion of workers' participation in the privatisation of former state-owned companies (EBO) and private companies (ESO = commercial employee participation programme) ⁹
Portugal	□	ca. 6% of companies ¹	•	ca. 3% of companies ¹		Promotion of profit sharing and equity participation (ESO and SO) ²
Spain	□	ca. 8% of companies or ca. 2 million employees ¹	••	ca. 10% of companies ¹ Stock options: ca. 4% ⁷		Promotion of stock-option schemes (SPS) and widespread participation schemes also in the form of cooperatives (EBO) ¹
Sweden	□ □ □	ca. 20% of companies ¹	•	ESO: ca. 2% of companies ¹		No particular support ¹
UK	□ □ □	ca. 30% of companies ^{3,4}	•••	ca. 23% of companies ¹ Stock options: ca. 18% ⁷		Extension of ESO and SO schemes CPS: existing programmes partly being phased out ⁸

Source: ¹ Poutsma, Erik: Recent trends in employee financial participation in the European Union (2001) - ² Priewe-Havinghorst: FES -Wirtschaftspolitische Diskurse Nr. 123 (1999) - ³ Carnet Studie (1999/2000) Pendleton et al. 2001 - ⁴ EPOC reports 40% - ⁵ Conseil Supérieur da la participation (2004/2005) - ⁶ IAB Betriebspanel (2000) - ⁷ Poutsma: Changing patterns of employee financial participation in Europe (2006) - ⁸ Pendleton-Poutsma: Financial participation: The role of governments and social partners (2004) - ⁹ Wurz: European Stock Taking on Employee Financial Participation (2003)

Notes:

PS: profit-sharing

SPS: share-based profit sharing

DPS: deferred profit-sharing

ESO: employee share-ownership

SO: stock options –

APSS: approved profit sharing schemes

ESOP: employee share-ownership plans

EBO: employee buy-outs

- low significance (p to 10 % of companies)
- middle significance (over 10% of companies)
- high significance (over 20% of companies)

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