A majority of European countries have rules that guarantee employees a voice in companies’ governing bodies. In 19 of the 31 countries in the European Economic Area (EEA) employee representatives have the right to be involved in decisions at board or supervisory-board level, a recent study by Aline Conchon for the European Trade Union Institute (ETUI) has found.

Employee representation at this level is so widespread that it could now be considered “a central component of the European social model”, Conchon says. In contrast to what is often assumed, employee involvement in decision making (“co-determination”) is not tied to a two-tier board structure where management and the supervisory board are kept separate. Employees also have a voice in countries where companies traditionally have a single governing body, such as in France, Norway and Sweden. In the vast majority of countries the rules are legally binding. In other words, a company that meets the criteria is obliged to take steps to include employee representatives in its governing body. The Nordic countries are an exception. Here an initiative from the workers or the unions in the company is needed to trigger these rights.

Not just in Germany
“There are significant variations between different European countries in the way in which worker representation with decision-making power operates at board-level,” Conchon says. Nevertheless it is possible to distinguish three clear groups:

► 13 countries have wide ranging rights to employee involvement in decision-making in both the public and the private sectors, that is in state-owned, quoted and limited companies. These are Austria, Croatia, Denmark, Finland, France, Germany, Hungary, Luxembourg, the Netherlands, Norway, Slovakia, Slovenia and Sweden.

► In six countries the right to board-level representation is limited to state-owned companies. This is the case for the Czech Republic, Greece, Ireland, Poland, Portugal and Spain. In Poland there is also employee participation in former state-owned companies.

► 12 countries have almost no employee involvement at this level: Belgium, Bulgaria, Cyprus, Estonia, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Romania and the UK.

The rules in the individual countries are not static, but constantly change, Conchon says. In particular, the financial crisis, whose effects continue to be felt, could still produce further changes, both posi-
tive and negative. “In the current turbulent times, encouraging greater provision of information, and strengthened consulta-
tion and representation of workers in corporate governance
could therefore be an important means to enable companies
to survive and thrive”, Conchon says. She points to evidence
that countries in Europe with more extensive rights to emplo-
yee board-level representation, such as Germany, have per-
formed significantly better economically than those with re-
latively few rights. The fact that Germany came through the
crisis particularly well is partly a consequence of the German
system of employee participation at board level. Both the Eu-
ropean Parliament and the European Commission have recog-
nised that employee involvement can help to avoid crises.

Despite this, employee board-level participation has been
weakened precisely in those states which have been hardest
hit by the crisis. In Ireland, Greece and Spain, especially, many
previously state-owned companies have been privatised un-
der pressure from the International Monetary Fund, the Euro-
pean Commission and the European Central Bank. This priva-
tisation has effectively ended employee participation in these
companies as, in these countries, employee representation at
board level only exists in state-owned companies. In addi-
tion, national legislators have sometimes restricted employee
representation rights, as in the Czech Republic. In 2012, the
Czech parliament passed new company legislation which abo-
lished previously obligatory employee board-level representa-
tion in private companies.

Legal form obstructs co-determination
Conchon believes that there are also threats at European le-
vel with a “regulatory competition” becoming apparent. Com-
panies are able to “shop around among the various national
regulatory and legal frameworks” and finally choose the one
with the weakest rules, allowing them to escape the require-
ment to have employee representation at board level. Com-
panies can have their registered office in a country “free of
employee representation”, for example setting up as a British
limited company or PLC. Data from the Hans Böckler Foun-
dation indicates that there are already 94 German companies
making use of a foreign legal form, operating for example un-
der the name of “Ltd & Co KG”. A loophole in German legisla-
tion means these firms no longer have employee representa-
tion on their supervisory boards.

The planned “single person company” (Societas Unius Per-
sonae, SUP) could further accelerate the escape from emplo-
yee representation. The European Commission wants to intro-
duce the one-person company to create a European legal form
that can also be used by small and medium enterprises. The
formation of subsidiaries abroad is also to be made simpler.
These moves by the EU are making it easier “to set up letter-
box companies” says Conchon. This allows companies, under
an apparently reputable pretext, to split the registered head
office of the company from its actual place of
operations and choose
which national compa-
ny law they fall under.

However, there are
demands from politici-
ans and trade unions for
a strengthening of employee participation. The European Trade
Union Confederation has proposed that rights for employee
board-level representation should apply to all companies ta-
kling a European legal form as opposed to a national one. An
EU directive would ensure a minimum standard, allowing na-
tional board-level rights going beyond this minimum to re-
main unaffected.

Source: Aline Conchon: ‘Workers’ voice in corporate governance: A European perspective
ETUI/TUC, 2015