Joint decision-making: a model that works

Employee involvement in decision-making is widespread in Europe. Even so, companies still try to avoid their obligations. European minimum standards could prevent that.

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

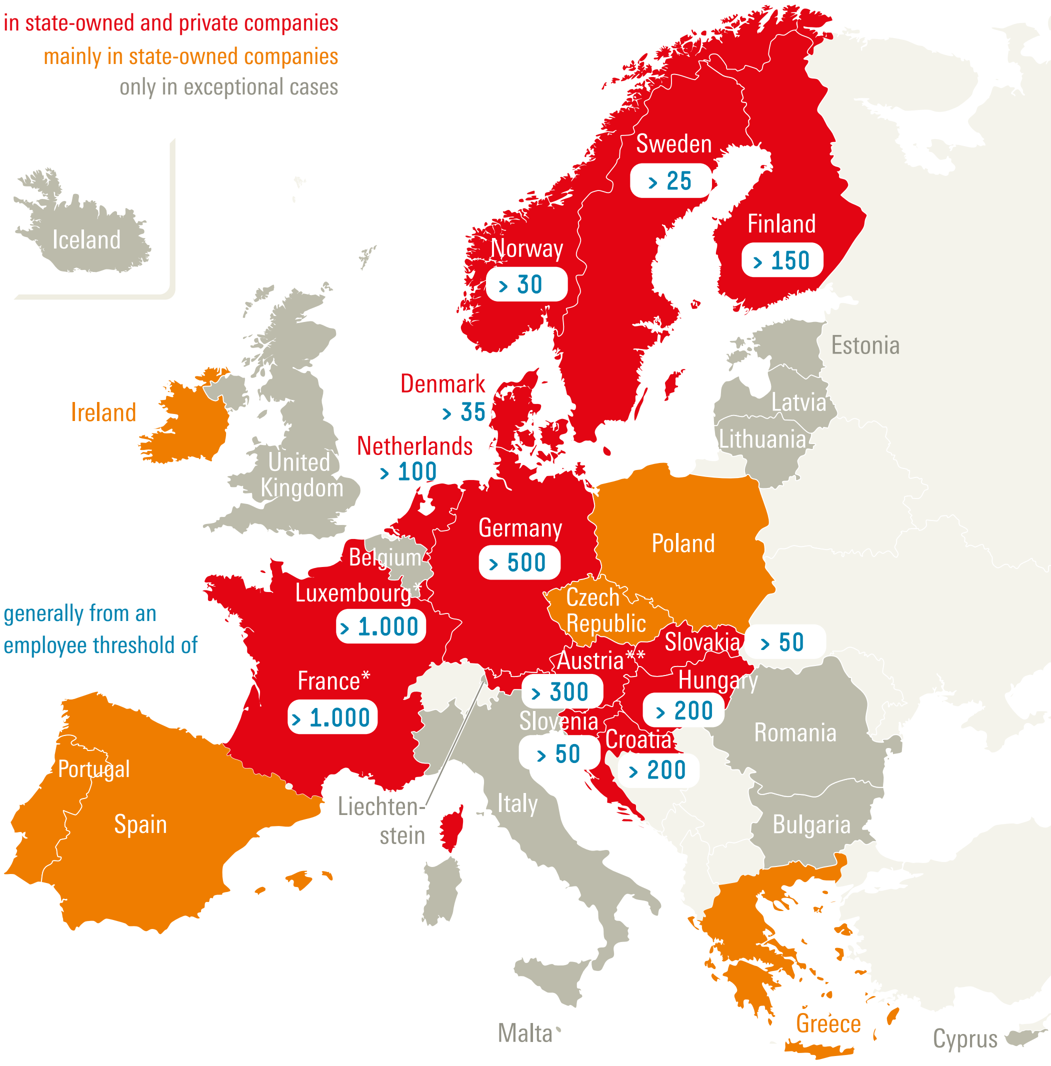
"There are significant variations between different European countries in the way in which worker representation with decision-making power operates at board-level," Conchon says. Nevertheless it is possible to distinguish three clear groups:

- 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-

Where employees are involved in decision-making

There is a right to employee representation in governing bodies ...



* not apply to state-owned companies
** only limited companies, at AGs no threshold unless a work council exists; Quelle: ETUI 2015

tive and negative. "In the current turbulent times, encouraging greater provision of information, and strengthened consultation 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 employee board-level representation, such as Germany, have performed significantly better economically than those with relatively 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 European Parliament and the European Commission have recognised 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 under pressure from the International Monetary Fund, the European Commission and the European Central Bank. This privatisation has effectively ended employee participation in these companies as, in these countries, employee representation at board level only exists in state-owned companies. In addition, national legislators have someteimes restricted employee representation rights, as in the Czech Republic. In 2012, the Czech parliament passed new company legislation which abolished previously obligatory employee board-level representation in private companies.

Legal form obstructs co-determination

Conchon believes that there are also threats at European level with a "regulatory competition" becoming apparent. Companies 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 requirement to have employee representation at board level. Companies 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 Foundation indicates that there are already 94 German companies making use of a foreign legal form, operating for example under the name of "Ltd & Co KG". A loophole in German legislation means these firms no longer have employee representation on their supervisory boards.

The planned "single person company" (Societas Unius Personae, SUP) could further accelerate the escape from employee representation. The European Commission wants to introduce 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 letterbox 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 company law they fall under.

However, there are demands from politicians 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 taking a European legal form as opposed to a national one. An EU directive would ensure a minimum standard, allowing national board-level rights going beyond this minimum to remain unaffected. <

FURTHER READING

Jeremy Waddington, Aline Conchon Board Level Employee Representation in Europe: Priorities, Power and Articulation, New York, 2016

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