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## **Employee information and consultation in Estonian companies – the analysis of eight cases**

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# **1. The idea of employee information and consultation**

## **1.1. Definitions**

### **1.1.1. The concept of employee participation: information, consultation and co-determination**

Employee participation refers to his/her ability to influence organisational decisions, while belonging to a low(est) level in the organisational hierarchy. In the current study we follow Knudsen's (1995) two-dimensional approach to employee participation. We look at the degree of employee influence and the range and relevance of subjects to be influenced. Most of theoretical and empirical literature on employee participation is related to the first dimension, i.e., the degree of influence, which is assigned to employees at the workplace. The influence can be expressed as a following continuum (Dachler, Wilpert, 1978) of information, consultation and co-determination:

- 1) No information is given to employees prior decisions.
- 2) Employees are informed in advance about the decision. Employees' right for information means that providing it or not is not at the discretion of management: there are certain topics (e.g., transfer of undertaking) together with specific time-frames when information is to be given.
- 3) Employees can give an opinion about the decision. This phase is known as consultation although formally, employers are not obliged to discuss these opinions.
- 4) Employees' opinions may be taken into account when making a decision. In practice, even though employers maintain the right to decline employees' proposals, they are required to give their arguments in doing so.
- 5) Employees can veto a decision, i.e. decision can only be taken if the two parties agree and therefore it is known as co-determination.
- 6) Decision is in the hands of employees: there is no distinction between managers and subordinates.

Some authors consider 'participation' only in the sense of 'co-determination', i.e. phases (5) and (6) (Addison, Schnabel, 1996, *Worker Representation...*, 2002). On the other hand, it has been argued whether phase (6) is 'participation' at all, because the interplay between the two parties is missing here (Knudsen, 1995, p. 10). It is more common in the literature to denote all six phases as 'participation', consisting of 'information' as in (1) and (2), 'consultation' as in (3) and (4) and 'co-determination' as in (5) and in the extreme (6). We also consider participation in a broad sense, including employees' right to decide as the strongest form and mere information as weak form of participation. Sometimes 'consultation' entails also 'co-determination', but typically the latter is seen as separate activity. In the current study, a distinction between 'consultation' and 'co-determination' is made. 'Co-determination' and 'co-decision' are often used as synonyms, although Knudsen (1995, p. 10) distinguishes the terms on the basis of the parity principle of decision-making body (50-50 in case of co-determination). In this paper, 'co-decision' and 'co-determination' are used interchangeably.

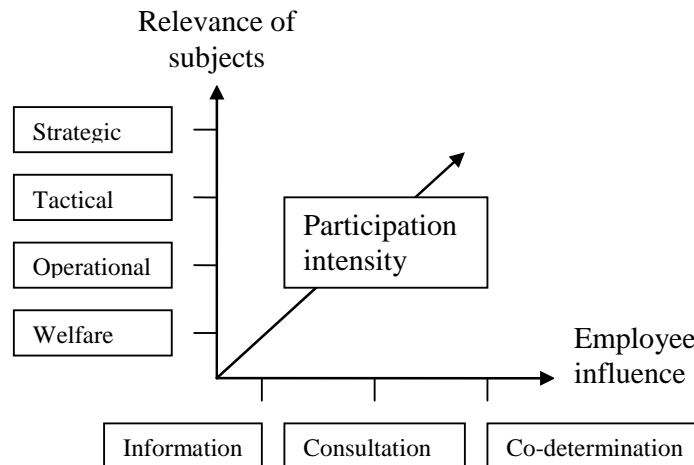
The multitude of approaches stems from different value-orientations in societies, variety of forms for consultation and co-determination across companies, industries and countries, and above all, different terminology used in the literature describing identical processes.

Another dimension of participation is the range and importance of subjects covered by the participatory decisions. One way of dividing the decisions is social, personnel and financial

matters, but in the context of our study it would be useful to adopt Knudsen's (1995, p. 11) suggestion with the following types of management decisions:

- a) strategic (goals, structure, investments, activities, mergers, closures);
- b) tactical (technology, job-design principles, operation hours, health and safety etc);
- c) operational (decisions taken at departmental or workshop level regarding specific measures how the work is conducted);
- d) welfare (canteen, housing, sports, culture, scholarships etc).

The participation intensity is a combination of the employee influence and the relevance of issues influenced (see Figure 1).



**Figure 1.** The concept of participation intensity

Source: Based on Knudsen (1995), modified by authors

Thus, the more influential is employees' voice on the decisions taken and the more these decisions are of strategic nature for the organisation, the more intensive is employee participation in the organisation deemed. It is common practice to give employees a decisive power in some operational and welfare questions, for example, when to take a lunch-hour or when to go to a paid holiday, but the importance of questions and employee influence generally tend to be inversely proportional. The described arrangement largely corresponds to our innate understanding of organisational functioning and the tasks of management.

### 1.1.2. Employee representation: precondition for intensive participation

Forms of participation are divided into:

1. **direct** – i.e. involving employees themselves and sometimes also called individual, and;
2. **indirect** – i.e. involving employees' representative bodies and therefore referred to as collective or representative.

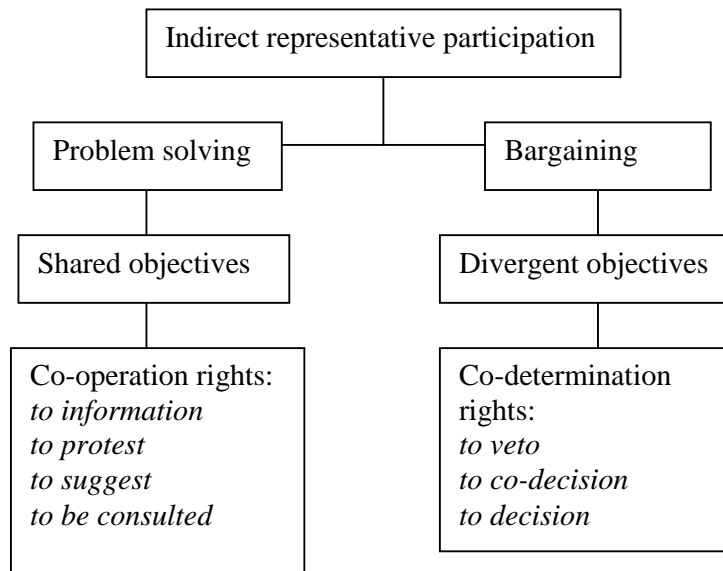
In theory, direct participation is more efficient – it is associated with higher employee satisfaction, commitment, motivation, and productivity. It is considered as an ideal form of the participation in information-consultation scale: employees should directly give their opinions and advice to and get the information and (counter)arguments from management. To

some extent, direct participation can be pursued by small companies, but becomes increasingly difficult and resourceful for bigger establishments. Moreover, co-determination is almost impossible to apply with direct participation, regardless of the company size.

There might be areas, where employees are assigned autonomous control over methods and pace of work and make decisions that substantively affect the production process – then it is called **delegative participation** (EPOC Survey<sup>1</sup>). Yet, when it comes to the decisions about more strategic subjects in the organisation, the viability of maintaining direct participation system is rather weak, to say the least. This is why the ‘second best’ participation system (i.e. indirect participation) has gained importance. Knudsen (1995, p.12) states: „Indirect participation ... contains potentials for influence on a much wider range of decisions...“.

Employee indirect participation i.e., the participation which is delegated to employee representative(s), is the concept that is mostly associated with employee participation in practice. Mostly indirect participation is the subject of legal regulations and collective agreements and is also the main focus of the current study.

Terry (1999) proposes to look at the activities of indirect participation very much in line with the information-consultation-co-determination concept. Namely, he distinguishes between problem-solving and bargaining activities, depending on the objectives of employees and management (see Figure 2):



**Figure 2.** Indirect participation activities

Source: Terry (1999)

Again, the terms used are somewhat different, although the content is intuitive. Terry denotes information and consultation as ‘problem-solving’ and uses ‘bargaining’ for describing co-determination. Historically, the most widespread employee representation institutions have

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<sup>1</sup>The project on Employee Participation in Organisational Change (EPOC) was carried out by the European Foundation for the Improvement of Living and Working Conditions between 1993-1998 covering more than 5700 organisations in ten European Union countries. Research project studied developments in the area of work organisation. The focus of the investigation was to show the extent of direct employee participation and to illustrate the role played by such participation in the modernisation of work organisation.

been trade unions. Although the union membership varies greatly among countries, the decline of union membership during last decades has been a common trend due to decline in employment in traditionally high-unionisation manufacturing industry, the growth of lower-unionisation services employment, and increasing levels of 'atypical' employment (Industrial Relations..., 2002)<sup>2</sup>. Owing to that, employee representation outside unions has gained more importance and new forms of employee involvement and participation (so-called high-performance work-place) have emerged. Some of the participation systems are induced by law, whereas typically the information and consultation rights are envisaged and co-determination rights remaining exceptions to the rule.

The reason for regulating employee participation via European-wide legislation is the theoretical argument stating that although participation increases social welfare; neither employees nor employers have an incentive to create institutions for employee representation. Therefore these should be mandatory (Freeman and Lazaer, 1994, p.8). Authors argue that the device of the works council extend the prospect of an improvement in the joint surplus of the enterprise as a result of information exchange, consultation, and co-determination. But they show that although the joint surplus (social outcome) of the enterprise increases, firms' profits are nonetheless expected to be lower in the presence of works council, because of the rising share of the workers surplus. As a result of this profit effect, management will either oppose the installation of works councils or vest them with too little power. For this reason, the institution has to be imposed by government mandate. A recent survey of European companies demonstrates that all works councils where members are formed only of employees<sup>3</sup>, works councils are established thanks to statutory regulations in national law (EIRO..., 2004, p. 13). In Greece, the resistance to employee representation is high on both sides - employees and employers, despite legislation which sets basis for creating works councils. In Austria and Germany, for example, employers in retail, the fast-food industry and the 'new economy' are particularly known for their opposition to works councils (*Ibid.*, p. 31). The next section discusses the actual practices and their effects in more detail.

## **1.2. The impact of information and consultation practices on employees' and companies' performance: evidence from recent research**

### **1.2.1. Participation effects on employee level – direct versus indirect participation**

The gains of participation on individual level stem mainly from two theories: democratic theory and human growth and development theory. Both theories rely on basic beliefs about human nature. The democratic theory assumes that people are inclined to be responsible, rational, cooperative and interested in the progress also outside their immediate environment. Democratic processes, whether at home, at school, in politics or in economic organisations, develop and educate these capacities to be realised and are perceived favourably by actors in

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<sup>2</sup> In Estonia, the fall has been especially dramatic: from 88% in 1992 to 14% in 2002 (Statistical Office Labour Force Survey database, authors' calculations). The reasons in decline in Estonia have been somewhat different of the decline in Western countries. The main reason has been change of economic system and according change in the role of the unions compared to Soviet time.

<sup>3</sup> Works council members may consist of workers only or also employers representatives. In France, for instance, works councils are chaired by employers, although they have a minority vote (Worker Representation..., 2002, p. 29) (see also ch 3).

the process. In this vein, participation at working environment conveys appreciation for democracy, as opposed to autocracy and dictatorship, and is known as 'workplace democracy'. There is a view that facilitating workplace democracy is morally 'right' and should be valued for its own sake (Collins, 1997).

Human growth and development theory has similar foundation: people are strived towards self-actualisation, which requires independence, awareness of one's potential, having self-control, long-range perspectives and being involved in variety of activities. Organisation of work typically entails task-specialisation, hierarchical decision-making and control. As such, it is in direct conflict with employee self-actualisation needs, causing frustration and demoralisation due to monotony, boredom and futility. Here, participation would reduce those negative effects and raise the meaningfulness of the job, increase the sense of responsibility of one's actions, self-fulfilment and self-respect (Alexander, 1994, pp. 198-199). From this point of view, participation in the workplace is a 'natural' need for employees and the more so with higher education level and fulfilment of lower-level needs (physiological, security etc).

Given the above, it is expected that employee participation increases effort and commitment, which in turn may improve his/her efficiency and productivity. There is plenty of evidence to give some support to the hypothesis (Batt, Appelbaum, 1995, Bartlett *et al*, 1992, Rubenowitz *et al*, 1983, EPOC Survey, Latham *et al*, 1994, Maree, 2000, Wagner, 1994, Cotton, *et al*, 1988). However, the specific results of different studies vary, showing positive as well as negligible effect of participation on satisfaction and especially productivity.

The main concern is that positive effects are associated with direct participation rather than indirect participation. For instance, evidence from Japan shows that although employee representation outside the unions strengthens employee voice, it does not lead to improvements in reported satisfaction with the company (Kaufman, Taras, 1999, p.7). The same is concluded based on Swedish data with an in-depth analysis of ten companies in metal- and food-industry: no increased satisfaction and commitment is present when decisions are made by representatives (Rubenowitz *et al*, 1983). Cotton *et al* (1988) argue on the basis of meta-study that representative participation, while not having any effect of productivity, results in higher satisfaction, at least for the representatives themselves. Latham *et al* (1994) showed that participation; in particular, the possibility to set goals increases self-efficacy via commitment to these goals, but does not improve performance. Maree (2000) conducted a meta-study on several empirical studies and showed that employee participation led to greater job satisfaction in about 2/3 of the cases and increased productivity in 1/3 of the cases. Another meta-analytic study by Wagner (1994) summarising 52 previous studies suggested that the positive influence of employee participation on satisfaction and performance is in place, but the average size of these effects is small enough to raise concerns of practical significance. Wagner's work has later been criticised (Sagie, 1995) and the shared view is rather that participative decision making can yield large positive effects if moderator effects are taken into account.

Therefore, we can conclude that participation is positively and significantly related to job satisfaction if direct form of participation is exercised, but there is less convincing evidence about the same effect on performance. And when it comes to representative form of participation even the increase of satisfaction may be in doubt. These mixed results may be both the motives and outcomes of countries' adoption of different participation strategies.

When comparing countries on the basis of direct participation, it must be noted that the only good comparable data on European level is the above cited EPOC project. Analytical literature is scarce because many practices of direct participation have informal character and different terms are used to describe same phenomena (Knudsen, 1995, p. 7). Cabrera *et al*,

(2003) using data from EPOC project found that direct participation is the highest in Netherlands and Sweden. Lowest scores are reported in Spain, Portugal and Italy (p. 52), which is accounted for cultural factors. Authors of the study were able to confirm the following hypotheses about direct participation (pp. 49-51):

- a) The higher the level of competition, the more direct participation is pursued in the company;
- b) Service sector employs more direct participation compared to manufacturing;
- c) Product quality differentiation strategy leads to more direct participation;
- d) In larger companies there is more consultation, but less delegation;
- e) Cost-leadership strategy is associated with less direct participation.

In UK the participation system is generally not so well established, yet, the overwhelming trend has been towards arrangements for direct information disclosure and consultation; the forms include formally designated team-work, regular team briefings, staff attitude surveys, problem solving groups etc. (Beaumont, Hunter, 2003, p. 3). Japan is famous for employee direct participation – quality circles as a form of participation originates from there - but the participation is limited to information and consultation. Marsh (1992, p. 255) showed in his study of 48 Japanese manufacturing plants that despite the existence of quality circles, delegative participation is almost non-existent and claimed that direct participation has not led to workplace democracy. It was only the routine and pre-programmed issues that lower level employees were allowed to make decisions about.

This result is in line with the theory: direct participation does not go much beyond information and consultation. If we are to look for more intensive forms of participation, we have to turn to indirect systems, and yet, something of a reciprocal relationship seems to exist between the two. Namely, employee representatives are found to be interested in introducing direct systems in parallel to indirect one. Cabrera *et al* (2003) noted that higher level of indirect participation induced by law or management practice brought along more direct participation in consultative form. EPOC survey allows concluding that although Sweden, Germany and Netherlands are known for extensive use of indirect participation, all three countries also have above-average scores in direct participation. Gill and Krieger (2000) also found that employee representatives in Europe play an active role in introducing direct participation into the workplace. Authors were convinced that even if the initiative to introduce direct participation is usually taken by the managers, once the system is in place, employee representatives actively try to ensure the greatest range of participation possible.

Hence, from the viewpoint of employees the question of ‘direct or indirect participation’ is not entirely adequate. While direct systems embody such virtues like increased job-satisfaction, commitment, possibly higher productivity and is preferred by employees themselves (Beaumont, Hunter, 2003, p. 9), when it comes to their perception of ‘fair’ management decisions emerging from participation and sustainability of direct participation procedures, indirect representation seems to be a key factor. Since direct employee involvement is, in practice, limited to information disclosure, some form of representative structure becomes a precondition for consultation, let alone co-determination. Consequently, the combination of direct and indirect form of participation provides the most effective outcomes.

### **1.2.2. Employee participation effects on company level**

The evidence on the positive relationship between the scope of direct employee participation and economic performance of the organisation comes from empirics and theory. For instance, Sisson (2000, p. 6) discussed the main results of the European-wide EPOC project and

showed many virtues of extensive direct participation for company performance, including higher production quality, cost reductions and the reduction of throughput time. Theoretical support comes from Steinherr (1977), who demonstrated Pareto improvements of employee participation regardless of specific firm objective function. But as noted above, European regulation is mainly concerned with indirect participation: while the main idea is protecting employee interests, it is believed to be also advantageous to businesses and society as a whole. This has motivated many researchers to analyse potential benefits of representative form of participation to the company functioning. Freeman and Lazaer (1994) conducted an economic analysis of works councils. In addition to the above mentioned mandatory preference for works councils, their conclusions were the following:

- Councils' access to information can reduce economic inefficiencies by moderating employees' demands during tough times (p. 12). This result was empirically found earlier by Morishima (1991, p. 482) on Japanese data with 97 union interviews conducted, where sharing information was associated with lower wages. Still, the same exercise with U.S. data (106 interviews) by Kleiner and Bouillon (1988, referred through Morishima, 1991) confronted the idea: sharing information seemed to increase employees' bargaining power in U.S.
- Employees can provide new solutions to the problem, therefore participation facilitates innovation. On the German data that covered 1025 establishments with at least five employees, Addison and Schnabel (1996) find product innovation and presence of works councils strongly and positively correlated. Of course, there is a trade off with the cost of delay, because participatory structures inhibit the flexibility and quickness of decisions (pointed out also in Schank *et al*, 2004, Levinson, 2001).
- Works council's co-determination rights that increase job-security should lead employees to invest more in job-specific skills and therefore increase firm performance. Given the commitment and satisfaction argument given above, companies might also enjoy lower cost of monitoring, lower turnover of employees, and thus lower the cost of work-force seeking and training. In his study, Levinson (2001) asks: Is co-determination a burden or resource to the Swedish companies? Analysing the responses from managing directors and chairpersons he finds employee representation as a benefit to the company. Generally positive attitude is reported by managing directors and chairpersons and the bigger the company, the more positive the view. The main reasons for that are healthy co-operation climate and the belief among managers that joint decisions become deeper rooted among employees. On the negative side, in line with the argument above, is that it takes too long to get things done, it is costly, and also risk for information leakage is mentioned.
- Participation in decision-making has a stabilizing effect on company, by potentially preventing conflict (Knudsen, 1995, p. 21). Or put another way: lack of participation is likely to increase the instability (Mizrahi, 2002).

These arguments have been challenged by numerous authors. Findings on efficiency and productivity are the most controversial. Beaumont and Hunter (2003, p. 14) showed with their 16 case studies of UK companies that although employee representation was generally not favoured by managers, the best results for the company perceived by the management were obtained, when indirect representative mechanism were combined with direct measures (compared to the latter alone). In the study by Schank *et al* (2004), which empirically covered several thousand German establishments each year, it was found that works councils did not exhibit significant differences in efficiency. Most likely, negative rent-seeking effects and positive voice effects balanced each other. Craig *et al* (1995) also found that employee participation had neither efficiency gains nor losses in U.S. plywood industry. Over several

decades, they analysed a panel with 34 mills of different categories: mills with co-ownership of employees (cooperative mills), mills with trade-unions as partners to management (unionised mills) and classical mills with no trade-unions and no ownership sharing. An idea very similar was tested earlier also on Italian organisations by Bartlett *et al* (1992): authors compared several indicators of two organisational types, 49 labour-managed cooperatives (associated with participation in decision-making) and 35 private firms. They concluded that as far as efficiency was concerned, cooperatives demonstrated higher labour and capital productivity. There is also experimental research conducted in the field. Frohlich *et al* (1998) played a game of different types of enterprises with Canadian students in a laboratory setting. Those students, who ended up in employee-owned companies, reported significantly higher individual productivity than their peers in conventionally-owned firms. Although the task in both types of companies was similar, students in employee-owned companies felt the task they were doing was much more interesting.

The relationship between works councils and company profitability has also been the focus of analysis. Morishima (1991) found joint consultation committee effectiveness to be associated with higher profitability of Japanese companies. The finding by Addison and Schnabel (1996) on the basis of 1025 German companies, however, showed negative and strongly significant effect of works council presence on profitability.

With respect to stability, Bartlett *et al* (1997) brought out the significantly greater stability of employment in labour-managed cooperatives, measured by the use of temporary layoffs and voluntary quit rates. Also, in cooperatives, there are only few or no strikes, compared to privately owned counterparts. Reduced employee turnover was also the result by Craig *et al* (1995): if output price fell, cooperative, i.e., participative companies kept employment and output stable but reduced wages; classical companies, in contrast, kept wages but reduced employment and output. In the works of Addison and Schnabel (1996) it appeared that works councils resulted in higher wages and lower employee turnover.

Hence, empirical results about company effects of works councils include: lower and higher profitability, lower and higher wages, reduced employment fluctuations, inconclusive evidence on efficiency and positive effects on innovation (net of decision-making costs). Addison and Schnabel (1996) concluded that economic case for works councils is mixed and less persuasive than often claimed.

But some authors question the very basic idea of participation. They argue firstly, that democracy is not sufficient argument for developing organisational systems in the same spirit of political democracy (Kerr, 2004). Economic organisations differ from political organisations in four fundamental aspects:

- a) those who govern are not directly accountable – there are no management elections in organisations;
- b) unlike in politics, participation of employees is controlled or manipulated by the management;
- c) access and exchange of information is largely controlled by the management, but participation requires free information flow;
- d) management does not normally represent employees.

Secondly, employee participation incentive does not have to be efficiency and company prosperity. Job satisfaction may not always lead to gains in efficiency: high level of employee involvement may encourage rent-seeking behaviour and maximise their self-interests rather than those of the firm. Therefore, an optimal level of participation in decision-making exists depending on company characteristics (Mizrahi, 2002, p. 703) and is therefore not uniquely

defined. It is also feared that employees wish to participate „outside their scope“, i.e. on issues where they lack the skills and knowledge and where there is no gains for immediate efficiency (Alexander, 1984, pp. 201-202). While this is, indeed, plausible in theory, evidence suggests the opposite: possession of skills and knowledge is directly related to the active participation of representatives (Knudsen, 1995, Levinson, 2001). In Sweden, where employee representatives belong to the company board, representatives' passive rather than active attitude towards strategic issues has been a concern.

Thirdly, there are hesitations about indirect representation effectiveness as such. The mediating role of works-council is likely to lead to professionalisation of such roles, creating vested interests for mediators to keep their functions, and often leading to estrangement and conflict between representatives and their constituencies (Dachler, Wilpert, 1978, p. 14). This is partly the reason for imposing limits to the release time for the council work. What we see in practice, is that French employers sometimes call for a reduction in the number of hours for which representatives are freed from their work to carry out their duties and Spanish employers are also in favour of a reduction of paid time off for employee representatives (EIRO..., 2004, p. 30).

Finally, there is a tendency to form works councils on the grounds of descriptive representation (part-time employees, disabled, young people), which, again, is problematic in terms of effectiveness (Engelen, 2004). Freeman and Lazaer (1994) in their economic analysis of works councils addressed the issue from the opposite side: even proportional representation may ignore minority views becoming heard (part-time young employees and part-time older employees may have diverging interests) and therefore random selection should be applied when choosing representatives (p. 20). However, authors acknowledge the potentially lesser effort and problems with accountability of representatives when they are randomly selected.

All in all, if we are to believe in the economic potential of employee participation we have to acknowledge the possible threats and some general principles should be fulfilled. Firstly, both employee representatives and management are expected to recognise each other with their legitimate but diverging interests, and secondly, view the co-operation as a plus-sum, rather than a zero-sum game. Finally, both parties need to have trust and goodwill for each other.

### **1.2.3. Relationship between works councils and unions**

Employee representation typically takes a form of a trade union, works councils or both simultaneously. In case there are several unions in the workplace, like is common in Finland, Norway, Denmark, Italy and Belgium, for example, the works council may consist of representatives of the different unions. Theoretically, there is no ground to prefer unions to works councils or vice versa. Both are indirect forms with their advantages and disadvantages discussed previously. Overview of empirical studies concerning their interaction in a company is given below.

Based on a panel sample of more than 700 German companies during four years, the interaction between unions and works council was described by Hübler and Jirjahn (2003). The authors uncovered the works council's positive effect on productivity in unionised companies. In non-unionised companies the works councils' impact was detected on wages more than their unionised counterparts. They also refer to Cooke (1994), who found employee participation contributing to value-added more in unionised firms than in non-unionised firms (Hübler, Jirjahn, 2003, p. 473).

In contrast, Addison *et al* (2000) reported that employee involvement had a positive effect on productivity in Britain and in non-unionised settings only whereas no such effect was detected for Germany. But UK might be an exceptional case, because the employers' reluctance

towards trade unions might lead to different pattern of behaviour by the management. Here, it has been found that approximately twice as many British employers consulted with employees during the process of organisational change if trade union was missing compared to when it was present (64% and 36%, respectively) (Beaumont, Hunter, 2003, p. 12).

Apart from the union/works council effect, a few articles have dealt with the substitution issue of one for another. Empirical study by Machin and Wood (2005) on union representation and human resource management (HRM) practices for employee consultation and involvement in UK over time revealed that unions and HRM practices were not substitutes. HRM practices were used as much in unionised as in non-unionised companies. HRM practices included both direct and indirect participation mechanisms<sup>4</sup>. Rather, unions and HRM practices could be viewed as supplements. EIRO reached the same conclusion for UK: "Consultative committees and union representation go hand-in-hand rather than being substitutes for one another" (EIRO..., 2004, p. 29). The similar result was reached when studying mandatory health and safety committees in U.S. companies (Weil, 1999): it appeared that in unionised companies there was much more of an enforcement and successful activity of such committees.

What about effectiveness of non-union representation versus union? Some research suggests that non-union representation is less effective, because it is often criticised by employees they are supposed to represent and acknowledged as un-influential by employers (Terry, 1999, p. 24, Worker..., 2002, p. 49). The reasons may be representatives' lack of training and lack of sanctions (possessed by unions). Some case studies indicate that in the absence of legal underpinnings (as in UK), non-union representative is effective at good times, but comes under strain and even collapse at the times of economic downturn or company crisis (Terry, 1999, p. 28). If this is the case, such representation structures deserve as starting-points for union recognition. In principle, though, non-union representative can be as effective, but it needs full support by management, i.e., no victimisation to occur. Indeed, in the old EU member states works council members generally have legal guarantees against dismissals on grounds of their representative duties, and they have certain prerogatives concerning job security in companies facing a reduction of the workforce (EIRO..., 2004, p. 9). Also, back-up by effective set of sanctions by industrial tribunal in case of non-compliance is needed.

The connection between employee representatives themselves and union is another focus of analysis. This differs by countries, but generally, the connection is strong rather than weak. For instance, employee representatives in Sweden are elected by the union. In Austria, 85% to 90% of all works council members are union members and works councils are considered a basic unit of union structures. In France, Luxembourg, the Netherlands and Spain trade unions have a specified role in nominating candidates for works council elections, with the majority of members thus being union members. In Germany, 79% of works council members are also union members (EIRO...2004, pp. 28-29).

It has been noted that in countries where employee influence is principally through unions and collective bargaining, management-employee relations on restructuring issues tend to be more adversarial, and the ability of employees to influence restructuring varies considerably from sector to sector and firm to firm according to union strength (Industrial Relations..., 2002). This is the result of unions' inclination to negotiate over wage and employment under the existing industrial relations framework. Mizrahi (2002) holds a view that the nature of

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<sup>4</sup> Studied HRM practices were: profit-sharing of share ownership, presence of Joint Consultative Committee, the presence of problem solving groups, occurrence of team-briefings, regular meeting with managers and entire work-force present, management chain for communication, suggestion scheme in presence, personnel specialist in place.

bargaining between employers and employees, either union or works councils, should be over the participatory rules of decision-making rather than over wages or working conditions within the status quo (p. 705).

To sum up, much like direct participation gives better results together with indirect participation in an organisation, representative committees in the form of works councils are supplements rather than substitutes for trade unions. Studies show that even if competition between the two representative forms is present in the early phases of functioning, for instance, trade unions may fear that their members are merely manipulated by participatory arrangements, it soon turns to cooperation because of the same constituency and common interests.

## **2. Overview of legislation concerning employees information, consultation and participation rights**

### **2.1. The level of the European Union**

Most widespread influence in the field of information and consultation rights for Estonia has the directive 2002/14/EC, which must have been enforced by the Member States no later<sup>5</sup> than 23 March 2005. The directive sets that in all of the EU countries there must be general arrangements for information and consultation of employees on a range of issues. This general arrangement assume indirect involvement of workers, meaning that there should be in place some form of employee representation for information and consultation purposes.

The directive applies to undertakings of the size at least 50 employees or establishments of at least 20 employees according to the choice of the Member State. According to the article 4 Information and consultation must cover:

- Information on the recent and probable development of the undertaking's activities and economic situation;
- Information and consultation on the probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, especially if there is threat to employment;
- Information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations.

Information must be given with such content, in such a time and fashion that employee's representatives will be able to conduct adequate study and prepare for consultation.

Consultations must be carried out so that the timing, method and content of thereof are appropriate. It must take place at the relevant level of the management and representation, depending on the subject. Consultations must give the possibility to employees' representatives to meet the employer and obtain response, and reasons for the response to any opinion they formulate.

Also the directive sets that there must be regulations on the obligations for keeping in secret the confidential information, guarantees to representatives, administrative and judicial procedures and adequate sanctions for breaching the obligations.

Most of the EU countries have some arrangements in place for information and consultation. The exceptions are Ireland, the UK, and some new EU Member States, which have to introduce considerable changes to their industrial relations systems, as there is no permanent mechanism for consulting and informing employees, nor a statutory general entitlement for a stable employee representation at the workplace (European Commission 2004, p109). It does not mean that in the UK there have not been any legal requirements for information and consultation. Regulations are in place for information and consultation in certain subject areas, e.g. collective redundancies, transfers of undertakings, health and safety. The challenge, however, lies in the creation of general employee representative system, whereas recent trend in general has been towards direct involvement system (Beaumont and Hunter) (see ch 2.2 for the compliance of Estonian legislation)

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<sup>5</sup> The countries might choose to phase in the system for smaller companies by 2008.

As the date for implementation of the directive has only recently passed, there is no analysis on the effectiveness of the implementation. The EC planned date for this is in 2007.

The second very important piece of legislation on the EU level is the directive 94/45/EC on the establishment of the works councils in the Community-scale undertakings. The aim of the directive is to give workers access to information and consultation at the supra-national level in which multi-national companies take the key decisions. The arrangement for information and consultation may be in the form of European Works Council, which is the body consisting of employees representatives from the different countries, where the company is active. The directive applies to undertakings or groups of undertakings with at least 1000 employees and at least 150 employees in two Member States. The responsibility of setting up the arrangement lies on the central management of the undertaking or if it is impossible, then the management in the Member State where the largest number of workers is. It is also responsible for financing the meetings and work of the EWC.

The central management and EWC have annual meetings where following themes are discussed: economic and financial situation, probable development of the business and production and sales, situation and developments of employment, investments, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishment of important parts thereof and collective redundancies. If there are important changes taking place the EWC has the right to be informed and meet and consult at their request central management.

As the directive was accepted a while ago the analysis of the EWC is numerous. In total there are expected to be 1865 companies in the scope of the directive with 17 million employees, of them 639 with 11 million employees had by 2004 EWC. More than half of the agreements had concluded by 1996, later around 40 agreements have been concluded in a year. 547 companies or groups falling into the scope of the directive had a subsidiary in the New Member States in 2002 of those 323 had EWC (European Commission 2004, p. 144). In Estonia there are expected to be around 20-25 companies in the scope of the directive. (Seletuskiri...2004)

On the background of these major directives there are some pieces of information and consultation rights in the other directives. These include for example directive 2001/23/EC, which sets basic rules for information and consultation in European Companies. These are the companies with specific judicial form. Also specific regulations for information and consultation are set for certain areas. For the case of collective redundancies regulation of employees' information and consultation is in directive 98/59/EC and for transfers of undertakings directive 2001/23/EC.

In the case of collective redundancies employer is obliged to begin consultations with the workers representatives in good time with a view of reaching an agreement. The consultations must cover the ways and means of avoiding the redundancy or reducing it, mitigating consequences (also redeploying or retraining). There are provisions which oblige employer to give employee's representative all relevant information in time and specifically in writing the reasons of redundancies, number of categories of workers made redundant, period of redundancies, criteria for selection of workers and method for calculating redundancy payment. Employer must give this information in such time that representative of employees can formulate opinion and give adequate alternatives. In the case of transfers of company the representative of employees or employees concerned (in case there is no representative and it is not the fault of employees) must be informed timely of the date of transfer, reasons, implications and measures envisaged in relation to employees. The argument for not

informing and consulting, that employer itself does not have such information (e.g. the decision is made by undertaking) is not a valid excuse.

The directives concerning EWC and information and consultation in European companies are transferred into Estonian law. The directive 2002/14/EC is not transferred and directives on information and consultation in the case of collective redundancies and transfers of companies are only partly valid as the legal acts are not totally in line with the directives.

## **2.2. Overview of Estonian legislation**

### **2.2.1. The list of relevant legal acts**

Major pieces of law establishing information and consultation of employees are:

- Employment contracts act (RT 1992, 16/16, 241, last red. RTI2004, 86, 584) (relevant paragraphs §6<sup>3</sup> on transfers of undertakings, §42 internal rules of work organisation, §89<sup>2</sup> the information and consultation in the case of collective redundancies)
- Workplace health and safety act (RTI 1999, 60, 616, last red. RTI 2004, 89, 612)
- The act on involvement of employees in Community scale undertakings, Community-scale groups of undertakings or European Companies (RTI 2005, 6, 21)

Also the following acts are important in the arrangement of indirect participation systems:

- Trade unions act (RTI 2000, 57,372, last red. RTI 2002, 63,387)
- Employees' representatives act (RTI 1993, 40, 595, last red. RTI 2002, 111, 663) (ERA)
- Collective agreements act (RTI 1993, 20, 353, last red. RTI 2002, 61, 375)

Additionally, important features that have impact on the future information and consultation systems are in the draft law of employment contracts which is in the second reading in the Parliament and the part of the initial draft law on involvement of employees. The latter was afterwards accepted as information and consultation in Community-scale undertakings and European companies. The part, which was left out of the law, concerned the transposing of the directive 2002/14/EC into Estonian legislation.

### **2.2.2. Employees' representatives**

According to Estonian laws representative of employees can be selected (ERA §3):

1. by the members of labour union,
2. by the employees who do not belong to union in the general meeting.

Additionally there are representatives in the health and safety issues.

Thus there can be two types of formal representatives in general questions in Estonia and these may exist in parallel. Also there can be more than one representative of employees chosen by general meeting or by union. If there is more than one, then the number must be agreed upon with the employer. If there is more than one representative, they may form a joint-committee to co-ordinate their work. The union and general meeting can choose by a joint decision chief representative among the representatives.

There are no rules for employees general meeting, i.e. neither the calling of meeting, place, time nor the voting rules are set by law. The only regulation is that the rules for election are set by the general meeting. This may result in cases, where the representative does not really

represent of employees but is appointed by the employer and the general meeting is formality. The rules for setting up a labour union are regulated much more precisely. The union must have the foundation meeting (the personal identification numbers of founders are marked on the memorandum of association). Union must have the statutes, the basic information that the statutes includes are set by law. The role and rights of management of union and general assembly (incl. minimum voting requirements) are set in the law.

In companies with 10 or more workers employees must choose working environment representative in the general meeting of employees. If the company has several structural units or shifts, each unit or shift, which consists of 10 or more workers, must have their own working environment representative. If the company is bigger (over 50 employees) the workplace health and safety council must be formed. This consists of representatives of employees and employers in equal number. The employer must organise the election of working environment representative in the general meeting of workers. At least half of all workers must participate in the elections. The working environment representatives are announced also to the Labour Inspectorate.

All the above mentioned representatives have the right to do their work for specified time during working time and they have special guarantees against lay-off.

Since the beginning of 2005 there are also provisions for European works councils or some other information and consultation arrangement in the Community-scale undertakings or groups of undertakings or European companies. In the companies, which do not fall into these categories, the works council type of representation except working environment council is not foreseen. There are no provisions for employees' representatives' participation in boards of the management or executive boards.

### **2.2.3. The rights for information and consultation**

The specific rights for information and consultation for employees' representatives are different according to the type of the representative. There are also some provisions for information and consultation of workers in the absence of representatives.

The representative who is selected by the union or by the general meeting of unorganised workers has the right (ERA §6):

- to get information from employer for implementing its tasks;
- to suspend the collective redundancy (up to 30 days) in line with the Employment contracts act;
- to examine working conditions and organisation in all workplaces;
- to get information on the points of disputes arising of labour relations;
- disseminate freely information pertaining to work and the activities of the union of employees;
- notify the owner of the enterprise, government agencies, unions and federations of employees of violations of labour laws, collective agreements, employment contracts or other agreements pertaining to work committed by the employer.

The union representative has additionally the right for timely information on (AÜS §22):

- the companies' figures of financial year, expenses incurred on labour force, essential investments;

- changes in work organisation, technology, principal directions in economic activities; fixed-term and part-time employment contracts that are concluded;
- merger, division, transformation or dissolution of the company, upon transfer of the enterprise or an organisationally independent part thereof, of changes in the structure or form of administration, of reasons and consequences of such transfer for the employees, and of devised methods;
- other issues pertaining to employees and work.

Specific stipulations for consulting of union's representatives concern (AÜS §22):

- termination of employment contracts on economic reasons, incl. collective redundancies reasons, workers who will be laid off , other relevant questions connected to collective redundancies and mitigating the results of redundancies inline with the provisions in labour laws;
- changes or implementation of working time and regime, pay conditions, principles of payment, vacation schedule, internal rules of work organisation and other important working conditions;
- further- and re-training of workers, qualifications, workplace health and safety;
- other questions agreed upon.

In the case of consultation unions have 10 days to present their opinion to employers if longer time is not agreed upon. During this time employer must not take the decision. The specific rules of the information and consultation are agreed upon between the parties. In case of infringement of the obligations of information and consultation employer is obliged to pay fine in the amount of 100 units (i.e. 6000 EEK in 2005). The same fine is prescribed to the union for not keeping the commercial, production and professional secret.

Both representatives (union representative and representative of workers without a union) can have collective bargaining with employer and conclude collective agreement. In the collective agreement additional information and consultation arrangements can be fixed. In both cases workers are entitled to strike in the case of disagreement. The decision to strike must be made by the general meeting of the employees or by the union of employees. There are no specific provisions on the general meeting of employees (neither on the calling and timing nor on voting requirements).

Thus in the case of unions the rights and obligations of information and consultation are more specific and there are specific fines in the case of infringement. If employees have just representative without union the regulations are more general and do not foresee any fines or punishment.

Additionally to above mentioned information and consultation regulations there are specific rules (TLS §6<sup>3</sup> and §89<sup>2</sup> respectively):

- in the case of transfer, merger or division of a company or part of it,
- in the case of collective redundancies.

In the case of transfer of undertaking previous and future employer must present to workers' representative or if it is missing, to workers, all relevant information concerning transformation. It must include at least the date, reasons, legal, economic and social consequences to workers, planned measures concerning workers. If there are changes concerning workers planned, then the employer consults workers representative first. If there is no representative employer is not obliged to consult. Employees have during the

consultations right to meet employer's representative and members of the board. They can present written proposals during 15 days since getting the announcement of transfer. Employer must justify its decision not to accept employees' proposal. Though, in general the law is in conformity with the directive 2001/23/EC there are some aspects not mentioned. For example there is no provision that the lack of information in the level of undertaking if the transfer is decided in the group level of undertaking is no excuse for excluding information and consultation.

In the case of collective redundancies the law is in line with the directive 98/59/EC. Law sets that employer must give written information timely to employees' representatives or if these are missing to concerned employees. The information must include at least the reasons of lay-offs, number, names and selection criteria for workers who will be laid off, number of employees in the company, time of lay-offs, and principles for calculating and paying of redundancy payments. Employees' representatives must be consulted in these issues and they have at least 15 days to present their opinion. Employer must justify if the proposals of employees are not accepted. Also employees' representatives can make proposals to Labour Inspectorate who also must agree with the collective redundancy. Additionally, employees' representative has a right to postpone collective redundancy maximum by 30 days if the problems which accompany lay-offs have not been solved.

In the case of infringement of the obligations Labour Inspectorate has the right to make prescription to the company and if the employer still does not fulfil the obligations the penalty payment up to 10000EEK can be assigned.

All employees have the right to see the draft of internal rules of work organisation (*sisekorraeeskirjad*) and make proposals to it. Employer must send it for consultation one week before presenting it to labour inspector. However, the employer has freedom to take account the proposals of workers or not (TLS §42).

To conclude Estonia has two channels for collective bargaining: one for unionised workers the other for non-unionised workers. Regarding the right for collective bargaining the two channels have equal standing. The issue of participation is different however, as can be seen from the above employees have greater legal guarantees to say their opinion if there is a representative and especially union representative present. As the unions have greater demands regarding their organisation and management of the organisation there is greater probability that the employers' information and consultation reaches the workers. Still this conclusion cannot be made without further empirical investigation of different schemes of representation in practice.

### **3. Overview of the practices of employee involvement in other EU countries**

#### **3.1. History for regulative background**

Information and consultation regulation is different in different countries. It differs both in the extent of regulations via legislation and in aptitude of the regulations. The practices are differently set by legal acts or by the agreement of labour market participants or are not regulated at all. The practices depend foremost on the historical and cultural background of the country. Only in the last decade the EU has intervened in the issue of employee involvement and nowadays also this is shaping the participation practices in the EU countries. In following we take a look at historical development of the participation systems in Germany, Great Britain and in Denmark. The chapter is summarised from the book by Herman Knudsen “Employee Participation in Europe” (1995).

The general conclusion based on these historical overviews is that the shape of participation system is highly dependent on the division of political powers additionally to general cultural background. Also the major changes in the system have occurred as the reaction to strikes or during the power of liberal governments.

##### **3.1.1. Germany**

German system is a dual channel system where employees are represented both through the trade unions and works councils. The unions are dealing mainly with collective bargaining that is held on industry level and which covers all enterprises within the bargaining unit in question. Works councils deal with workers’ involvement and workplace representation in company level and which do not have the right to strike. Works councils are elected by all employees irrespective of union affiliation. In addition, employees are involved in company management through representatives on the supervisory board. Germany has the similar dual system for management of the limited companies as Estonia, where there exists additionally to executive board a supervisory board. The representation of workers is foreseen in supervisory boards, where employees have usually minority representation.

The history of works councils in Germany dates back to the end of 19<sup>th</sup> century when the format for these was proposed by the liberal employers and reformist bourgeois politicians. At that time these received a great opposition by the trade unions as the institution that might take away the work of the unions. Despite that the legal act was taken first for voluntary establishment of works council type of bodies and then for obligatory establishment in mining industry in the wake of major strike in 1905 and then during the First World War extended obligatorily to all factors in importance of basic factors employing more than 50 workers. In 1922 the law was passed granting employees minority representation in supervisory board of the company.

During the Hitler time there was a disruption in the system but it was revived after the Second World War. After the Second World War trade unions were in a great power and major industrialists compromised by their collaboration with Nazi power. It was decided that the big trusts should not dominate the German economy never again and therefore the agreement with unions and British military government was made (1947) that trade unions have parity representation on the supervisory boards of iron and steel producing companies and also the right to appoint a labour director into the management of the firms.

In 1946 a framework law was passed stipulating that the works councils could be established by the negotiations between employers and unions. Unions formulated their extensive

demands to works councils: equal rights in relation to decision on type of production, investment, work methods, price policy etc. The rights should be exercised under the leadership of trade unions and works councils should operate as trade union bodies in order to make them less dependent of management. Some regions passed the legislation favourable to trade unions, but some did not, especially American military governments were opposing these regulations.

The CDU/CSU Government wanted to change the participation rights of workers, but as they were threatened with a major strike, they passed the law in 1951, where extensive participation rights in iron and steel industry were upheld. The institution of works councils was also revitalised (1952 in all sectors except public sector, 1995 in public sector). The rights that the laws granted were much lower than unions were asking for: no co-decision in financial and production issues and just one-third of seats in supervisory boards. More extensive rights were later (1972) granted to employees in companies with over 2000 workers, when the Social Democrats and Liberal coalition was on power.

### **3.1.2. Great Britain**

The legal background for employee participation is scarce and most of the employment relations, including participation rights, are set by the collective bargaining. Collective bargaining occurs at several levels in the same time; however, most important level is company level. The result is that in each company the decisions on participation are made separately. Exception is health and safety committees that are regulated by law. Thus the participation of employees and employers is largely left to voluntarism of the two parties. At the same time neither employees nor employers have shown an interest to the regulating participation legally. Employers are afraid of restrictions to their management prerogatives and employees of becoming responsible for company decisions and have preferred to be independent actor in collective bargaining. The attempts to regulate participation have been initiated by the Government in order to socially integrate labour in critical situations.

The attempts were made during the First and Second World War, when major strikes occurred. In both times the Government attempted to establish the joint committees of employees and employers in companies in order to make labour more concerned for productivity and efficiency of the company. Both attempts failed because of the resistance of both sides of social partners. In 1970s were made a new attempt when Labour Party was on power. At this time Employees Confederation (TUC) was in favour of the extending participation by legal provisions. The main idea was to establish board of directors consisting of equal number of employee and employer representatives, plus some 'neutral' representatives appointed by two sides' agreement. The attempt failed because of large opposition to it by employers and also some unions and mainly because of the change of the Government power to Conservative Party, who opposed union movement. At the same time some other attempts, such as establishing health and safety committees and employers obligation to disclosure of information to trade unions were passed during 1970s Labour Government. In 1990ies the Unions have been much more in favour of the EU attempts to participation regulation than they were in before.

### **3.1.3. Denmark**

Danish system is also not based on legislative regulation but on collective bargaining. However, it is different of the British system as the rules and regulations for employment relations are worked out through negotiations and central agreements between national level social partners (both bi- or tri-partite). From collective agreements the most important side has been sector level, with big influence on these from peak level. Most important channel for

employees' interest representation are shop stewards. They are participants in more specific participatory institutions: cooperation committees, representation on company boards, safety committees. The system of workplace participation is based on union movement.

The functions of shop stewards were set by an agreement in metal industry in 1900. Additionally to protecting workers rights and representing their ideas the shop steward has to 'do its best in order to maintain and further a good and smooth operation in the shop'. This formulation is standard and works as device to strengthen the peace obligation at workplace level.

The issue for establishing works councils inline with some other European countries (e.g. Germany) was raised by unions and Social Democrats after the First World War. It was rejected and also collective bargaining in this issue was not much of the success. Only in metal industry there were agreements upon workshop meetings between shop stewards and employer once a month. The establishment of the legislation for works councils was second time raised after the Second World War, but this did not get the form of legislation as the employers and employees made in advance collective agreement on cooperation committees (1947). The agreement envisaged for the information disclosure and joint meetings. This agreement has been renegotiated afterwards several times. In the public sector these committees were introduced in 1970s.

The employees' right to elect two members of company board was established through legislation (1973). Later it was extended to one-third of members and at least two members. Also health and safety committees which include both employee and management representatives are established by legislation.

The driving force in Denmark for advancement of participation has been active trade union movement after the Second World War. Also the parliamentary majority has consisted most of time of centre and left political parties who had relatively favourable attitudes to workplace participation. Employers' unions have therefore been under pressure to conclude respective collective agreements or to let issues to be regulated through legislation. E.g. the first cooperation agreement grew out of such pressure. At the same time employers have succeeded in avoiding more radical modifications of managerial prerogatives.

### **3.2. Works councils in the European countries**

Works councils are dominating form of employee representation in Europe. Almost in all European Union Member States there are works council type organisation. The specific details of the works council differ in countries, but in general works councils can be defined following (EIRO 2004, p. 9):

Permanent elected bodies of workforce representatives (or occasionally joint committees with employers representatives), set-up on the basis of law or collective agreements with the overall task of promoting cooperation within the enterprise for the benefit of enterprise itself and employees by creating and maintaining good and stable employment conditions, increasing welfare and security of employees and their understanding of enterprise operations, finance and competitiveness.

The number of employee representatives in works councils is generally based on the company size, and varies considerably between countries. In Denmark, for example, it varies between four members in companies employing between 35 and 50 workers and up to 12 members in larger companies (more than 500 employees). In the Netherlands, the size of the works councils is between three and 25 members. In Greece the number varies between three and seven (EIRO, 2004, p. 13). The procedure for appointment of members varies by countries

(see the table 3.1 for general description of the works council type of bodies in the EU old Member States).

Irrespective of the works councils' presence, their size, or how the members are elected, few of them are guaranteed co-determination rights. Freeman and Lazaer (1994) show that co-determination is more useful when relevant experiences and knowledge are different between employees and management (p. 26). This implies that co-determination could but does not necessarily have to be beneficial for a company. Indeed, countries have taken different approaches: in UK and Mediterranean countries one hardly meets co-determination practices, whereas examples of deeply rooted co-determination rights are given to German and Austrian works councils. For instance, areas in which the German works council has joint decision-making authority with management are (Schank *et al*, 2004):

- the commencement and termination of working hours,
- principles of remuneration,
- the introduction of new payment methods,
- pay arrangements to include the fixing of job and bonus rates and other types of performance related pay,
- the regulation of overtime and reduced working hours,
- the introduction and operation of technical devices to monitor worker performance,
- health and safety measures.

Specific matters, e.g. employee selection tests can not be introduced without prior consent by employee representatives. Due to legal similarity, this also applies to Austria.

By contrast in Sweden there are only a limited range of issues where employees have the veto power according to the law, however, bilateral negotiations between the works council and the firm often seem to range well beyond those prescribed by the law. Swedish system is extraordinary in the sense that there is no works council institution set by agreement or law but the information and consultation rights are given by law and agreements to the trade unions, which are present in almost all companies.

The relations between works councils and trade unions are different in countries. Even though first trade unions were opposing works councils for example in Germany, today they have defined roles and work successfully together. In some countries trade unions are working in the sector level by collective bargaining and works councils are representing workers' interest in enterprise level. For example in Germany the difference in this respect is quite clear. However, it appears that more active trade union members are also more active in works councils. In some countries works councils are trade union bodies in enterprise level (e.g. in Italy). In many countries the trade unions have specific role in appointment of candidates for works council members (e.g. in France, Luxembourg, Spain).

**Table 3.1.** Works-councils in the old EU Member States

| Country | Name   | The legal basis  | Composition     | Automatic or triggered | Threshold size of companies (no of employees) | Election procedure   |
|---------|--|--|-----------------|------------------------|---|--|
| Austria | Betriebsrat  | Law  | Employees only  | Automatic              | 5   | Workforce election   |
| Belgium | Onderenemingsraad/<br>Conseil d'Enterprise                               | Law  | Joint committee | Automatic              | 100   | Election among the candidates presented by trade unions, employer candidates appointed by employer |
| Denmark | Samarbejdsudvalg   | Collective agreement   | Joint committee | Triggered              | 35  | Elected by workforce/appointed by management   |
| Finland |  | Statutory information and consultation rights for employees/employee representatives, no specific works council type of body |                 |                        |   |  |
| France  | Comités d'Enterprise   | Law  | Joint committee | Automatic              | 50 (10 to elect workforce delegates)          | Elections based on lists presented by trade unions or non-union groups of workers                  |
| Germany | Betriebsrat  | Law  | Employees only  | Triggered              | 5   | Employees election with exception of management  |
| Greece  | Symvoúlia Ergazménon   | Law  | Employees only  | Triggered              | 50 (20 where no trade union)                  | Elected by General Assembly of the company   |
| Ireland |  | No general, permanent or statutory system of information and consultation  |                 |                        |   |  |
| Italy   | Rappresentanze Sindicali Aziendali,<br>Rappresentanze Sindicali Unitarie | Collective agreement   | Joint committee | Triggered              | Varies by sector                              | 2/3 of seats elected by workforce 1/3 allocated by trade unions                                    |

| Country     | Name   | The legal basis  | Composition                          | Automatic or triggered | Threshold size of companies (no of employees)               | Election procedure  |
|-------------|--|--|--------------------------------------|------------------------|---|---|
| Luxembourg  | a) Délégation du Personnel, b) Comités Mixtes d'Enterprise | Law  | a) Employees only b) Joint committee | Automatic              | a) 15; b) 150   | a) elections among the lists of trade union candidates b) appointed by the members of employee committee    |
| Netherlands | Ondernemingsraden  | Law  | Employees only                       | Automatic              | 50 (10 for personnel delegation)                            | Elected by the workforce (at least 18 month of service) within list of candidates presented by trade unions |
| Norway      | a) Arbeidsmiljøutvalget b) works councils                  | Collective agreement   | Joint committee                      | Triggered              |   | Elected by and among employees  |
| Spain       | Comité de Empresa  | Law  | Employees only                       | Triggered              | 6 to elect workforce delegates, 50 works councils           | elections among the lists of trade union candidates   |
| Sweden      |  | Statutory information and consultation rights for trade unions, there is no works council type of body |                                      |                        |   |   |
| UK          |  | No general, permanent or statutory system of information and consultation                              |                                      |                        |   |   |
| Czech Rep   |  | Law (only if <b>trade unions are missing</b> in the company <sup>6</sup> )                             | Employees' committee                 | triggered              | 25  | Elections   |
| Hungary     |  | Law  | Employees only                       |                        | 15 for single employee representative, 50 for works council |   |
| Lithuania   |  | Law (if there is <b>missing</b> )  | Employees                            |                        |   | Elections (secret) in general   |

<sup>6</sup> Employees' committees have less extensive rights and entitlements than trade unions.

| Country  | Name | The legal basis  | Composition    | Automatic or triggered | Threshold size of companies (no of employees) | Election procedure |
|----------|------|--|----------------|------------------------|---|--------------------|
|          |      | <b>union</b> and the rights for representation are not transferred to sectoral union <sup>7)</sup> | only           |                        |   | meeting            |
| Slovak   |      | Law  | Employees only | triggered              | 50 (5-50 single representative)               | election           |
| Slovenia |      | Law  | Employees only |                        | 20 (smaller companies trustee)                |                    |
| Estonia  |      | No works-council type of body  |                |                        |   |                    |
| Latvia   |      | No works-council type of body  |                |                        |   |                    |
| Poland   |      | Law (only in <b>public companies</b> )   | Employees only |                        |   |                    |
| Cyprus   |      | No works-council type of body  |                |                        |   |                    |

Source: Old EU Member States - EIRO 2004; New EU Member States – Tóth and Ghellab 2003.

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<sup>7</sup> Have also the right to conclude collective agreement

### **3.3. Employee participation in management and supervisory boards of the European countries**

Employee participation in company boards is aiming at getting employees input into general strategy of the company. If the works councils are mainly targeted to information and consultation of day-to-day matters, then board level participation is for strategic decision making (Schulten, Zagelmeyer 1998).

Employee participation in supervisory board or board of directors, if the former one is missing is quite common in the European countries. Depending on the corporate governance system, the companies have in different countries only one board of directors or additionally to it supervisory board, which is the representation of shareholders and has right to appoint and dismiss management, review management performance etc. Usually if supervisory board is established, employees are represented in this board. If supervisory board is missing (as for example in Luxembourg or Sweden), employees are represented in board of directors. At the same time there are examples, where employees are represented in both supervisory board and in board of directors as in coal, steel and iron industry in Germany. The summary of the board level representation for each country in the EU is presented in table 3.1.

Only in seven countries out of 25 EU countries plus Norway, there is no statutory legislation or collective agreements based system for employees' representation in company boards. These seven countries include three Baltic countries, UK, Belgium, Cyprus and Italy. Additionally in Portugal, there is legal base for employees' representation in public sector company supervisory boards, but it is not implemented in practice. In five countries the board level representation is just for public sector companies and in Poland the representation is for state-owned or privatised (i.e. formerly state owned) companies.

Usually employees have minority representation in boards. The employees representatives are normally entitled to fully participate in the meetings of boards and to vote in decision making. In some cases, however (as in France) employees' representatives in board are just attending the meeting without further rights for decision making. In general it is stated that the employees' representatives who participate in the work of board must act as if they were on the side of employer in their decisions, i.e. they have the same rights and duties as other board members. In companies and countries, where the system is implemented, it is seen as favourable for both sides.

Even though employees are in most of European countries represented in company boards it has brought along several discussions, especially with the establishment of European Companies. General opponents to board level participation of employees are arguing that it inhibits management prerogatives to decide and rule the company. Also it is argued that presence of employees representative in supervisory board might result in preference for conservative corporatist strategies, shielding management from control by shareholders and capital market and therefore leading technological immobility, excessive emphasis on personnel and employment-related activities and excessive consensus oriented management. The argument against it is proposed that corporate strategies associated with board level representation enables to take account of possible problems in early stages of decision making. The proponents of board-level representation argue also that it brings about productive effects through consensus and cooperation, corporate culture based on trust grater understanding among the workforce of the needs and interests of the company (Schulten, Zagelmeyer 1998).

Yet, Levinson (2001) shows with his study of employee representatives in 660 Swedish company boards, that in large majority of companies – 83% - representatives of employees never participate in the early stages of decision-making, i.e., formulating the problems, determining the board agenda, initiating solutions etc. (p. 268). This trend is also recognised by Knudsen (1995, p. 13) – employee participation occurs less in the planning phase than in implementation phase. Representatives' activity is seen passive rather than active in most companies, apart from specific topics – personnel, reorganisation, production and work environment, i.e., operational and welfare issues. More than half of representatives feel they have a negligible possibility to influence board work. Here, the importance of adequate representative training has been stressed (Levinson, 2001, p. 272, Knudsen, 1995, p. 14).

In practice in most of the countries there are some companies that do not have employee representatives in the board, even though there are employees' rights for that. Most remarkable is Portugal where there are almost no cases of the employee representation in boards of companies. Schulten and Zagelmeyer (1998) bring out that in Denmark for example employees in 1400 companies out of 4500 have used the right for board-level representation.

**Table 3.1.** Board-level employee representation in the EU countries

| State     | System of corporate governance | Is there statutory provisions/ type of regulation for BLR | Companies  | Only public | Proportion of employees representatives and structures where employees are represented   | Selection method of employees representatives  |
|-----------|--------------------------------|---|--|-------------|--|--|
| Estonia   | D                              | No  |  |             |  |  |
| Latvia    | D                              | No  |  |             |  |  |
| Lithuania | D                              | No  |  |             |  |  |
| Cyprus    |                                | No  |  |             |  |  |
| Malta     | M                              | Yes/legislation   | State-owned companies  | Yes         | 1 member of the board of director  | Employees vote   |
| Czech Rep | D                              | Yes/legislation   | All state-owned companies and joint stock companies with more than 50 employees                    | No          | One-third of supervisory boards  | Employees vote   |
| Hungary   | D                              | Yes/legislation   | Companies with more than 200 employees   | No          | One-third of supervisory boards  | Works councils nominate the representatives (must consult first with union representatives)    |
| Poland    | D                              | Yes/legislation   | Privatised companies with more than 500 employees and state-owned companies                        | No/Yes      | In state-owned companies 2/5 of supervisory board<br>In partly state-owned companies (<50%) 2-4 members of supervisory board<br>In privatised companies 1 member of management board | Employees vote   |
| Slovakia  | D                              | Yes/legislation   | State-owned companies and companies with supervisory board, where there are more than 50 employees | No          | Private companies 1/3 of members in supervisory board<br>State-owned companies 1/2 of supervisory board  | Employees vote, in state-owned companies one board member is directly appointed by trade union |
| Slovenia  | D                              | Yes/legislation   | Joint stock companies with supervisory board   | No          | 1/3-1/2 of supervisory board (defined in the statutes of   | Supervisory board members are directly appointed the works                                     |

| State   | System of corporate governance | Is there statutory provisions/ type of regulation for BLR | Companies  | Only public | Proportion of employees representatives and structures where employees are represented   | Selection method of employees representatives   |
|---------|--------------------------------|---|--|-------------|--|---|
|         |                                |   | (obligatory if e.g. there are more than 500 employees)             |             | company) and 1 member in management board if there are more than 500 employees   | councils;<br>Proposal for management board member is made by works council and appointed by shareholders  |
| Austria | D                              | Yes/legislation   | Companies with at least 40 employees                               | No          | 1/3 supervisory boards   | Appointed by works council from its ranks   |
| Belgium |                                | No  |  |             |  |   |
| Denmark | D                              | Yes/legislation   | Companies with at least 35 employees                               | No          | Two members and up to 1/3 of supervisory boards  | Employees vote among employees  |
| Finland | Mixed                          | Yes/ legislation  | Companies with more than 150 employees                             | No          | Employees' representatives may be any body nominated by management board, supervisory board or management group. Up to 1/5 of the membership of the body and it is 1-4 members (many details left to local negotiation)  | Employees vote among trade union appointed candidates, who are employed in this company   |
| France  | Mixed                          | Yes/legislation mainly                                    | State-owned companies with staff more than 200, all private sector | No          | State-owned companies staff 200-1000two members<br>State-owned companies staff over 1000 1/3 of members<br>In private sector 2-4 works council members may attend the meetings of the board<br>In ltd companies which have voluntarily reserved seats for staff members 4-5 members or up to 1/3 of membership<br>Representation in board of directors very rare | In state-owned enterprises and companies where voluntary board-level participation is envisaged employees elect the representative from the candidates appointed by the five nationally recognised unions;<br>Works council members attending in board meetings are appointed by works councils |

| State   | System of corporate governance | Is there statutory provisions/ type of regulation for BLR | Companies   | Only public | Proportion of employees representatives and structures where employees are represented   | Selection method of employees representatives  |
|---------|--------------------------------|---|---|-------------|--|--|
| Germany | D                              | Yes/legislation   | Companies with 500 employees or more                                    | No          | Coal, iron and steel industry – parity representation of labour and shareholders in the supervisory board and also one member in management board “labour director”<br>Companies with workers 500-2000 1/3 of supervisory board<br>More than 2000 workers ½ of supervisory board (the chairman is shareholder representative and has two votes if there is disagreement) | Generally by employees vote (specific provisions for companies with different size and for representation of different workers groups).<br>In coal, steel and iron industry candidates are appointed by trade unions and works councils, shareholders approve the candidate. Labour director is appointed by shareholders and it cannot be done against the majority vote of employee’s side in supervisory board. |
| Greece  | D (in socialised sector)       | Yes/legislation   | State run “socialised companies” such as public utilities and transport | Yes         | 1/3 of the supervising body consists of employees representatives, 1/3 of consumer groups and local authorities, 1/3 of government representatives.<br>1/3 of board of directors consists of members elected among workforce   | Employees vote   |
| Ireland | M                              | Yes/legislation   | State-owned companies   | Yes         | In some companies 1/3 of seats in board of directors   | Employees vote among candidates who are appointed by the recognised organisation of collective bargaining  |
| Italy   |                                | No (some company-level)                                   |   |             |  |  |

| State       | System of corporate governance | Is there statutory provisions/ type of regulation for BLR | Companies  | Only public | Proportion of employees representatives and structures where employees are represented  | Selection method of employees representatives   |
|-------------|--------------------------------|---|--|-------------|---|---|
|             |                                | agreements)   |  |             |   |   |
| Luxembourg  | M                              | Yes/legislation   | Companies that are more than 25% state-owned<br>Companies that receive state aid<br>Companies with over 1000 employees   | No          | In state-owned and state-aided companies one employee representative per 100 employees. Min 3 employees representatives and maximum 1/3 representatives of the board of directors<br>Companies with over 1000 employees 1/3 of board of directors | Works council representatives appoint the members among the workforce. In iron and steel industry most representative national trade unions appoint the board representatives, who may be outside the company's workforce   |
| Netherlands | D                              | Yes/legislation   | Companies with more than 100 employees   | No          | The proportion of employees' representatives is not defined. The representation is in supervisory board   | Supervisory board elects its own members. General meeting of shareholders, works council and executive board recommend new members in case of vacancy. Employees of the company and union officials engaged in collective bargaining may not be members of the supervisory board. |
| Norway      | Mixed                          | Yes/legislation mainly                                    | Most private companies, Agreements or public sector decision based representation in public sector companies and companies that are not covered by legislative framework | No          | Up to 1/3 of seats on board of directors and not less than three members. If there is a similar body to supervisory board, employees are represented in both of boards  | Employees vote among workforce (it is common that trade unions nominate the candidates)   |
| Portugal    | D                              | Yes/legislation   | State-owned companies  | Yes         | Board of directors, supervisory   | Employees vote  |

| State          | System of corporate governance | Is there statutory provisions/ type of regulation for BLR | Companies  | Only public | Proportion of employees representatives and structures where employees are represented                                  | Selection method of employees representatives |
|----------------|--------------------------------|---|--|-------------|---|---|
|                |                                | (not implemented in practice)                             |  |             | board   |   |
| Spain          | M                              | Yes/tripartite collective agreements                      | Largest public sector companies, institutions with special legal status (e.g. savings banks) | Yes         | Board of directors  |   |
| Sweden         | M                              | Yes/legislation   | Companies with more than 25 employees  | No          | In companies with 25-1000 employees two members<br>Over 1000 employees three members<br>Employees cannot be in majority | Appointed by local trade unions               |
| United Kingdom | M                              | No  |  |             |   |   |

Sources: Old EU Member States – Schulten, Zagelmeyer 1998, New EU Member States – Kluge, Stollt 2004.

## **4. Case studies**

### **4.1. The idea and rationale behind the case studies**

#### **4.1.1. The idea and hypothesis**

The idea of conducting the case studies is to investigate participation process (more precisely information and consultation of employees) and satisfaction with it in the cases of different representational structures.

The acuteness of the theme comes from the necessity to adopt the respective EU directive but also from the lack of research in this field in Estonia. The trade unions and other types of employee representation are not very common in Estonia. Only a bit over 10% of employees belong to trade unions. The other forms of representation are probably even scarcer<sup>8</sup>. As the EC Directive on the framework of employees' information and consultation is not passed it is expected that the participation will grow in the near future. However, there is no direction yet, which forms of participation and representation will grow the most. There is clear disagreement between the labour unions and employers unions on which forms should be favoured by the law. The unions have the idea that information and consultation through unions should be favoured, while employers are in favour of minimum regulation involving different kinds of representation on equal standing with unions.

In Estonia there are currently two main types of representation for general information and consultation procedures (see ch 2). These are union representatives and representatives elected by the non-unionised employees. As the election and rights of these representatives are not the same it is expected that the information and consultation procedures with these representatives differ. More particularly we expect that the non-union representative who should be elected by the general meeting of non-unionised employees works less efficiently in bringing the ideas of workers in front of the management. The hypothesis is based on the idea that as the elections of non-union representatives are less regulated and less transparent their mandate from the employees is not clear and this might result in less efficient information and consultation. Also if the non-union representative of workers is appointed by the management just to show up as there is the participation and to force the favourable collective agreement, the information and consultation of employees is not the real practice. At the same time it can happen that if the employees have not unionised themselves and the employer wants to have a partner on the side of employees he is the initiator of the non-union representation. And as such this might result in more efficient information and consultation practices than in the case where resisting employer is confronted with the unionised workforce, eager to participate in company's decision making.

#### **4.1.2. The method of the research**

As the information and consultation process of employees and satisfaction with it is very context specific issue the choice for the method was case studies in companies with different representational structures. The number of case studies conducted is eight: this would enable to study the conditions for participation as well as to compare alternative approaches.

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<sup>8</sup> There is no overview of the extent of different representational structures in Estonia. No research has been done in this field.

Companies are chosen so that the labour unions could suggest four companies and employers unions could suggest four companies. First they both appointed three or four companies in excess, so that the choice in between these could be made by the researchers. The first criteria for the choice of the companies were such that it could make an interesting case to look at in respect of the representation and information and consultation process. Also the comparability of different companies in respect of representation structures could be made was borne in mind. However this was not very successful in several cases due to the lack of companies' interest to participate in the research. The companies, which were in some aspects extraordinary for Estonia were eliminated. The reasoning for this being that the lessons learned from the case studies could be transferable to some extent to the other companies. For example, companies of extraordinary size for Estonia, public companies, a company where there are four unions etc. were eliminated.

In respect of representation, it was borne in mind that the different types of representation could be compared within the context. Therefore the aim was to have some cases for union representation, some for non-union representation, some for union and non-union representation simultaneously and also some for no employee representation at all. As the labour unions pointed only companies with the union representation, the employers union pointed companies with varying structures.

Being able to compare the companies, the economic sector and the size of companies was also kept in mind. Also in this respect we were not all the time successful as we could not find a comparable retail company with different representation structure willing to participate in the research. Even though we have a fairly interesting set of companies that are briefly described by the table 3.1 and which allow to look at all the different representation structures and information and consultation within their context.

**Table 3.1.** Description of the companies participating in the case studies

|        | <b>Number of employees</b> | <b>Economic activity</b>      | <b>Representation</b>           | <b>Ownership</b>                    |
|--------|----------------------------|-------------------------------|---------------------------------|-------------------------------------|
| Case 1 | 300                        | Public transportation         | union                           | Municipality and private (Estonian) |
| Case 2 | 280                        | Infrastructure                | union                           | Private (foreign)                   |
| Case 3 | 470                        | Manufacturing                 | none                            | Private (Estonian)                  |
| Case 4 | 200                        | Road building                 | union                           | Private (foreign)                   |
| Case 5 | 142                        | Manufacturing                 | Trustee without union           | Private (foreign)                   |
| Case 6 | 130                        | Carrier and dispatch services | Trustee without union and union | Private (foreign)                   |
| Case 7 | u 500                      | Wholesale and resale of goods | union                           | Private (Estonian and foreign)      |
| Case 8 |                            | Manufacturing                 | none                            | Private (Estonian)                  |

In order to study the process and outcomes of the information and consultation the case studies consist of following parts in all companies:

1. interview with one person from the management,
2. interview with the employees representative(s),
3. survey among random sample of workers,

4. study of each companies economic situation, based on the economic reports and information and consultation procedures, based on the documents delivered by company (e.g. collective agreement, internal rules of work etc).

The interviews with the company and employee representative are semi-structured, lasting until one hour. The aim of the interviews is to give the general picture of the company so that employees questionnaires could be compared to employees' representatives and employers views. Also context specific issues will become evident from interviews.

The sample of workers is made based on electronic list of personnel given by companies. The sample is stratified according to the departments or occupations, depending on the content of personnel list. The size of the sample as percentage of the whole workforce in the company is different in companies. In total, however, 20% of employees are covered with the survey.

The questionnaire is distributed and collected after one week by the personnel department in each company. The questionnaire is self-fulfilled by respondents and returned in sealed envelope with special safety closure so that the questionnaires could not be replaced by the management. Survey is not anonymous and the sender's names can be checked afterwards, this is again the precaution in order to avoid the change of the answers by the management. In the accompanying letter it stated however that the results are presented in anonymous manner and that the management does not have any access to the answers. This altogether should guarantee the honesty and good response rate.

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