

**Board-level participation and workers'
financial participation in Europe**

State of the art and development trends

Norbert Kluge and Peter Wilke

European Trade Union Institute
for Research, Education and Health and Safety (ETUI-REHS)

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Dr. Norbert Kluge is senior researcher at the ETUI-REHS and head of the SEEUROPE project (nkluge@etui-rehs.org).

Dr. Peter Wilke is consultant and executive of wmp-consult Hamburg (peter.wilke@wmp-consult.de).

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1. Introduction: Workers' participation as characteristic of the European social model

1.1 The Lisbon strategy is based on active workers' participation

With the Lisbon strategy of 2000 Europe set itself ambitious economic and political goals. Within the framework of a 10-year strategy the European Council wants to make the EU into the most dynamic and competitive economic area in the world. These aims are to be attained on the basis of the high social standards of the European social model, as well as ecological sustainability. The implementation of this strategy, therefore, should not be at any price and based on unbounded cost dumping in pursuit of economic competitiveness, but rather on the basis of a highly developed economic model. To the extent that above all innovative and hi-tech products and services are to be the European trademark in the context of the Lisbon strategy highly qualified workers are needed who are committed to 'their' enterprise. From the EU standpoint a well functioning system of European labour relations institutions will play an important role in this. It will give workers the right – but also the duty – to help shape their working and living conditions at all levels.

Even if Europe, already past the half-way stage of the Lisbon strategy, is still far from a coherent European system of labour relations European policy has been characterised from the beginning by the comparatively strong institutional position of economic involvement in most EU member states. Workers' participation runs like a red thread through the history of the origins of the European constitution, not to mention across all national and cultural differences: from Art. 13 of the European Social Charter of 1961 through the Charter on the Fundamental Social Rights of Workers of 1989, the Charter of Fundamental Rights of 2002 up to Art. II, 87 which is supposed to codify information and consultation in the workplace as a fundamental right for workers in the future European constitution. It could be said that these fundamental rights make the worker a 'citizen' of the enterprise. They underline the common political will in Europe to include workers as central actors in the shaping of the economy and society of the future.

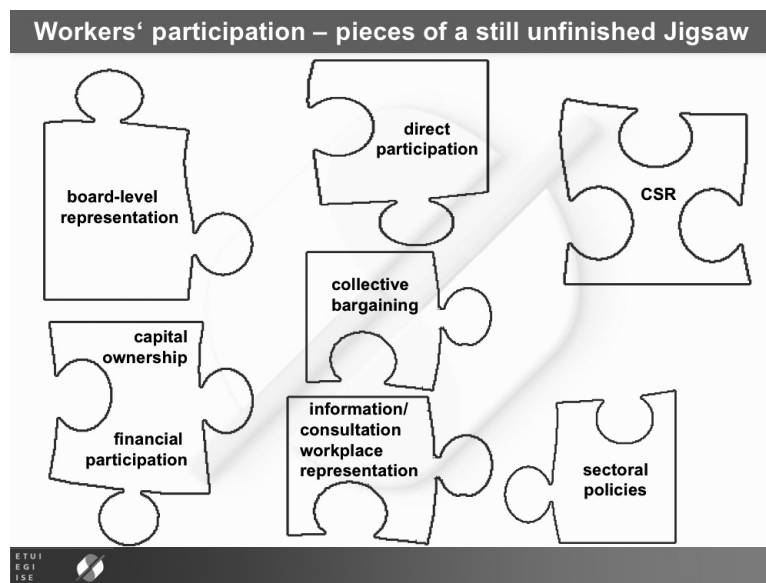
There are three major European directives on workers' information, consultation and participation:

1. European works council directive (Council directive 94/45/EC) of 1994 which is currently awaiting amendment;
2. Council Directive 2001/86/EC of 2001 supplementing the Statute for a European company with regard to the involvement of employees;
3. Council Directive 2002/14/EC on informing and consulting employees which defines the minimum framework for information and consultation in each EU member state.

All three directives amount to structures of interest representation in Europe which are intended to provide employees, nationally and cross-border, with information which is timely, as comprehensive as possible and at the level at which company decisions are taken.

It is important for an understanding of workers' participation in Europe to know that European regulations build on the existing diversity of national laws. They do not harmonise them. The institutions of worker involvement in the EU member states are – and will remain so for the foreseeable future – very diverse. In order to implement common workers' rights concerning information, consultation and participation the socio-political legislation (for example, on health and safety or old-age pensions) of different EU member states, as well as the strength and significance of trade unions and collective agreements played a major role.

Figure 1



Current labour relations in Europe can best be portrayed as an uncompleted puzzle (see figure 1): we can label all the important elements and know the underlying formal structure. However, we still do not know how the individual parts of the puzzle combine and – in the context of a cross-border European undertaking – what instruments and levels give rise to what in different countries. There may therefore by all means be ‘functional equivalents’. The lack of obligatory enterprise participation in a country therefore does not automatically mean that opportunities for participation are lacking; it is possible that there are other ways of influencing strategic enterprise decisions. Equally, the fact that financial participation is not widespread in a country should not be taken to mean necessarily that there are socio-political deficiencies.

1.2 Workers' participation is a core element of good management

The European way of doing business on the ‘high road’ of economic development requires the involvement and participation of employees in decision-making processes. Elements of involvement and codetermination are not surviving relics of earlier times but elementary

components of European enterprise and economic 'culture'. In contrast to what many discussions today suggest under the dominant influence of financial market interests there can be no 'razing to the ground' of board-level participation rights nor a substitution of board-level participation by financial (share) participation if enterprises are to function properly. Share ownership alone does not make someone a good European citizen. Rather the political consensus has generally been that legally enshrined workers' participation represents an expression of socially responsible economic behaviour. Workers' participation at the enterprise level is one of the core elements of the fundamental legal endowment of European democracy.

The European idea of global economic competitiveness makes these rights more than mechanisms for social interest conciliation. Mandatory participation is becoming part and parcel of enterprise development. It provides enterprises with a possible framework for the requisite permanent internal restructuring. Together with good profitability it helps to bind so-called 'high potentials', including skilled workers, to the undertaking.

It is therefore reasonable to expect that in a modern enterprise concept collective participation (board-level participation) and individual financial incentives will combine on the European 'high road'. What is new in this is the optimal utilisation of the different elements of participation and striking a balance between social and economic interests. Workers' participation both in decision-making and financially (equity and profits) is in general an accepted part of the European economic and social model. However, the extent and concrete forms of participation have not been agreed. Four forms of workers' participation are in focus here:

1. direct participation allowing workers to avail themselves of rights in relation to matters which affect work on a day to day basis;
2. indirect or representative participation, where workers can influence issues concerning the workplace and the enterprise through elected representatives (for example, works councils);
3. participation through parties to collective bargaining making it possible to influence wages and working conditions;
4. financial participation which makes it possible to share in the company profits.

All four forms of participation partly influence one another and so define to what extent and in what form workers can influence their work, their working conditions and how they participate in the results of this work (see Poutsma 2001 : 5).

The following sections consider the existing elements and structures of board-level participation and financial participation in more detail. In conclusion, we return to our opening thesis that board-level participation and financial participation constitute an interface full of prospects for the European enterprise management model of the future and both elements together belong to good European enterprise management.

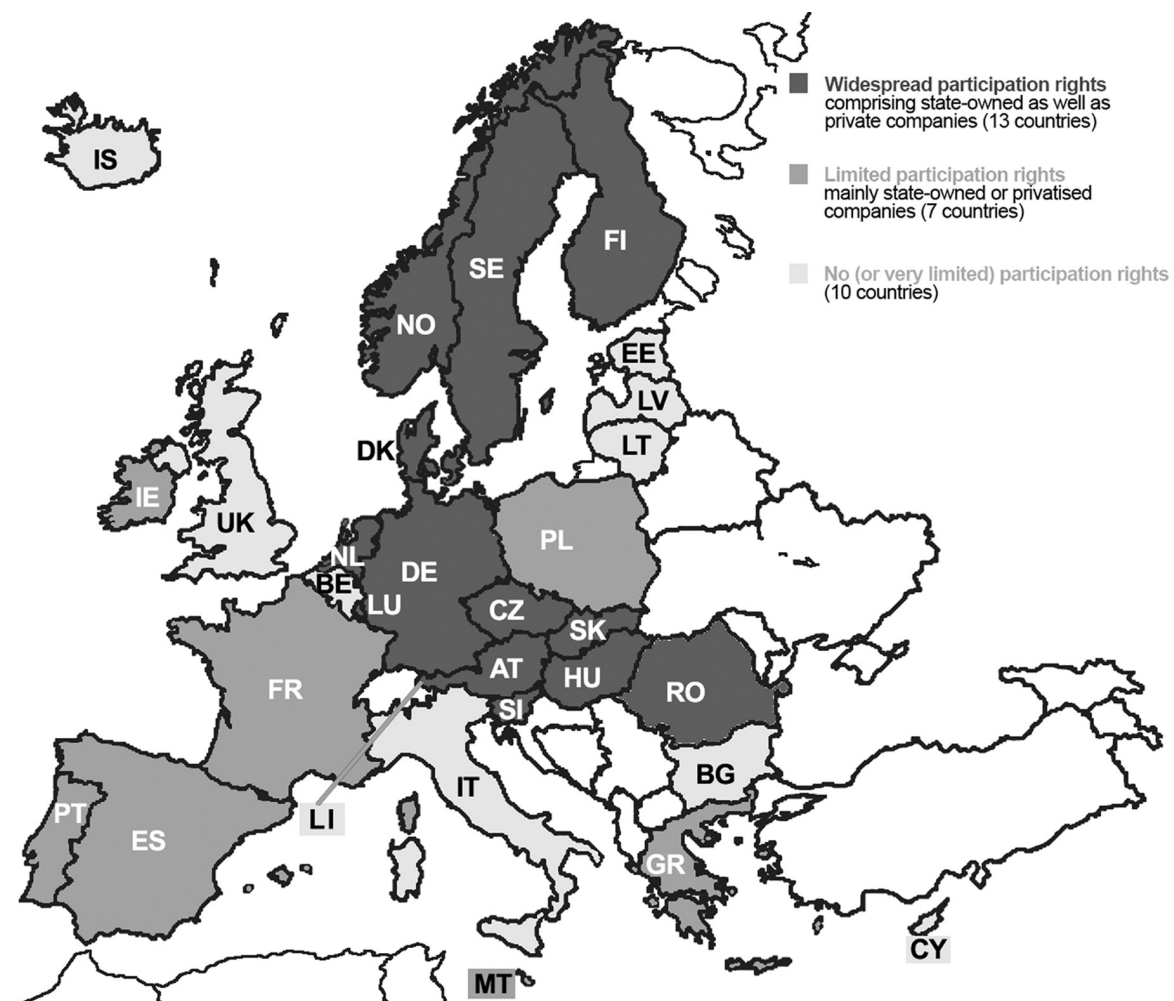
2. Europe's board-level participation map: participation as a component of corporate governance

2.1 Legal background of employee participation

The presence of employee representatives on supervisory and management boards is taken for granted in many European countries. Roughly speaking, in Europe as a rule there is a possibility of interest representation in establishments with more than 20 employees – indeed, in 11 EU member states there is also a possibility of interest representation at enterprise level.

In 18 of the 25 EU member states employees have the right to have their interests represented in the highest administrative and management bodies (see Figure 2 and Table 1). Only the UK, Belgium and Italy out of the EU-15 and the three new Baltic EU member states plus Cyprus are exceptions (see Summary).

Figure 2



In 11 (12 including Norway) EU member states employees can have their interests represented in the administrative bodies of the enterprise in all sectors, in both private and state-owned companies. In the Nordic countries, Austria, Germany, Luxembourg and the Netherlands, as well as the central and east European countries the Slovak and Czech Republics, Slovenia and Hungary employees' participation rights have emerged at national level and are a stable component of national 'economic culture'.

In seven EU member states employee representation in administrative bodies is foreseen only in certain sectors (like public savings banks in Spain) or for state-owned and privatised enterprises (in France and Poland), or only in state-owned enterprises (Greece, Ireland, Malta and Portugal). Workers' participation at this level is therefore not generally perceived as an element of national labour relations.

Germany is one of the countries with strong codetermination rights at enterprise level. However, developed codetermination also exists in other EU member states. While in countries like Germany, Austria, the Netherlands and also the new EU member states from Central Europe employees have rights of proposal and/or nomination of their representatives on the supervisory board, which supervises the management board, in the Nordic countries the law provides seats on the one-tier administrative board (board of directors) which not only supervises the enterprise's strategic decisions but may also make such decisions.

It is characteristic of codetermination in the Nordic countries that the highest level of interest representation is basically an extension of the workplace level. Interest representation is understood as a system which is as all-encompassing as possible in all enterprises and at all levels. This also explains the low thresholds at which codetermination comes into play: in enterprises with more than 25 employees in Sweden, more than 35 in Denmark, more than 150 in Finland and more than 200 in Norway. Among the EU member states with a developed codetermination system only Slovenia (more than 500 employees), Germany (more than 500, 1000 or 2000) and Luxembourg (from 1000) have very high thresholds for the application of codetermination laws. Fundamental to workers' participation in the Nordic states is the high level of unionisation: more than 70% of employees are members of a trade union.

The company law regulations on the relationship to the company of employee representatives in the highest enterprise organs reflect the broad spectrum of different national conceptions of how members of the administrative and supervisory boards should be appointed. While in most countries members must be employees of the enterprise, in the Netherlands this is explicitly excluded. In Germany the presence of external trade union representatives means that both categories exist. It is by no means unusual, however, for employee representatives to have explicit links with trade unions. In the Nordic countries only trade union members at the enterprise level may send their representatives to the administrative board.

It must be said, by way of qualification, that comparison between European countries of the intensity of participation and so also the quality of supervision provided by workers' participation is difficult. Both the degree and the range of participation are extremely variable.

Table 1: Employee board-level participation in the 30 countries applying the European Company (SE) legislation

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

Abbreviations: TU = trade union / WC = works council or elected workplace representatives

M= monistic structure (board of directors) / D= dualistic model (management board and supervisory board)

* including privatised companies

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

The effectiveness of workers' participation in the different systems on the one hand depends on the general significance of the administrative organ in national company law. Exactly what can the administrative organ make decisions about and to what extent is there a list of issues which require its agreement? Only in Austria is such a list prescribed in law. While in some countries interest representation of the employees' side on the supervisory board (in Germany and Austria) or on the board of directors or the management board (in Sweden and Denmark) is laid down in special laws, the relevant foundations in other countries are to be found in commercial law. This applies, for example, to the Czech Republic. It is obvious that in such cases workers' participation in the highest level enterprise organs (board level) is understood less as a direct form of interest representation.

2.2 Excursus: Economic effects of codetermination

Every attempt to prove that codetermination has a negative effect on enterprise results, the share price or enterprise innovation has so far failed. However, it is frequently claimed that enterprise codetermination puts off foreign investors and is a disadvantage for countries that practice it. This reproach is directed towards Danish employees and trade unions just as much as German or Austrian ones. In contrast, it is striking that countries with far-reaching codetermination rights usually belong to the group of countries with a strong position in world markets or with favourable microeconomic location factors. If anything characterises the European social model it is legally binding participation of employees in the workplace, the establishment and in management decision-making. Neither the stock-exchange nor the economic performance of locations (EU states) justifies abandoning workers' participation in company management or diluting it in European legislation on company law.

A recent study by the economist Frick on share prices before and after the introduction of the codetermination law in Germany comes to the conclusion – again – that codetermination has not negatively influenced the market value of enterprises (Frick 2005). Countries with developed participation regimes for employees on average perform better in the rankings of the World Economic Forum's Business Competitiveness Index (BCI) (Global Competitiveness Report 2004, p. XIV) than those without such a system. In this ranking what is evaluated is primarily the microeconomic conditions for enterprises in different countries. That means that the economic performance of countries with developed participation systems is better on average than those without this system (Benchmarking Europe 2006, Chapter 9, Vitols 2005).

3. Financial participation in Europe: overview of similarities, differences and development trends

The distribution and significance of workers' financial participation in Europe are at first glance no more uniform and structured than in the case of codetermination. However, analysis shows examples and cases of good practice concerning financial participation in all European countries, even if the political and economic preconditions vary between strong legal foundations for the active promotion of financial participation (as in France and the UK) on the one hand, and rather poor recognition of such practices at enterprise level by the social partners, on the other.

Historically, approaches and instruments for financial participation have emerged for the most varied reasons. In some companies financial incentives have always been an instrument to have a stronger commitment to the company. Particularly after 1945 there were also socio-political motives to promote wealth creation among the workers which in the meantime have been found in many European countries (France, Germany, the UK). Today these instruments are used partly to compensate for deficitary state old age pensions. In countries such as the UK and Ireland financial participation traditionally plays a major role in the composition of old age insurance through pension funds. Employees and their trade unions frequently have a seat and a vote on the supervisory board of such pension funds in order to oversee the proper use of the money. However, there are also strong traditions in the cooperative movement from which a tradition of financial participation has been nurtured (for example, in Spain).

As with the codetermination debate analyses of approaches to financial participation in Europe tend to emphasise the differences in the details and so overlook the great similarities. What at first glance seems very diverse can be categorised in terms of a few basic schemes which are to be found in all countries. The most important differences concern:

- the form of participation (participation in profits and/or equity);
- the form of use or investment of the proceeds of participation (lump sum, accumulation of share, or feeding old age pension plans); and
- the determination of which employees are entitled to participation.

In all European countries distinct participation models have developed around these coordinates which, due to national peculiarities in terms of taxation, state support, forms of enterprise, and so on, can look very different in detail. As time goes on, the spread of financial participation schemes in individual countries has necessarily become extremely differentiated (for example, the relatively high significance of profit sharing in France or equity participation in the UK).

The new EU member states find themselves in a special situation in this connection: on the one hand, in all these countries – although with different national emphases and intensity – financial participation has formed an essential component of privatisations in the post-socialist transformation process. This led at least temporarily to a dramatic leap in the proportion of company assets in the hands of the employees. So far only a few relevant studies and research are available concerning the distribution of different participation models in the new EU member states.

Differences notwithstanding, most European countries are pursuing a national policy promoting financial participation – mostly deliberately linked to political goals of strengthening participation and wealth creation among employees.

Table 2: Form of participation and scope of workers' participation

Form of participation	Scope
Participation in profits or results (A) and/or equity participation (B)	for all employees (C) and/or for special employee groups (D)

These national policies are based mainly on two fundamental rules:

1. on the one hand, the principle of a far-reaching double voluntariness: as a rule, neither employees nor employers are forced to implement financial participation (only in a few countries are there legal provisions which prescribe financial participation, for example, partly in France);
2. on the other hand, a separation of financial participation from employees' and employee organisations' autonomy of wage negotiation (trade unions): financial participation schemes are predominantly not regulated by collective bargaining.

It is difficult to clearly separate the basic types of financial participation empirically according to form of participation and scope (see Table 2). Basically, we can say that profit sharing is more common in European companies (especially in the form of 'cash-based profit sharing') than equity participation, and more companies have participation systems for managers and executives than for employees as a whole.

A study published in 2001 by the European Foundation for the Improvement of Living and Working Conditions attempted an overall assessment of EU countries and came to the conclusion that 24% of all enterprises in the EU have adopted a profit sharing scheme, 9% an equity participation scheme, and 4% a scheme which incorporates both profit sharing and equity participation (Poutsma 2001). Even if these figures are not reliable in terms of their statistical basis but in many countries rest rather on general expert estimates they at least show a notable spread of participation schemes in Europe.

3.1 Profit sharing

The simplest form of financial participation is profit sharing. This can be understood as a collective regulation which in addition to the stipulated wage provides a variable income (mostly paid out annually) dependent on enterprise profits. This practice exists in many enterprises, even if it is not always laid down in an agreement, but based on a voluntary decision on the part of the management. In Germany a representative poll of more than 9,000 enterprises by the Institut für Arbeitsmarkt- und Berufsforschung der Bundesagentur für Arbeit (IAB), for example, established that around 13% of enterprises were voluntarily practising annual profit sharing (Möller 2000).

Profit sharing can either be paid directly or diverted to various forms of investment for later disbursement. Basically, the following schemes can be distinguished:

- profit sharing through bonus payments (cash-based profit sharing);
- profit sharing with deferred payment/savings plan (deferred profit sharing);
- profit sharing on the basis of share ownership (share-based profit sharing).

What is particular about profit sharing plans in many European countries is that to a certain extent they are subject to tax benefits (after recognition of the agreement by the state authorities). This applies primarily when they are set up for the medium-term accumulation of assets by employees. In these cases allocation rights, prescribed holding periods, forms of investment, and so on, are legally regulated. Examples include France, the Netherlands, Sweden, and the UK.

In Europe the link between profit sharing plans and old age insurance schemes has so far not been emphasised to the same extent as in the USA. This can be attributed to the fact that in Europe state old age pension systems are as a rule much more developed. To that extent European deferred profit sharing plans are generally more directed towards accumulation of assets. Furthermore, a link with wage negotiations is the exception in most European countries. Having said that, in recent years there have been increasing tendencies from the employers side towards creating such a link.

Conceptually, profit sharing schemes are part of remuneration and are linked to employment in the enterprise. They are only linked to the ownership issue if the profit claim derives from equity participation.

Among profit sharing plans which foresee payment in the form of a share in the company (shares or other documented share in the company) there is a logical link with equity participation. This is because here permanent (or at least for an agreed period) mandatory participation in the company and its future results is developed from the inflows of profit sharing. Whether advanced rights to be consulted go together with this participation, alongside claims to a share in future results, depends on the legal and economic form of the company share.

3.2 Equity participation

In European countries the forms of equity participation schemes are strongly determined in detail by the relevant company and tax law. Basically, forms of both individual and collective participation can be found which are related to the company in which the worker is employed or also to other company shares (see Table 3).

Table 3: Form of participation and scope of equity participation

Form of participation	Scope
Participation in own company (A) or Participation through shares, etc. in the capital market (B)	Individual participation of individual employee (C) or Collective participation (D)

One widespread (and so typical) form of participation in European countries is to offer employees a share (above all, stocks) in their company. This usually goes together with special conditions, linked to prescribed holding periods and tax benefits. Company shares either go into an individual employee account or are administered by a holding company (for example, an ESOP or ‘employee share ownership plan’ in the UK). In all cases participation is legally a form of ownership, linked to all the rights of share ownership.

On the enterprise side, due to the rapid development of share markets since 1945 equity participation schemes (in the form of employee share schemes) are common practice in almost all large European companies. As a rule, management and workers are offered different schemes. This form of participation is comparatively simple to implement since shares are tradable assets and have a determinate price. At the same time, ownership rights (and so participation possibilities) are linked to shares, although in practice they don’t play much of a role due to their insignificance.

In Europe large companies operating in several countries face practical implementation problems with share participation schemes. Because of different tax laws and company statutes a participation offer of, for example, 10 shares in a company represents different costs for the company and differing returns for individual employees, depending on the country in which the scheme is being run. Two expert groups were set up to harmonise these regulations in the EU but so far no real program has been achieved.

Important distinctive features of equity participation practice in Europe include (cf. Poutsma 2001, 17f):

- access to participation schemes: for all employees or only a part (management);
- dependence of schemes on company performance;
- regulations on the introduction of a plan and approval: approval obligations of the authorities, collective bargaining parties or employees;
- voting rights and involvement of employees;
- range of participation: limited to one enterprise or even sectoral or regional schemes;
- state recognised plans or voluntary company plans;
- prescribed holding periods and disposability for employees;
- allocation formulae: according to company affiliation, level of earnings, etc.;
- financing of participation: profit sharing or employees' contributions (deferred compensation).

Government policy plays a significant role in the diffusion of employee equity participation schemes. This is particularly the case in France with its legally prescribed profit sharing schemes for employees and employee savings plans. The long-term influence of legislation and government promotion policies also manifests itself in the UK, the Netherlands and Germany (for example, the strong emphasis there on building society savings and capital-forming payments under the employees' savings schemes and the relative insignificance of financial participation, at least in state-regulated form).

Government incentive schemes are dominated on the one hand by tax benefits and on the other by direct income subsidies for equity participation for lower income groups. In many countries the situation is particularly favourable for both employees and enterprises for whom participation costs are tax deductible.

Statistical data are scarce on the financial significance of employee participation for individual employees. In most cases we are talking about annual amounts of between 2% and 5% of annual income (corresponding to about half a monthly wage). These sums are disbursed or go into long-term investment schemes.

The increase in the number of equity participation schemes in Europe in recent decades has been driven less by government provisions than by personnel policy considerations in companies. Above all in limited companies the introduction of participation schemes has proved itself a practical contribution to improving enterprise culture and employee motivation (team spirit, 'entrepreneur in the enterprise', participation in enterprise value added, and so on). This has certainly been helped by the fact that the schemes often involve low costs for the company (for example, stock-option schemes, or the issue of employee shares within the framework of capital increases).

Table 4: Varieties and spread of financial participation in Europe

Country	Profit Sharing	Spread of the most important profit-sharing elements	Equity participation	Spread of the most important equity participation elements	Savings plans	Government promotional instruments
Belgium	•	Predominantly multinational companies and financial service providers ¹ ca. 10% of large companies ²	•	ESO and Stock Options: predominantly multinational companies ¹ ca. 10% of large companies ²		ESO and other widespread participation schemes for employees ⁸
Germany	••	ca. 13% of companies ¹	•	ca. 3% of companies ⁶ Stock options: ca. 8% ⁷	(ca. 80% of employees in schemes, of which ca. 32% entitled to employees' savings bonus) ²	Widespread ESO schemes within the framework of capital accumulation (savings plans) ⁸ Tax benefits of option schemes CPS: not government regulated ¹
France	•••	ca. 53% of companies ⁴ ca. 27% of employees: legal (Participation) PS ca. 13% of employees: voluntary (Interessement) PS ²	•	ESO: ca. 7% of companies ¹ Stock options: ca. 5% of companies ⁷	Voluntary, more than 117,000 employees from 12,000 enterprises ⁵	Profit sharing as DPS schemes (obligatory if E>50) ³ and extension of ESO and SO schemes ³
UK	•••	ca. 30% of companies ^{3,4}	•••	ca. 23% of companies ¹ Stock options: ca. 18% ⁷		Extension of ESO and SO schemes CPS: existing programmes partly being phased out ⁴
Spain	•	ca. 8% of companies or ca. 2 million employees ¹	••	ca. 10% of companies ¹ Stock options: ca. 4% ⁷		Promotion of stock-option schemes (SPS) and widespread participation schemes also in the form of cooperatives (EBO) ¹
Netherlands	••	ca. 13% of companies ¹	•	ESO: ca. 3% of companies ¹ Stock options: ca. 28% ⁷		ESO and other widespread participation schemes for employees ⁸
Sweden	•••	ca. 20% of companies ¹	•	ESO: ca. 2% of companies ¹		No particular support ⁸
Poland	•	No government support or regulation of profit sharing schemes ⁸	•	EBO (state): 1,335 companies with 162,000 employees ESO (private): ca. 330 companies with 270,000 employees (in total 15 million employees) ⁹	Pension saving plans 12 years after their introduction still not widespread ⁹	Promotion of workers' participation in the privatisation of former state-owned companies (EBO) and private companies (ESO = commercial employee participation programme) ⁹
Greece	•	ca. 7% of companies ³	•	ca. 7% of companies ³		Up to 10% of share capital must be distributed as profit sharing or equity participation to employees ²
Ireland	•	ca. 8% of companies ¹ APSS: ca. 400 profit sharing schemes	•	ca. 4% of companies ¹	ca. 90 SAYE schemes for over 140,000 employees ⁹	Promotion of APSS, ESO and SAYE schemes ¹
Italy	•	CPS: ca. 4% of companies ¹	•	ca. 3% of companies ¹ Tax exemption for equity participation held for min. 2 years ² State promotion of share acquisition within the framework of privatisation		ESO schemes promoted to a small extent ⁹ PS schemes: no state promotion ²
Luxemburg	••	CPS: ca. 26% of companies ²	•	Provision of employee shares in the case of new issues ²		ESO and PS schemes: no state promotion ²
Austria	•	Government regulation of CPS ²	•	Tax relief for employee shares, ESO and stock options ⁹		ESO (capital market companies) or employee shares (Limited) are subject to tax benefits ⁹ PS: no state promotion ²
Portugal	•	ca. 6% of companies ¹	•	ca. 3% of companies ¹		Promotion of profit sharing and equity participation (ESO and SO) ²
Finland	•	ca. 28% of companies ³	•	ESO: promotion of employee funds in connection with DPS schemes and employee shares ² Stock options: ca. 12% ⁷		Promotion of wealth formation through DPS schemes ²
Denmark	••	ca. 10% of companies ¹	•	ca. 6% of companies ¹		Promotion of profit sharing schemes as CPS, SPS or bonds ²

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

Notes: PS: profit-sharing - SPS: share-based profit sharing - CPS: cash-based profit-sharing - DPS: deferred profit-sharing - ESO: employee share-ownership
SO: stock options - APSS: approved profit sharing schemes - ESOP: employee share-ownerships plans - EBO: employee buy-outs

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

3.3 EC initiatives to promote financial participation schemes in Europe

Alongside initiatives in individual European countries the EU itself has cautiously taken the first steps towards the political support promotion of the idea of financial participation since the beginning of the 1990s. Three PEPPER Reports (Promotion of Employee Participation in Profit and Enterprise Results, see European Commission 1991, 1996 and 2006) have been published and two expert groups set up to harmonise transnational obstacles to financial participation.

The PEPPER proposals for participation schemes are based on the following common minimum criteria for such schemes which at the same time to some extent represent the maximum achievable consensus in European countries in this area:

- Participation schemes are voluntary actions by companies which are only indirectly promoted by government incentives.
- Participation schemes are solely enterprise-related, that is, there are no sectoral schemes, pension plans, etc.
- Participation schemes are to be open to all employees in a company (broad access).
- Participation schemes should contain profit sharing, that is, they are coupled to company performance without being part of stipulated wages and salaries.
- There is a connection between participation and decision-making rights only to the extent that they derive automatically from capital shares, but not as a political initiative.

Efforts in the European Union to harmonise the legal framework of financial participation so far have not been successful. In December 2003 an expert group published a report for the European Commission on the cross-border obstacles to employees' financial participation. The expert group's recommendations included, alongside a demand for tax harmonisation and standardisation of stock exchange rules, a proposal to develop a uniform scheme for workers' participation at the enterprise level.

A second expert group set up for this purpose in 2004 and 2005 was able to establish an extensive uniform framework with recommendations for a scheme (more or less minimum criteria). However, implementation in a uniform scheme will not be achievable until tax law differences, among other things, are dealt with.

3.4 Trends in the development of financial participation: a participation-oriented enterprise culture requires trust and transparency

The practice of financial participation is widespread in Europe today. However, the current increase in the significance of financial participation is due less to a strong promotional policy on the part of individual states than to the development of enterprise culture, human resource policy and competition between large companies for scarce qualified workers.

Almost all large listed companies in Europe today offer their employees active possibilities for financial participation in order to foster motivation, achieve identification with the company's economic aims and strengthen an open enterprise culture.

At the same time, such participation schemes, primarily among higher management, are connected to efforts to link portions of remuneration with company results. Share option programmes are one clear product of this.

A connection can be clearly identified between types of company and management systems, as well as financial participation schemes (see Table 5). There is a clear kinship between board-level participation and financial participation in the context of a participation-oriented enterprise culture. A central category of a participation-oriented enterprise culture is trust. Everything is done to develop employees' trust. From empirical research on enterprises with a good enterprise culture we know that 'trust creates commitment', which also applies the other way around, 'commitment creates trust'. The interface between financial participation, which as a rule is unilaterally provided by the employer, and codetermination, imposed by law, lies precisely here. Well functioning financial participation, just like codetermination, requires transparency and employee oversight of 'his' company's books.

Table 5: Connection between enterprise types/management systems and financial participation schemes

	High affinity	Low affinity
Profit sharing	<ul style="list-style-type: none"> Enterprise with a highly qualified workforce in a highly competitive market situation 	<ul style="list-style-type: none"> Enterprise with strongly diversified workforce in a less competitive personnel market
Equity participation	<ul style="list-style-type: none"> Management concept regards the motivation of all employees and their active participation as a decisive competitive advantage Larger companies (more than 200 employees) with a highly qualified workforce and an intensive direct participation culture Often dynamic enterprises in growth sectors 	<ul style="list-style-type: none"> No participation-oriented management concept, often confrontational employer/employee relations <p>Primarily smaller enterprises</p>

To avoid misunderstandings, we must be clear that an employee will not take entrepreneurial responsibility just because he has a few employee shares. The objective of employees as 'co-entrepreneurs' may be partly realisable in smaller companies, but across the economy as a whole it is an illusion. It is much more important for the employee to know that his employer will share his success with him. Here interest representation in the company helps to establish an obligation concerning the flow of information. In addition, it can be the last resort when someone feels hard done by.

4. How can financial participation and codetermination cooperate in stakeholder-oriented corporate governance?

4.1 Codetermination and financial participation are not opposites

Workers' participation in decision-making and in capital and profits are well known elements of the economy in all European countries, although there exist differences in forms of participation and codetermination.

In its resolution on financial participation of 12 June 2002 the ETUC called attention to the fact that financial participation can only have a positive effect if it is embedded in an overall system of workers' participation. There can be no question of one element competing with the other or even supplanting it. European trade unions find the interface between income based on collective bargaining and individual profit-related pay particularly sensitive. Financial participation should not lead to parts of income fixed in wage agreements being set off against it or linked to enterprise results. They should always be supplementary. Apart from that, no employee should be forced to join a financial profit sharing scheme. That should remain a personal decision. Finally, financial participation should not lead to an increase in social differences through income differentiation. Moreover, financial participation schemes should be transparent and go together with a long-term enterprise policy and mandatorily scrutinisable corporate social responsibility. To be sure, what we have here is a new and demanding interface between financial participation and mandatory codetermination.

Share ownership on the part of employees should not be taken as a reason to set vested participation rights in enterprise organs and co-decision-making rights as enterprise owners in opposition to one another. Where, as in France, it can happen that there are both elected employee representatives as foreseen under the law and employee shareholders' representatives on the administrative organ the two groups can cooperate with one another on the basis of the difference between their tasks.

Codetermination and financial participation can complement one another positively in an enterprise at all levels. However, even where they exist alongside one another they are at the very least not a negative influence. Ultimately it is a question of how far and in what form employees are able to influence their work, the conditions under which they work and how the economic results of this work are distributed. Codetermination and financial participation can be important components of good enterprise management – that is, an active participation policy can benefit the enterprise. Examples from all European countries show that they provide enterprises with the framework for the requisite permanent internal restructuring.

The challenge for management and employee representatives is to put the different elements of participation into operation together in an optimal way and to balance social and economic interests.

The message is: participation is also becoming a management task in enterprises. Financial participation, particularly schemes for employee shareholding, can represent an important addition in eliciting the desired responses from employees. Among the employees as a whole, however, logically it cannot substitute obligatory interest representation,

codetermination and binding collective agreements. Mandatory codetermination contributes to the development of trust for a financial participation scheme because it can provide the necessary transparency and verifiability.

4.2 Do the regulations governing international financial markets rule out participation?

The debate on European competitiveness today focuses narrowly on enterprise indicators under conditions of global competition. In these terms all efforts are tending towards establishing optimal conditions of capital exploitation, measured strictly in terms of high yields and rising share prices. This overlooks the fact that enterprises and also whole economies are complex organisations which can only be successful over the long term if they are able to motivate their employees and strike a balance between economic, social and technological innovations.

In our opinion, in large listed companies codetermination at the enterprise level will come to have more importance than hitherto, also in order to make the financial side of enterprises, including decisions about (de)investments, more transparent. At present, however, it is particularly controversial in this segment. The idea that enterprises can be viewed only in terms of a conflict of interest between managers and shareholders must be countered. The viewpoint of the financial markets and investors dominates and at present always demands the same thing: the rights of shareholders should be strengthened, the transparency of enterprise decision-making should be increased, extraneous – that is, unrelated to shareholders – interests should be eliminated and the remuneration of executive boards and supervisory boards should be disclosed.

Although the European Company (SE) statute includes the equal standing of monistic and dualistic management systems this agenda suggests a preference for the US model. The extent to which the debate at European level has not been thought through so far is shown for example by who and what counts as ‘independent’. If the European Commission’s criteria on ‘independence’ were followed no one could be a non-executive member of the board of directors who is contracted to the company, whether as employee representative or as shareholder. This is clearly an artificial notion for Europe which derives its legitimacy solely from the fact that it follows the US model of enterprise financing and control. Moreover, most new EU member states have decided to follow the dualistic model of corporate governance and have expressly rejected the Anglo-Saxon approach. And in at least four cases there are mandatory employee representatives on the supervisory boards of these countries’ enterprises.

In its Resolution on corporate governance of March 2006 (ETUC 2006) the ETUC emphasised that European regulations on enterprise management are inconceivable for European trade unions without an acceptance of codetermination at enterprise level, on the grounds of both democracy and economic-social policy. The Lisbon goals can only be achieved with European companies whose employees participate at all levels. This is what

differentiates the European way from other systems in global competition and provides it with its comparative advantage. Enterprise managements should be clear about this, too. They must be socially responsible.

Against this background employee share ownership has ambivalent effects if it is dominated by partial interests. On the one hand, it underlines that employees as shareholders develop a great interest in the success of the company through good management. They become an 'at-risk group' alongside the other shareholders. Since they have an interest in maintaining their jobs employee shareholders in case of doubt come down in favour of a long-term orientation on the part of investors and against rapid 'cashing in' of high share prices or dividends. Since the proportion of employee shares is generally small, and in any case nowhere near a critical mass, and the gap is too great between the shop floor and the board, interest representation in the enterprise's management and supervisory boards takes on special importance in terms of mediation. Employee shares and codetermination must therefore not be seen as contrary but as complementary if they are to fulfil their functions in modern enterprise management.

The European company with its possibility of flexible and case-adapted negotiation of workers' participation makes such companies the touchstone for the company side. They must put their cards on the table concerning whether and to what extent they wish to involve their employees in decision-making, including the direction of the company, and how far they envisage meaningfully combining enterprise and socio-political elements with one another. Creative solutions as regards participation-oriented management coupled with board-level participation, interest representation and financial participation make SEs a specific European phenomenon and competitive compared with their competitors.

4.3 Conclusion: there can be no future European social and competition model without workers' participation for the knowledge-based industrial society

Our investigation into the European social model shows the importance in Europe of legally binding involvement in the workplace, in the firm and in management decision-making.

Enterprise management with board-level participation in this ascription of roles for enterprises represents an important connecting link between enterprise and society. It is only possible to maintain and develop successful companies on the technological and productive high road if their employees are strongly committed to them. It is important that employees are embedded in the company permanently and dependably as a high-skilled labour force. Otherwise it is unlikely that employees will develop the requisite responsibility for the enterprise. They need to be able to exercise a direct influence on changes in their jobs and income opportunities.

Here the question arises: is there any chance that the diversity of traditions and models of workers' participation in the countries of the EU will develop its own participation culture which borrows elements from so-called 'Rhine capitalism' with its strong participation components, the French–Romance tradition of stronger profit sharing on the part of the whole workforce, and the Anglo-Saxon model of high market capitalisation?

Three elements have to be joined together in order to enable participation in results and decision-making:

1. Reliable participation at the workplace and in the enterprise.
2. Financial participation in equity and results within the framework of a well functioning collective bargaining system.
3. Integration of both participation forms in human resource management and enterprise management which regards the knowledge and motivation of employees as a decisive competitive factor.

There is no competition between codetermination (as participation in decision-making) and financial participation (as participation in results). However, financial participation can be no substitute for collective bargaining. Links between collective bargaining and financial participation can be imagined but whether they are implemented in practice is entirely up to the bargaining parties.

Both codetermination and financial participation can be beneficial for well functioning corporate governance since they assume information obligations and create transparency and control. In principle, a European company model cannot be prescribed by government. It must – beyond laws and development policies – above all prove itself and be implemented through practical experience and everyday benefits for all employees. The task for both enterprise managements and organised workers' representation is to establish meaningful links between codetermination and financial participation.

Bibliography

- Bedrac, Janja (2006) What makes a good company? Employee representation in European company law: reflections and legal provisions. Brussels: ETUI report 94.
- ETUC and ETUI (2006) Benchmarking Working Europe 2006, Brussels: ETUI.
- ETUC (2006) Corporate governance at the European level. Resolution of 14 March 2006: www.etuc.org
- European Commission (1991) The PEPPER report: Promotion of employee participation in profits and enterprise results (PEPPER I), Brussels.
- European Commission (1996) Report from the Commission: PEPPER II: Promoting participation by employed persons in profits and enterprise results (including equity participation) in member states, COM (96), 697 final, Brussels.
- European Commission (2003) Modernising company law and enhancing corporate governance in the European Union – a plan to move forward, Brussels: Communication from the Commission COM 2003 (284), http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0284en01.pdf.
- European Commission (2004) *Facing the challenge. The Lisbon strategy for growth and employment*, Luxembourg: Office for Official Publications of the European Communities.
- European Commission (2005) *Sozialpolitische Agenda 2005-2010*, Brussels: COM(2005) 33 final: http://europa.eu.int/comm/employment_social/social_policy_agenda/spa_de.pdf
- European Foundation for the Improvement of Living and Working Conditions (2005) Financial participation in the EU: a benchmarking study of Slovenia.
- Frick, Bernd (2005) Kontrolle und Performance der mitbestimmten Unternehmung: Rechtsökonomische Überlegungen und empirische Befunde, *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, Sonderband *Vom Manager- zum Finanzweltkapitalismus*.
- Global Competitiveness Report 2004* (2004), Davos: World Economic Forum.
- Höpner, Michael (2003) *Wer beherrscht die Unternehmen? Shareholder Value, Managerherrschaft und Mitbestimmung in Deutschland.*, Frankfurt a.M.: Campus.
- Hopt, Klaus J., et al. (2004) *European corporate governance in company law and codes*, Report prepared for the European Corporate Governance Conference, 18 October, The Hague, the Netherlands.
- Jürgens, Ulrich and Inge Lippert (2005) *Kommunikation und Wissen im Aufsichtsrat*, Berlin: Wissenschaftszentrum Berlin in Kooperation mit der ULA.
- Kluge, Norbert (2004) Workers' involvement in Europe – a still unfinished jigsaw. In: Henning Jorgensen, Mette Baerentsen and John Monks (eds) *European Trade Union Yearbook 2003/2004*, ETUI: Brussels, pp. 115–136.

- Kluge, Norbert (2004) Handle with care. How economic civil rights in Europe are taking shape, *Mitbestimmung* 8 (Eng. edition): 8–13.
- Kluge, Norbert and Michael Stollt (2006) (eds) *Die Europäische Aktiengesellschaft (SE) – Perspektiven für eine europäische Unternehmensmitbestimmung*. Brussels: Social Development Agency/ETUI/Otto-Brenner-Stiftung/Hans-Böckler-Stiftung.
- Lannoo, Karel and Arman Khachaturyan (2004) Reform of corporate governance in the EU, *European Business Organization Law Review (EBOR)*, 5 (1): 37.
- Martins, Erko, Alexander Pundt and Friedemann W. Nerdinger (2005) Mitarbeiterbeteiligung und Unternehmenskultur. Zum Konzept der Beteiligungsorientierung in Organisationen, Arbeitspapier Nr. 1 aus dem Projekt TiM, Universität Rostock.
- Maul, Silja and Georg Lanfermann (2004) Europäische Corporate Governance – Stand der Entwicklungen, *Betriebs-Berater* 59 (35): 1861–1868.
- Nagels, Karlheinz and Arndt Sorge (1977) *Industrielle Demokratie in Europa*, Frankfurt am Main: Campus Verlag.
- Poutsma, Eric (2001) *Recent trends in employee financial participation in the European Union*, Dublin.
- Poutsma, Eric et al. (2006) Changing patterns of employee financial participation in Europe, Nijmegen.
- Rose, Caspar and Hans Kurt Kvist (2004) *Employee directors – What is their say?*, Copenhagen: Copenhagen Business School.
- Taylor, Robert (2004) Taking responsibilities in an SE – a new challenge for workers from different cultural and political backgrounds, in Hans Böckler Foundation/European Trade Union Institute (eds) *The European Company – prospects for board-level representation*, Brussels and Düsseldorf: ETUI, pp. 40–49.
- Vitols, Sigurt (2005a) Changes in Germany's bank-based financial system: implications for corporate governance, G. Jackson and A. Moerkes, guest editors, *Corporate Governance: An International Review*, Special Issue on Germany and Japan, 13 (2).
- Vitols, Sigurt (2005b) *Prospects for trade unions in the evolving European system of corporate governance*, Brussels: ETUI report 92.
- Voss, Eckhard, Peter Wilke and Klaus Maack (2003) *Mitarbeiter am Unternehmen beteiligen*, Wiesbaden.
- Weiss, Manfred (2003) Arbeitnehmermitwirkung in Europa, *Neue Zeitschrift für Arbeitsrecht* 20: 177–232.
- Wilke, Peter (2002) Finanzielle Mitarbeiterbeteiligung in Europa, in Klaus Wagner (ed.) *Mitarbeiterbeteiligung. Visionen für eine Gesellschaft von Teilhabern*, Wiesbaden, pp. 152–164.