



2015/2222(INI)

30.5.2016

OPINION

of the Committee on Legal Affairs

for the Committee on Employment and Social Affairs

on workers representation on the supervisory or administrative bodies of
undertakings in Europe
(2015/2222(INI))

Rapporteur: Enrico Gasbarra

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SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas 18 Member States and Norway recognise forms of codetermination, participation, consultation and information of workers and employees at company level in different forms depending on their economic and social historical development;
 - B. whereas full compliance with the principle of subsidiarity in the field of employee relations shall not impede the competence of the EU to set minimum standards in the field of workers' rights to representation in order to provide a level playing field for EU companies;
 - C. whereas the representation, information and consultation of workers and employees, as well as equality between men and women with regard to labour market opportunities and treatment at work, including salaries and workers' rights, are mentioned in Articles 9, 151 and 153(1)(f) TFEU and in the fifth paragraph of the Preamble of the Charter of Fundamental Rights of the European Union referring to the Social Charters adopted by the European Union which emphasise the fundamental right of workers to information and consultation;
1. Calls on the Commission to provide a general and coherent framework for the existing legislative instruments regarding codetermination, participation, consultation and information of workers and employees;
 2. Calls on the Commission and the Council, in the event of new legislative acts, particularly in the area of European company law, to determine and publicise their impact on European and national forms of workers' participation through an appropriate impact assessment procedure, and to take appropriate measures to counter any adverse consequences;
 3. Notes the importance of implementing recent EU legislation regulating the codetermination, participation, consultation and information of workers and employees, in particular Council Directive 2001/86/EC supplementing the Statute for a European company¹, Council Directive 2003/72/EC on the Statute for a European Cooperative Society², Directive 2005/56/EC on cross-border mergers of limited liability companies³ and Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees⁴;
 4. Is worried about the impact that the proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies⁵ could have on

¹ OJ L 294, 10.11.2001, p. 22.

² OJ L 207, 18.8.2003, p. 25.

³ OJ L 310, 25.11.2005, p. 1.

⁴ OJ L 122, 16.5.2009, p. 28.

⁵ COM(2014)0212.

workers' rights, in particular workers' representation;

5. Expresses concern at the fact that, according to studies conducted in this field, the European Company Statute allows companies to elude or avoid the granting of national rights to employees in respect of managerial level participation;
6. Calls on the Commission to submit a proposal on the cross-border transfer of seats, the so-called '14th Company Law Directive', as requested by the European Parliament in 2012¹;
7. Takes note of the Commission Communication on the Action Plan on European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies (2012), in which it places emphasis on employees' participation in capital, believing that 'employees' interest in the sustainability of their company is an element that ought to be considered in the design of any well-functioning governance framework', and affirms, in this context, that employees' involvement in the affairs of a company may take the form of codetermination, information, consultation and participation in the board to the extent that employees consider this to be beneficial to their company;
8. Points out that there are two systems for company governance in the EU: the unitary system, with a single council, and the dual system, with both a management council and a supervisory council, and in this context encourages participation by employees in the supervisory council; considers that, should there be no employee participation in a company board or in another form of management body, employers shall at least inform them on matters discussed that are liable to affect their rights and interests;
9. Calls on the Commission to study the impact of the existing diversity with respect to rules and practices in Member States as regards the manner in which employees' representatives are involved in decision-making within companies, and to consider making a proposal on how to develop minimum standards for workers' and employees' participation on supervisory boards, which could be universally applied to all European corporate law directives and which should take into account, but not replace nor undermine, existing rules on codetermination, information, consultation and participation;
10. Believes that workers' representatives on European supervisory boards should have a say in all fundamental decisions by a company and oversee the management board, without interfering in the management board's right to manage the company;
11. Calls on the Council, the Member States and the Commission to respect and protect existing national forms of workers' representation at supervisory board level in the EU and to counter any attempt to use existing EU law to circumvent or abuse such arrangements;
12. Welcomes and reaffirms the right of workers and employees to elect their own representatives in accordance with the national representation systems and highlights that the procedure for selecting representatives must be democratic, legitimate and transparent; supports the idea of presenting gender-balanced lists of candidates in order to create a

¹ European Parliament resolution of 2 February 2012 with recommendations to the Commission on a 14th company law directive on the cross-border transfer of company seats (2011/2046(INL)).

legal environment for future legislative initiatives to enhance the gender balance in companies; recalls the importance of respecting human rights and prohibiting all forms of discrimination by enterprises, with due regard to the role of existing governance structures such as corporate boards, as established by the United Nations Guiding Principles on Business and Human Rights;

13. Stresses that the Commission's review of the EU corporate governance framework must take account of the rights and duties conferred on the various company bodies under national law and, in particular, of the differences between unitary and dual systems;
14. Calls on the Commission to conduct an impact assessment of the economic benefits of employees' representation with regard to a company's performance;
15. Acknowledges that board-level employee representation on supervisory boards leads to democratic and inclusive corporate governance that benefits employees and employers, thus giving companies a competitive advantage;
16. Calls on the Commission to define minimum criteria for workers' and employees' representation at board level, notably on the size of the company (with higher proportions of workers' representation for bigger companies), on balanced gender representation, on the prohibition of discrimination, and on the extension of the right to codetermination, participation, consultation and information to public and semi-public companies; calls on the Council, in this connection, to expedite the Parliament-backed proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures¹;
17. Calls on the Commission to submit all necessary measures and financial instruments aimed at promoting enhanced information, codetermination, participation and consultation of workers and employees; calls on the Commission to improve EU company law in order to serve also these core social aspects.

¹ COM(2012)0614.

RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

Date adopted	24.5.2016
Result of final vote	+ : 19 - : 2 0 : 2
Members present for the final vote	Max Andersson, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Laura Ferrara, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Dietmar Köster, Gilles Lebreton, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, József Szájer, Axel Voss, Tadeusz Zwiefka
Substitutes present for the final vote	Daniel Buda, Angel Dzhambazki
Substitutes under Rule 200(2) present for the final vote	Jens Nilsson