

Belgium

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1. LEGAL ASPECTS

Employee representation in the executive bodies of companies does not exist in Belgium. Although trade unions are or were represented on certain public sector management boards, for instance ‘Nationale Spoorwegen’ (National Railways) and ‘De Lijn’ (public bus transport company in Flanders), in Belgium this is an exception.

The system of corporate governance in Belgium is based on the existence of a ‘Conseil d’administration’ (Board), which is elected/appointed by the shareholders of the company. This board appoints the CEO and main directors of the company (CFO etc.). As there is no system of participation in Belgian private companies, employees do not have an impact on the appointment of these directors.

Employee representation in **companies** exists in the form of information and consultation rights through the **Works Council (OR)** and the **Committee for Prevention and Protection at Work (CPB)**. Both consultative bodies are jointly made up of employee and employer representatives. The works council is chiefly entitled to information, such as economic, financial and employment information. It also supervises social legislation within the company. The works council is entitled to certain rights of decision, including the drafting and modification of employment regulations and holiday planning.

Crucially, with one exception, only the representative trade unions (there are three representative trade union umbrellas in Belgium: ACV – CSC, ABVV – FGTB, ACLVB – CGSLB) may submit candidates for election as members of the Works Council and the Committee for Prevention and Protection at Work. From a legal viewpoint, these two consultative bodies are legally elected ‘employee bodies’, as all employees are entitled to elect representatives in both bodies. In fact, however, they are ‘union bodies’, as only representative unions are able to put their candidates forward as members of these bodies.

Both bodies are elected every four years by means of so-called ‘social elections’ which are organised within a two-week period. Such social elections are events in themselves as they take place simultaneously over a brief period of two weeks. Approximately 3,500 Works Councils are elected in this way, as are around 5,000 Committees for Prevention and Protection at Work.

In addition to the Works Council and the Committee for Prevention and Protection at Work, Belgian workplaces also have **Shop Stewards’ Committees** or union delegations (SD), which were established through a National Collective Labour Agreement. The union delegation makes requests and demands on behalf of the employees within the firm, in contrast to the OR and CPB which are predominantly information and consultation bodies. The SD deals with labour relations, collective labour agreement negotiations, the implementation of social legislation, collective labour agreements, individual contracts, and individual and collective disputes.

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The shop stewards' committee acts on individual and collective conflicts, organises campaigns, negotiates and is the 'countervailing power' within the company. The trade union emphasis is (also for employees) more on this committee than on the Works Council or Committee for Prevention and Protection at Work. The latter bodies are more information and supervisory bodies, but are not used to formulate employee or union demands.

There is no conflict between these consultative bodies on one side and the Shop Stewards' Committee on the other, as all three are viewed as 'part of the instrumentation of the trade union movement'. A shop steward will often also be member of the Works Council or the Committee for Prevention and Protection at Work, or both. This means that members of the Works Council and Committee for Prevention and Protection at Work and the Shop Stewards' Committee can work properly and intensely together.

This structure means that trade unions (and therefore employees) are well established at enterprise level. There is no conflict between the three bodies, which complement each other: from information and supervision to union militancy and strength. Each body plays its part and they do not compete. However, this does not mean the system is without its weak points (see chapter 2). The main constraint is the fact that none of these bodies has the right of consent or consultation before decision. In other words, the employer is not obliged to consult the Works Council and respond to that advice before executing his proposal. Consequently, the Works Council and the other bodies are confronted with an 'accomplished fact' and then organise their counteraction, rather than being legally obliged to involve themselves in the phase preceding an ultimate decision.

2. DEMOCRATISATION OF THE COMPANY: Historical viewpoints

As is stated above, Belgium has no system of employee participation in the managing bodies of companies. However, this does not mean that ideas have not been developed in this field in recent decades, nor that concrete proposals for changing the current level of employee involvement have not been formulated.

Much can be attributed to the turbulent 1960s. This was a time in which student and other movements called for greater political involvement, participation and democracy. The same general social unrest applied to the industrial sector, which manifested itself in rife absenteeism and staff turnover, sabotage and 'wildcat' strikes. The analysis of this unrest was clearly established in the 1970 Socio-Economic Conference: the background to social unrest could be found in the powerlessness of the employee within his work situation and within the company. It was understood then that the principles of democratic society could no longer be left behind at the factory gates.

The ideas around the democratisation of industry then launched by several unions were multi-phased. Rome was not built in a day, and numerous plans were put forward to achieve systematic democratisation.

However, the concepts of liberalisation which arose in the '80s in Belgium, and the defensive position that unions were forced into by the economic crisis, did lead to these proposals for democratic industry being 'left on the back burner'.

These proposals dealt with the following aspects, among others:

1. Information and supervision: improving the effect of the existing consultative bodies

A basic condition of achieving true employee participation is the systematic provision of information to employees and their representatives. Employees must have a perspective on the employer's actions and proposals; only then can this be monitored and influence exerted on the employees' behalf.

A number of tools were developed for employees in this regard, for example:

- The Collective Labour Agreement n° 9 concerning information employment and staff policies
- The Royal Decree (1973) concerning Economic and Financial Information
- The monitoring of the firm's annual accounts by appointing company auditors

At the present moment, this information is provided, but its quality and clarity mostly leaves much to be desired. Too much information can also have a restraining effect.

It is also important to state that this information is given in order to enable a monitoring function, and does not bring about a greater impact on decisions made by the employer.

2. Employee consultation

A second significant idea that arose from the trade union movement in the '70s was that of involving the employee more in his work. Employees were entitled to opportunities to organise their own work more. Employee consultation and group responsibility were to provide a counterbalance to the old-fashioned, authoritarian power relationships in industry. In this way the concept of democratisation also took shape on the shop floor.

3. The establishment of employee councils

In Belgium, the Works Council is a joint institution consisting of employee and employer representatives. This type of Works Council was viewed as the one in which ideas and views of employees were obscured by 'joint' proposals and decisions.

Another proposal concerned the establishment of employee councils in which workforce representatives were able to express their own ideas and advice. The aim was also to provide the employee councils with the right of consent, and in various social fields also the right of decision, in accordance with existing works councils in certain other countries.

4. The reform of the Public Limited Company

A fourth proposal concerned the role of employees in the management of the company. The employee council allowed employee supervision, but there was yet no genuine form of board level participation. The board of the company was still made up of shareholders.

The aim was to put forward the workforce as a third party in company policy, alongside shareholders and management. A dual system in which management would sit on the board of directors was opted for, side by side with a Supervisory board comprising both shareholders and workforce representatives. The Supervisory board would be able to appoint and fire management staff, have unlimited viewing and supervision rights, and would have to give prior consent of

strategic company decisions. This allowed workforce representatives greater legal impact at crucial moments in the company's history.

The employee council's role would be to monitor the workforce representatives on the Supervisory board. Therefore, it is essential that there is good reciprocity between the two bodies.

In such a way, 'employee supervision' or 'co-supervision' (the key word of the 1970s trade union movement in relation to company reform) could be achieved, while union supervision would also remain possible through the 'Shop Stewards' Committee'. It was, however, essential that a balance was maintained between employee supervision and union supervision. For this reason, one of the proposals regarding the employee council was that it would permit non-union members to participate in this employee council. This was, and still is, an awkward issue as the modern Belgian Works Council has the advantage for trade unions, that they alone can submit candidates for election as workforce representative on the Works Council (with one exception).

However, one should not confuse this employee supervision with 'co-management'. It has always been thought that the latter would lead to an unhealthy conflict of interest in which employees and their unions would be unable to perform their duties. Thus, 'co-management' in that sense of the word was and remains a taboo among Belgian trade unions: the workforce and its representatives must be granted greater influence over company matters, but should not be allowed to lose their individuality and their own role.

3. SO WHAT ABOUT THE EUROPEAN COMPANY?

The first proposals regarding a statute for the European Company date from the early 1970s, at a time when the Belgian trade union movement was involved in heated discussions of the democratisation of the company. It is clear that the initial points of view regarding the European Company were influenced by the concepts around democratisation.

The previous two chapters also make it clear that at present, industrial relations between employee and employer in Belgium are based on the idea of 'each knows his place and plays his part'. Belgium does not have extensive rights of consent, obligatory consultative rights or participation via a supervisory board. The strength of employees within a company comes from utilising the information and supervision rights of the Works Council and Committee for Prevention and Protection at Work as effectively as possible and, and translating it into a strong, effective and efficient Shop Stewards' Committee. Therefore, and it is worth making this point again, there are no ideas of *Mitbestimmung* or co-determination at the foundation of current social relations within a Belgian company.

From this perspective, the current proposals on employee participation at the level of the European Company have forced the Belgian unions back to their old positions. 25-year-old discussions are rearing their heads again, though they must now be translated into the context of European legislation on the European Company. There are obvious fears of an 'unhealthy conflict of interest' or 'co-management' in which workforce representatives share the table with shareholders and management, and are held jointly responsible for redundancies, relocation of production, company closure etc.

However, the situation is of course different to thirty years ago. Firstly, the European company and the Directive for employee participation in this company are already in place. Secondly, each member state is expected to adapt the European regulation and Directive, giving some room to manoeuvre in some areas, though the main points cannot be altered regarding employees' rights of consent, consultation and participation in this European Company. Thirdly, Belgian unions also experience and conclude that the concept of participation is now accepted at the level of the ETUC, as well as at the level of certain European trade union federations such as the European Metalworkers' federation. The concept of participation will even be promoted by the European trade unions. The recent European steel merger, and the establishment of the Arcelor company, has already brought about employee seats on the supervisory board of this firm. Lastly, Belgian unions also state that few fundamental questions have been set regarding the principle of participation at European Company level, not only in countries where participation rights exist but also in those where they do not.

What this entails is that the Belgian unions will probably approve the principle of participation in the European Company. However, in view of the conditions made in that regard in the past and the ideas expressed within its scope, the Belgian employee representatives will scrupulously see to it that participation does not lead to an unhealthy conflict of interests.

Participation has to lead to more information and supervision, and a situation in which the interests of employees can more effectively be defended. The fundamental issues put forward by the Belgian trade unions have more to do with the part that we, as workforce representatives, will play in such participatory bodies. Another awkward point will be the flow of information from the workforce representatives in the participatory bodies to the lower echelons of the firm. If confidentiality prohibits us from passing on information acquired within that body to lower levels and using it, the entire purpose of participation will again be called into question.

Last but not least, the Belgian trade unions keep an eye on each other. Should one of the participating unions refuse on principle to sit in a participatory body, then future Belgian seats would automatically be passed on to the other unions. This may prove the deciding argument for reluctant involvement in a participation in a European Company.