

Greece

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INTRODUCTION AND OVERVIEW.

The EC Regulation concerning the Statute for a European company (SE), and the Directive supplementing the Statute for a European company with regard to the involvement of employees, provide a rather innovative framework for board level representation of employees in Greece, where the national system of corporate governance has been traditionally single-tier.

Greece belongs to the countries of the EU where there has been no tradition of board level representation of employees for years. This is associated with two factors. On the one hand with the adversarial model of industrial relations that prevailed for decades and the relevant absence of participation practices in the regulation of industrial relations. On the other hand it is associated with the structure of the national economy, which has been dominated by small and medium size enterprises in the private sector, while the large enterprises were mainly under the state control.

However, it is noteworthy that since the early 1980s, after the rise of the PASOK socialist party to power in 1981, there have been, under various schemes and occasions, legal provisions for board level representation of employees. These provisions for direct board level representation of the employees referred to state controlled and public sector utilities companies, or to private companies that were brought under the state control. Since the mid-1990s, namely after 1994, on the way to public sector modernization and to successive waves of privatizations, in a context of “rolling back the state” policies, board level representation has been given a new impetus.

The conversion of public sector companies and organizations into *Societes Anonymes*, with the aim of bringing them into the system of private Corporate Governance, has been coupled with the introduction of labour representation in the administrative boards. But the further privatizations of their 50% shares, have, since the early 2000, undermined the existing provisions for board level representation of employees. Not surprisingly privatizations are in all cases followed by the abandonment of board level representation of employees provisions. Thus, currently board level representation is maintained in public sector utilities that still remain under the majority control of the state. For instance, board level representation of employees is observed in public sector utilities such as the Public Power Corporation (DEH) which is still the state controlled electricity producer and distributor in Greece, the Hellenic Post Office (ELTA), and the National Bank of Greece (ETE) which is the main state controlled bank in Greece.

Therefore, in the Greek context the main issue with regard to board level representation of employees is twofold. Firstly, there is the question of why board level participation hasn't emerged in the private sector, and whether the new EC regulation and directive may radically change this tradition. Secondly, there is the question of whether the experiments of board level representation of employees in the public sector Corporate Governance system may survive under the privatization plans and the opening up and the integration of the network industries in the context of the internal market.

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1. LEGAL ASPECTS

The national Corporate Governance System is mainly based on the provisions of Law 2190 of 1920 that regulates the operation of *Societe Anonymes*. This has been a single-tier system of Corporate Governance. Although the relevant legislation has been amended and updated since its first adoption, it is still considered as requiring major codification and modernisation. The national system of Corporate Governance has remained a single-tier system. Throughout its development the legal framework on the Corporate Governance system has never had any provisions concerning the board level representation of employees.

Elements of board level representation of employees in Corporate Governance systems of public sector companies were introduced in the early 1980s on a rather ad hoc basis. On the occasion of its attempt to introduce “social control” in the governance of public sector utilities the then newly elected socialist government of PASOK introduced a labour supervisory council (Law 1365/1983 on the socialization of public sector companies and public sector utilities). The model was one for a supervisory council of 27 members of which 9 represented the employees, 9 represented the state, and 9 represented other stakeholders such as local government, economic and technical chambers, labour and employers confederations, agriculture organizations etc (an indicative example was the ASKE, i.e. High Council for Social Control in the Public Electricity Corporation DEH).

In the same period there were legal initiatives to introduce participation practices in the Corporate Governance system of the private mining industries, through the Law 1385/1983 that provided for sectoral supervisory boards in the mining industries. That Supervisory Board, that was, to a certain extent, moving towards a sectoral double-tier model, consisted of 13 members of which 4 state representatives, 3 labour representatives, 3 employers representatives, and 3 local government representatives.

A similar attempt was made through Law 1386/1983 that concerned the setting up of the Organisation of Economic Restructuring of Companies (OAE), which provided for direct board representation of employees in the companies that were brought under the control of the Organisation of Economic Restructuring. Although the companies that were brought under its control were mostly ailing private companies, the provisions of board level representation in fact applied again to state controlled companies, as the board level representation of employees provisions were applicable after the state obtaining control of the private company.

A second wave of introduction of board level representation of employees in the Corporate Governance system in the public sector utilities developed in the mid-1990s in the context of attempts to modernize public sector utilities and their corporate governance systems. Under the umbrella of Law 2414/1996 concerning the Modernisation of Public Sector Companies and Organisations the board level representation of employees in many public sector utilities has been consolidated. Indeed Law 2414/1996 in its article 6 referring to the composition of the Board in the new *Societes Anonymes* set the pattern for employees representation at the board level, by defining that boards may have an odd number of members, with a minimum of 7 and a maximum of 13. In these Boards the company employees, in any case, would be represented by two elected representatives, and there was also provision of one representative of the National Economic and Social Committee (OKE), that in most cases would have been a labour side representative.

As the introduction of board level representation of employees in the Corporate Governance system in the public sector companies, utilities and organizations, since 1996 was only aiming at easing their conversion to *Societes Anonymes* according to the Law 2190, and not aiming to establish board level representation in the new Corporate Governance system, in 1999 the government legislated (article 25 Law 2682/1999) that companies that were subject to the provisions of Law 2414/96 and especially to the board level representation provisions, can be excluded by these provisions following a joint ministerial decision of the Minister of Economy and the Minister that overviews and is responsible for the relevant company (e.g. transports, energy, telecommunications, port authorities, etc). Ministers were given the right to withdraw board level representation of employees (including the OKE representative) in cases were they decided to transfer to private shareholders a minimum of 50% of the public sector *Societes Anonymes*.

In a nutshell, board level representation of employees in the single tier Corporate Governance system is not part of the legal framework that covers the private sector companies. It only emerged since the early 1980s as a means for developing “social control” and participation in state controlled companies and public sector utilities. It has been also used as a means in facilitating the conversion of public sector organizations and companies into legal entities, i.e. *Societes Anonymes*, compatible with the private company law, and in introducing private sector principles and management tools. In the intermediate stage of conversion and modernization of the public sector organizations it was stressed that they maintain their character as public utilities, at the later stage of privatisation the Corporate Governance system returned to the traditional scheme of shareholders and single tier governance where there has been for decades no room for board level representation of employees.

2. THE EXPERIENCES AND THE PRACTICE OF BOARD LEVEL REPRESENTATION SCHEMES.

Despite the fact that the governmental attempts to reshape Corporate Governance systems have been one element of socialist party policies in the 1980s and in the 1990s, yet there are no systematic and in depth studies of these practices, going beyond the description of legal provisions. The Greek experiences and the practice of Board level representation of employees can be classified in two sets. First, in these associated with the legal initiatives of the 1980s, and, second, in these associated with the initiatives since the mid-90s, through the provisions of Law 2414/1996. We start with reference to the later, as the former is now part of the Greek industrial relations history.

According to these provisions the scheme of employee Board representation with two representatives (and the representation of OKE with one member) was applicable to a list of 37 organisations and companies. These included all the state monopolies in electricity, telecommunications, urban transports, railways, airways, gas and oil companies, state companies for tourism, water and sewage companies, stakes and lotteries, radio-television, airport and port authorities and defence industries. The list later included other public sector organizations thus increasing the aggregate to 50 public sector organizations. In fact these were the majority of the large employers in the Greek economy accounting for more than 10% of employees in employment. To these we may add the segment of the state-controlled banks that have been also practicing since the mid-80s the board level representation of employees.

In all of the above-referred cases, the employees have had the right to elect two members of the companies' administrative board as employee representatives. The pattern has been for the new Board to serve for five-year terms – and this has been applicable also for employees representatives and the OKE representative. The procedural aspects have been also prescribed by the Law 2414/ 1996. There has been no automatic provision, but the election of representatives has to be initiated by the trade-union following the invitation of the CEO or the Minister. The employees representatives have had to be elected through a general ballot, based on proportional representation. The ballot has to be regulated by the provisions on trade-union rights for representation and election of union officers, which in the Greek case have to be supervised and certified by a judge.

The initiative for calling the ballot lies with the most representative trade-union at the secondary (federal level) or in case of absence of a secondary level trade-union with the most representative primary level union. Not surprisingly in the case of the public sector utilities, which remain the area where trade union densities are high and where, in fact, lies the major and active part of Greek trade unionism, candidates for board level representation of employees are proposed and supported by the political fractions of the company trade unions. After their election, the major shareholder, which is the government (i.e. the Minister) appoints the two representatives next to the other Board members. A similar procedure applies in the case of the OKE representative, as the Minister of Economy invites OKE to appoint, in a two-month period, its representative.

With regard to eligibility criteria, in the case of employees representatives only company employees are eligible to be elected to the company board. In the case of the OKE representative there is a clause about selecting a person who has relevant experience and knowledge of the company concerned. Therefore, trade-union officers or experts are not excluded, but the practice has been to elect employees acting in the high ranks of the trade-union structures. With regard to re-election rights, in some cases there has been an explicit provision according to which employee elected representatives can only serve a single term and have no right to be re-elected (e.g. public Power Corporation DEH, according to article 43 of Law 2773/1993 on liberalization of electricity generation and dissemination). Further, it is also noteworthy that there has been in Law 2414/1996 a specific provision according to which the Board in all the companies concerned, can operate legally even a) in the absence, b) before the appointment of the employee and OKE representatives, and c) after their resignation.

With regard to rights and duties of Board members there has been no specific provisions for the workers representatives. The general rule and the provisions of the company statute applies to all Board members, and the same status is also applicable as far as remuneration is concerned. Overall, board members remuneration differs (around an average of, approximately, 3,000 euros per month) from company to company and from sector to sector.

In existing state controlled public sector utilities that operate under the *Societes Anonymes* Law, there is still board level representation of employees. Prominent examples are the Public Power Corporation (DEH) which is still the state controlled electricity producer and distributor in Greece, the Hellenic Post Office (ELTA), the National Railways (OSE) and the National Bank of Greece (ETE) which is the main state controlled bank in Greece. However, it is noteworthy that the process of privatisations has had a direct impact on provisions for board level representation of employees. For instance, one can sit the gradual privatisation of the Hellenic Telecommunications Organisation (OTE), which until recently held the monopoly of network telephone services in Greece. This privatisation resulted in dismantling the provisions for board level representation of employees, which, during the period in which the state had the majority

share holding, had a provision for 3 employee representatives among the 11 members of its Board.

The operation of board level representation for employees requires the appropriate legal provisions, as incorporate in Law 2414/1996, despite the fact that the provisions reflected, in the majority of cases, the strong bargaining power of the company employees in the public sector organizations and utilities. There are no cases where board level representation has been agreed and managed on the initiative of the corporate management, between management and the unions. The locus of the regulation is in the political sphere and appropriate legal provisions on both the rights and the procedures of electing labour representatives have been major prerequisites.

Let us now turn to the 1980s experiences with regard to board level employee representation. Twenty years after the introduction of the “labour supervisory councils” (Law 1365/1983) in the Corporate Governance systems of public sector companies with the objective of “social control” in the governance of public sector utilities, we can hardly say that these councils are an established practice with more than a marginal role. This is for two reasons. First, because the locus of interest representation remained with the company trade-unions (namely the company Federations in the public sector organisations and utilities) and, second, because, later on, the board level representation of employees has been institutionalised only on an “ad-hoc” or “fixed-term” basis in the public sector companies.

With regard to legal initiatives that concerned the Corporate Governance system of the private mining industries (Law 1385/1983 on the sectoral supervisory Boards in the mining industries) it is noteworthy that were followed by capital flight and abandonment by the private management of ailing mining industries that sooner or later were brought under the state control through the Organisation for the Economic Restructuring of Companies (OAE). Therefore, the “sectoral supervisory boards” became redundant and had no role to play. Mining industries operated then under the provisions for board level representation of employees in state controlled ailing companies, and not many of them stayed in the market for long. The mining areas became areas in crisis hardly hit by high unemployment.

The setting up (through Law 1386/1983) of the Organisation for the Economic Restructuring of Companies (OAE), which provided for direct board representation of employees in the companies that were brought under the controlled of the OAE, provides a long experience of board level representation of employees under very specific circumstances. Nearly 60 ailing private companies were overall controlled by OAE and were managed by government appointed managements. These represented nearly one third of the manufacturing employment of the period (1980s), and more than 10% of the total number of employees in employment. Their boards included at least one employee representative appointed by the trade union. In most cases the restructuring ended up to liquidation. In a minority of cases the restructuring ended with privatisation. In all cases of privatisations board level representation of employees has been abandoned. OAE itself ceased operating in 2000 and liquidation followed.

Board level representation of employees in the Corporate Governance system still is observed in the public sector utilities following the attempts in the mid-1990s to incorporate and involve employee representatives and the trade unions in modernizing public sector utilities. However, as mentioned earlier in this chapter, as the modernization of public sector utilities has been the initial stage towards their privatisation, in all cases of completed privatisations, board level representation of employees has been abandoned.

Another marginal set of cases has been that of local government *Societes Anonymes* that also have practiced board level representation of employees – normally by including one representative in

the Board, and which are not yet a major employer nor in a sector which is planned to be privatised.

The main issue arising from the experience of ‘labour supervisory councils’ for “social control” in the 1980s and board level representation in the 1990s is an interesting and open question regarding the extent to which the councils and the employee representatives (including the OKE representative) represented the broader interests of the public or were in practice restricted to express the interests of the company employees in monopolistic state controlled public sector utilities. The pattern has been for the representatives to seek a role ‘in favour of the public good and interest’, in a rather politicised social and economic environment, while at the same time they had to deal with company specific issues. The lack of studies, of joint activities, of networks, of exchange of views by the employee representatives in Boards concerning their experiences and problems in Board participation calls for further research.

3. DETERMINANTS OF THE CURRENT SITUATION: HISTORY, CULTURE, AND POLITICS.

Over most of the decades of the 20th century Greek industrial relations have remained adversarial and conflict oriented. The state has had a strong interventionist role in regulating both wage formation and industrial relations. It is noteworthy that only in the early 1980s, with Law 1264/1982, labour representation rights at the company level were properly recognized. Indeed, the right to company collective agreements was only recognized in 1990 through Law 1876/1990.

However, even before their formal recognition in 1990, since 1975 (in 1974 Greece returned to parliamentary democracy after a seven year dictatorship and a post war period of political instability) informal company collective bargaining and “illegal” but operational company collective agreements were practiced according to the bargaining power of trade unions in the workplace. In the period 1975-1980 it has taken record strike activity at the plant level to introduce and establish company trade unions and collective bargaining rights.

In this adversarial context of industrial relations there has been no room for the development of participation and social dialogue practices. Even the successive attempts of the socialists throughout the 1980s to introduce and develop legislation providing for participation mechanisms at the company level (through legislation on Occupational Health and Safety, Works Councils) did not succeed. Especially in the private sector industrial relations remained adversarial.

Labour representation and participation practices expanded only in the public sector of the economy, where in fact one finds the strongholds of Greek trade unionism as well as of the organized labour associated with the PASOK socialist party. Overall, at the national level social dialogue practices have been developed only after the early 1990s. In the same period, in the context of policies aiming at meeting the Maastricht Convergence criteria and in the context of policies aiming at rolling back the state through privatisations, the environment started becoming less friendly for board level representation of employees in the Corporate Governance system of the public sector organizations, companies and utilities. The dominant trend has been towards abandoning, or dismantling, board level representation provisions for employees prior to the run up to privatisation.

Therefore, for historical and political reasons, the issue of board level representation of employees has remained a strictly public sector issue. This is not only associated with the fact that the large-scale industry and service-sector companies have been mainly state controlled companies. Despite

the existence of large-scale private companies the issue of labour representation in the Corporate Governance system has never been an issue in any agenda.

Not surprisingly, the current level of debate mainly concerns the defensive views of public sector utilities trade unions, which focus on their opposition to privatisation and then, among other things, on the resulting abandonment of rights for board level representation of employees. Trade unions, government and employers associations have not yet considered systematically the implications of the EC Regulation concerning the Statute for a European company (SE) and, from this point of view, the innovative implications of the Directive supplementing the Statute for a European company with regard to the involvement of employees. Although the Regulation and the Directive provide a rather new framework for board level representation of employees in Greece, there has been no real debate based on taking stock of past national experiences.

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