



VP/2012/003/0061

# Enhancing employee involvement in SMEs.

## The construction sector as a benchmark



European Federation  
of Building  
and Woodworkers





# **Strengthening rights to information and consultation in SMEs. The case of the construction sector.**

INTERMEDIATE REPORT

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## 1. EMPLOYEE PARTICIPATION IN SMES UNDER EU LAW

To speak of participation in Europe is to speak of the development of SMEs.

Many credit the European Union with having pushed industrial systems towards a model of participatory industrial relations. This took place, firstly, through legislation, which "constitutionalised" workers' rights to information and consultation. The right to be involved in a company's strategic choices appears in Article 27 of the Charter of Fundamental Rights of the European Union, in the chapter on Solidarity. Since the entry into force of the Lisbon Treaty, the Charter has the same programmatic and binding force as the rules of the Treaties.

This is the result of a lengthy process in Europe leading to the affirmation of a fundamental principle of the process of European integration: if the social dimension is a pillar of economic and political integration of the European peoples, social dialogue is the method by which this social dimension is constructed.

Social dialogue engages institutions and social partners in the search for participatory relational methods as opposed to the exercise of conflict. In the business world, social dialogue means "participation".

It was a lengthy process because the first EU legislative instruments of participation date back to the 1970s (procedures related to the management of business crises) and they then evolved towards regulatory frameworks aimed at all European employers (firms with more than 50 employees). To summarise, it can be affirmed that European employers are generally required to inform and consult their employees on matters affecting work, both its organisation and the company's strategic business decisions.

But legislation is just one of the channels through which the practice of participation in Europe is disseminated. A second channel is the mutual influence between systems of industrial relations. The process of economic integration has increased the areas of collaboration between the unions of Europe, which has enabled the "know how" of participation to become a common asset of European trade unions. Sectoral committees for social dialogue, European Works Councils and transnational framework agreements are a spontaneous factor of convergence between national systems.

A third channel is constituted by the harmonising capabilities of corporate governance models. By steering clear of labour law and going beyond the contamination of industrial relations models, the participatory model has found new areas of confirmation in the search for corporate models that conform to the logic of the "social market economy" announced in Article 3 of the founding Treaty of the European Union.

In corporate law and codes of good governance, throughout the use of both *soft* and *hard law*, the push towards participation on an EU level has made a quantum leap forward. While in labour law "involvement" meant above all "information and consultation", in the corporate domain reference is expressly made to "participation". Whether it is just to neutralise the impact of new European-type corporate models on the national systems of employee participation (see for example the European Company (SE) Statute) or to strengthen the protection of the stakeholders in certain corporate events (see the European regulation of cross-border mergers or cross-border takeover bids), the right of workers to express

themselves begins to resemble a form of co-decision, without however possessing the veto power that characterises some continental systems (e.g. Germany).

But EU policies go even further. The emergence of corporate and capital mobility also requires a convergence of corporate governance. The European Commission proposes an approach in which the market is the area where common and particular interests interact, and it identifies those that should be protected against possible distortions that may arise from the concentration of power that may be created in corporations, or rather, in the hands of those who govern them. This provides fertile terrain on which to build new pathways for participation in Europe.

If the market is "all of us", then defending the market does not coincide with the defence of enterprises. These constitute one family among many other actors in the market. Taking care of the market thus means taking care of all the legitimate or recognised interests of this multitude of actors. The protection of the market therefore requires transparent decisions and accessibility to information on corporate behaviour. The term *accountability* has become commonly used and expresses the concept of bearing responsibility for the actions that are taken. Regulations aimed at promoting good corporate governance, whether they are binding or non-binding (in English *soft* and *hard law*), recognise the right of certain stakeholders to have their say. Among these stakeholders are the workers. It is here that we begin to find recognition for innovative forms of participation such as employee ownership and financial participation (see, for example, the recent Action Plan on Corporate Governance published in 2012 by the European Commission).

The novelty does not regard the tools as such. The tools of financial participation have been well known in Europe for decades. They were widespread in France and the Anglo-Saxon world and were promoted greatly in the second half of the last century, though with limited success in the Nordic social democracies, and the issue of economic democracy was interpreted according to the canons and values of the period.

What is new today is the economic and social context in which these tools are to be applied. Tools for participation must provide answers to new needs. Corporate mobility, the volatility of the capital, the financialisation of the economy and the retreat of the State from the role of entrepreneur are factors that tend to reduce the bargaining power of labour expressed in its traditional forms. Then there is the issue of inequalities, which are also linked to an excessive concentration of capital. The distribution of income becomes an increasingly challenging issue when one of the sources of personal income – capital – is so poorly distributed. Inequality thus manifests itself as a reduction of the remuneration of labour compared to the return on invested capital and as the difficulty for citizens to own financial instruments<sup>1</sup>.

The ownership of financial instruments is not relevant only to the distribution of wealth. It also affects the ability to make decisions because in a market economy, the power to decide is usually linked to the possession of financial securities (the most striking example is that of shares of company stock). If democratic institutions ensure the participation of citizens in political action, the tools of economic democracy are called upon to fine tune the balance of decision-making power in the market. Currently, due to the factors mentioned above, this power is so concentrated as to have fostered the idea that politics, or democracy, is ancillary to the will of the market.

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<sup>1</sup> There is an extensive bibliography on the growing inequalities in western economies. Recently, the OECD report has had great resonance...

Two things are thus requested of participation that were not asked until now: to render financial markets more democratic and to pursue a more efficient redistribution of wealth. Both aspects seem to be elements that would ensure the positive relationship that must exist between democracy and the market. In other words, participation in Europe will become an increasingly integral part of the canons of economic democracy.

## 2. SMEs IN EUROPE AND IN THE COUNTRIES EXAMINED IN THIS STUDY

In the pre-crisis period,<sup>2</sup> there were 20 million enterprises registered in the 27 EU countries (excluding the financial sector). Of these, 99.98% are SMEs. 91.8% are micro enterprises with less than 10 employees, 6.9% are small enterprises (10-49 employees) and 1.1% are medium-sized companies (50-249 employees). The remaining 0.2% are large companies (over 250 employees).

Number of companies and economic relevance

	Total	SMEs	Micro	Small	Medium	Large
Number of enterprises (millions)	19.65	19.60	18.04	1.35	0.21	0.04
Share of total (%)	100.00	99.8	91.8	6.9	1.1	0.2
Persons employed (millions)	126.7	85.0	37.5	26.1	21.3	41.7
Share of total (%)	100.0	67.1	29.6	20.6	16.8	32.9
Value added (EUR Billion)	5.360	3.090	1.120	1.011	954	2.270
Share of total (%)	100.0	57.6	20.9	18.9	17.8	42.4
Apparent labour productivity	42.3	36.4	29.9	38.7	44.8	54.4
	100.0	86.1	70.7	91.5	105.9	128.6

The percentage of SMEs with respect to the total number of enterprises is consistent throughout EU countries and varies between 99.99% and 99.6%. The differences regard the number of persons employed in SMEs: the amplitude varies between 80% in countries such as Spain, Greece and Italy, and 60% in countries such as the United Kingdom, Slovakia and Finland. The other countries do not vary much from the level of 67% of the workforce employed in SMEs<sup>3</sup>.

The countries also differ according to size. A competitive advantage is attributed to countries that show a higher concentration of medium-sized enterprises. In the UK and Germany, SMEs employ a greater number of workers and this has a positive effect in terms of development, competitiveness and growth.

A more in-depth analysis leads us to note that the sectors with the highest number of SMEs are construction (2.7 million companies) and services (more than 14 million companies). In terms of workforce, the construction sector reports 10.5 million employees of the approximate total of about 12 million (88%). In the services sector (excluding financial services), 35.4 million workers in SMEs account for 68% of total employment in the sector.

<sup>2</sup> It should be noted that statistics tend to classify companies by size according to the number of employees. Data from the Eurostat census of the population of SMEs date from 2005 and 2006.

<sup>3</sup> However these measurements are greatly affected by how independent workers or individual self-employed entrepreneurs without employees are classified.

The industrial sector has 2 million SMEs. In some sectors such as that of metal products (excluding machinery), SMEs employ 82% of the total number of employees, the recycling industry 88.5% and the wood industry 84.4%. The textile sector has a number of employees ranging between 70 and 80%, while there are areas in which the percentage of employment is below 20%, such as the extraction, oil and coal, motor vehicle, electricity and natural gas sectors.

Today's enterprises are not indifferent to the capacity of the productive system to grasp and meet the challenges of the moment. If it is true that the ability to export is a key success factor for innovative and specialised entrepreneurship, we must admit that "extremely small" is not compatible with "extremely strong". A minimum amount of potential is necessary in order to compete with emerging economies such as those of China, India, Russia and Brazil.

But statistics based only on the number of employees do not allow us to appreciate how many businesses increase their critical mass through partnerships. There is however broad agreement that the competitive strength of Germany and the UK on international markets exceeds that of Italy and Spain, and one reason is identified as the size of the productive system.

In the construction sector, the positive effect of large corporations on downstream industries is less than in heavy industry. SMEs in the sector rely, more than those in other sectors, on their own market, which means that domestic demand (to be clear, that of local companies and households) determines the health of the entire sector.

For this reason, current austerity policies are a threat to small businesses and artisans. For the same reasons it is necessary for the large-scale common strategies (e.g. Europe 2020 strategy) to be calibrated to the needs of this type of enterprise.

With regard to the ability of SMEs to generate employment, it is necessary to "evaluate" different job positions. The thesis that a job in a leading company in the production cycle (*upstream*) is qualitatively better than a job created by a subcontracting company in the loop (*downstream operations*) appears well founded. This is because attempts to circumvent rules and regulations, including core labour protections, often conceal themselves in the fragmentation of production cycles, in the chain of corporate control and in the chain of contracts or in the outsourcing of industrial activity.

This phenomenon is amplified in the construction sector. National studies show that the more you descend the subcontracting chain, the lower the size of the contractor; the added value of the work contract decreases, the economic margins deteriorate, and with it, so do working conditions.

This happens in a historical moment that penalises private initiative. Micro and small enterprises have been penalised by measures of macroeconomic rebalancing (so called by its precursors) or austerity (if referred to by its detractors). Case studies highlight some factors of negative growth that are also well known and which here we will mention only briefly.

The crisis has had a great impact on small businesses, though with irregular timing. A decrease in turnover and profitability for all SMEs is expected in Germany, and, moreover, they appear to benefit less from the contribution that German exports give to the productive system. Micro enterprises have only a 2% share in national exports, while SMEs as a whole have only a 20% share. For this reason, the unions are requesting interventions to stimulate private demand, which is usually directed towards SMEs.

Poland is showing a sharp slowdown in its economy in 2013. Levels of GDP growth and productivity are around 1%. Austerity measures accompany Poland's road to adherence to the single European currency, but hold back the economy. For the construction sector, the economic forecasts have turned negative after the large contracts for infrastructure – encouraged by a high volume of European structural funds and work related to the European football championships – had guaranteed two years of strong growth in the sector.

If the sector in Belgium has only "slowed down", with characteristics similar to the case of Germany, in Italy and France there are visible signs of recession. In Italy, the debt crisis has had a severe impact on the construction industry in all its segments.

A report commissioned by the European Parliament [bibliographical reference] identifies some areas of intervention aimed at mitigating the effects of the crisis on employment levels in SMEs. Some involve subsidies to enterprises aimed at maintaining employment, linked to measures to stimulate demand. But these can be qualified as emergency measures, which are often vulnerable to special interests and in any case produce distortion in the long term. An example is found in subsidised part-time work schemes, practised in the major European economies, which pursue the praiseworthy intention of keeping valuable skills in the company in a period of temporary difficulty, though they preserve business or employment situations that are not economically viable.

On the contrary, strategies aimed at enhancing human capital (education, training, labour mobility) seem more appropriate to strengthening long-term productivity and the innovative capacity of the European productive system, on the one hand, and rendering capital markets more efficient in order to favour the recapitalisation of companies or the access of SMEs to credit, on the other.

The shared recipe for strengthening the European productive system is summarized in the framework strategies of the European Union, and they will have to find a driving force in new European governance. The European Semester is the process of government through which the EU countries will implement European 2020 Strategy in a renewed context of mutual collaboration and mutual surveillance.

It is in this context that social dialogue and participation must allow the social partners to give their contribution. In this sense, industrial relations for SMEs will no longer be exempted from EU policies or legislation; indeed the contrary is true: they will have to be at the heart of EU policies to strengthen the social dimension of the internal market.

### **3. EMPLOYMENT, ENTREPRENEURSHIP AND SELF-EMPLOYMENT**

In these years of economic difficulty, the boundary between employment and entrepreneurship tends to be less well-defined. Here we focus on three categories: companies that offer employment, self-employed workers and company employees.

In a period of stagnation in the European economy as a whole, the number of existing companies must necessarily decrease. In Italy this is certainly the case. Enterprises registered in \* 2008 number about 100,000 less than those existing in 2010, and about 3 million jobs were lost.

In France, the decline is seen directly in the number of micro-enterprises, those which employ at least one employee. In Germany and in Poland no decrease in the number of micro and small enterprises has been reported, although the economic outlook will probably turn negative already this year<sup>4</sup>. This event is considered likely, if not already in place, by those in a privileged observation point involved in this study.

What we believe it is important to stress is that our study takes place in a situation of severe economic crisis that affects all countries of the Union.

In this negative economic scenario, major programmes of common development remain in the agendas of national governments, the application of which is reinforced by a common economic governance. This includes the Europe 2020 strategy, the Single European Act and the new social agenda of the EU, to cite the most relevant to our discussion. The ambitions of the European Union will have to deal with the contingency of the crisis and the dysfunctions, which must be repaired, stemming from the explosion of the speculative bubble, the subsequent credit crunch, and also the explosion of public debt and unemployment.

One of the effects of these dysfunctions is an increase in the self-employed. Far from speaking against the enterprising spirit of Europeans workers of both sexes who embark on individual business projects, what is striking is the widespread attempt to transform company employment into self-employment, with the not very well hidden goal of circumventing the protections or (for the most condescending observers) of rendering the labour market more flexible. When self-employment hides an "economic dependence", we are faced with an "autonomy" that has little chance of generating other jobs, while it has a much better chance of fostering insufficient protection and social unrest. The job of distinguishing between an entrepreneurial initiative and a false self-employed worker is a task as complex as it is necessary. It is necessary because any form of promotion of entrepreneurship may be ineffective if the aid supports initiatives with no real business perspective. Furthermore, any policy aimed at sustaining employment would be undermined by the alteration that this phenomenon provokes in the encounter between supply and demand in the labour market.

But evaluating the authenticity of a business initiative involves the evaluation of a "potential" and therefore can hardly be known *a priori*. Of course the explosion of sole proprietorships with no employees determines an increase of registered companies, but hides, however, the most alarming statistic related to the epidemic loss of micro-enterprises with employees. In France, since 2008, a new law has had the merit of creating a new form of individual enterprise that has driven many French people to start individual businesses in particularly dynamic innovative sectors. In 2012, of over 550,000 businesses, 307,000 were created with this new legal form. It is a controversial law that has generated negative reactions from craft associations, which complain that market distortions have arisen from the non-universality of the tax advantages and the administrative simplification. The unions complain about the misuse of the tool, claiming it has multiplied the number of false self-employed workers (the average revenue of these individual companies is 5,800 Euro per year). Even in this case, it is the construction sector that suffers these distorting effects the most.

Of greater concern is the significant increase across Europe of individual entrepreneurs without employees in the construction sector, where the intensity of working conditions and job insecurity lend themselves to a distorted use of self-employment. Precisely in the construction industry, it becomes evident how the disintegration of the production site (e.g.

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<sup>4</sup> The national cases described in the annexes will enable the reader to appreciate with a greater amount of data the situation of small and micro enterprises in the countries under study.

the work site) disqualifies the workplace, making it difficult to manage effective policies for increasing the sector's competitiveness, and specifically, aspects such as workplace safety, environmental impact, vocational training, the availability of skilled labour, the transparency of contracts and fair competition.

In a European perspective, the rise of self-employment is related to the issue of labour mobility. Legislative developments of recent years has increased the free movement of services. Presenting the opportunity to work abroad as a kind of "service" does offer some advantages. One example of this is seen in the transitional measures that precede the opening of the labour market to EU citizens in countries that have recently entered the Union. These restrictive measures discourage the search for company employment abroad, while they do not impose restrictions on the free movement of companies or the self-employed. For this reason, the European Trade Union Confederation has recently requested the non-application of restrictions on access to national labour markets for European workers from poorer countries (such as Romania, Bulgaria and Croatia).

Transnational job posting has accelerated following the entry into force of the 2006 European Directive on the free movement of services. In Germany, the number of posted workers from other EU countries increased from 50,000 to 71,000 between 2009 and 2011. In France, posted workers from abroad number about 190,000.

Since 2007, this number has increased by 4,000, while employment in the sector has fallen by 52,000. This number indeed underestimates the phenomenon since European legislation does not provide for the obligation to declare the presence of posted workers from abroad to the public authorities in the country that hosts them. The phenomenon of posting also affects countries such as Poland, not only because the number of Polish companies that compete on the European market with formulas of self-employment or posting is increasing, but because Poland is experiencing distortions due to the employment of workers from neighbouring countries such as Ukraine, whose nationals do not require permits to work in Poland.

This brings us back to the condition of the third group, the company employee. Regulations on company employment have undergone a profound revision in Europe in order to remove those protections that some political forces believe constitute rigidity or privilege, such as measures that inhibit dismissal of individual employees and limit the unilateral decision-making power of the employer to organise the work.

To this long-term trend has been added the urgency of the crisis, which has made it inevitable to face the issue of competitiveness of the productive system and the unsustainability of the public debt of many European countries. It is a complex set of inefficiencies in the governance of the internal market and of macroeconomic imbalances, which have been shamefully neglected in recent decades.

The long awaited economic government of Europe has taken shape during the difficult years of the crisis in a tumultuous series of reforms that have taken place inside and outside the constructs of the European Treaties. It is a multilateral process that is articulated on several levels, in a logic of mutual surveillance among states, and it affects several sectors of the economy and of European finance.

Europeans are starting to become familiar with this complexity. What appears clear is that the economic government of Europe now considers questions of a social nature a European (or intergovernmental) matter, questions which until a few years ago were completely excluded

from the common game. Among these are reforms of the labour market, wage policies and the cost of labour, pensions and social protection, the taxation of individuals, labour and enterprises, etc.

It is within these processes that many European countries have had to undergo far-reaching labour reforms. These are reforms, however, that compress the individual rights of workers. It is sufficient to consider in how many countries individual dismissal protection has been reduced unilaterally by national governments, prompted by EU institutions, the Central Bank, the International Monetary Fund and with the approval of the EU partner countries, to accelerate the recovery of the competitiveness of national economies. In countries such as Spain, Portugal, Greece, Hungary and Romania, legislative reforms were accompanied by measures to weaken collective bargaining – according to some, pushing respect for fundamental trade union rights to the limit – to prevent the social partners from establishing contractually what the legislator had sought to eliminate through legislation.

In SMEs, the pressure on working conditions is fuelled by the difficulty of establishing shared intentions through social dialogue. While in countries like France, Italy and Belgium social dialogue moves to strengthen the contractual protections for employees of SMEs, in Germany, there is a drastic reduction in the levels of coverage in collective agreements. This results in an increasing difference between contractual wages and the salary the worker actually takes home, which in the construction industry has now reached margins of 20%. The dismantling of collective bargaining in the EU's leading national economy resulted in a decade of wage moderation that resonated throughout the internal market and, in particular, the Euro-area.

#### **4. WORKER REPRESENTATION IN SMEs.**

When we speak of small and medium-sized enterprises we are referring to a category so broad as to represent the majority of all enterprises. We are speaking in fact of 20 million enterprises occupying two thirds of the workforce in the private sector (approximately 87.5 million people).

To speak of exceptions in regulatory application for SMEs means to restrict the application of a rule or policy to the very small group composed of large companies (43,000 large companies and about 43 million workers) or to select subgroups having similar or specific characteristics within the total group of SMEs. There can be a specific policy for micro enterprises, for enterprises with reduced turnover or for companies in a particular sector.

In the field of investigation of this study, the rights to information and consultation of employees in Europe are recognised in firms with at least 50 employees, while the TFEU exempts small companies from the obligation to follow the procedures of employee involvement in the event of a company crisis.

EU regulations have, however, helped to harmonise national legislations. Returning to our case studies, in 2008, in Poland, the threshold for the establishment of a works council dropped from 100 to 50 employees, specifically to extend the right to information and consultation.

For companies with less than 50 employees the provisions of EU law are silent. In Italy, Belgium and France, however, a form of representation is also provided for in enterprises with fewer employees, but the difficulties are such as to recommend the adoption of ways to administer procedures for employee involvement that take place beyond the level of the single company.

In Germany, works councils themselves do not ensure representation in SMEs (only 10% of SMEs there constitute a works council). The system of German participation confirms that the smaller the enterprise, the lower the participation. Unions prefer to focus on a minimum salary for each specific sector and the universal application of collective agreements. This strategy is very successful in Belgium thanks to their unique system of social dialogue commissions, which are also the site of the negotiation of collective agreements whose effects are extended by law to all workers, including those of SMEs. In Poland, however, worker representation in firms with fewer than 50 employees is non-existent or marginal. This is also due to certain laws and regulations concerning representation in the workplace and trade union associations.

From the evidence gathered in the countries under study, participation remains, nevertheless, an optimal dimension for the management of relations with SMEs. This dimension is still insufficiently addressed by EU law.

The EBC<sup>5</sup> encourages the establishment of business associations.

The EBC welcomes the development of practices of multiemployer social dialogue. For this reason it has requested a place on the European Commission for sectoral social dialogue, in order to represent the specific perspective of SMEs. Although recognised as representing the European Commission, the EBC has not been invited to the table for social dialogue precisely because of the resistance put up by the current FIEC employers' association, which has its membership base mainly in large companies in the industry.

What European law does not seem to take into account is the type of relationship that employers and trade unions have in enterprises with fewer than 50 employees. In doing so, the EU legislator turns his back on 1.4 million companies in France (companies with 1-50 employees), approximately 1.5 million businesses in Germany, 3.5 million enterprises in Italy, 300 in Belgium and 1.7 million companies in Poland<sup>6</sup>.

For the purposes of our argument, we do not wish to focus on the lack of enforcement of certain rights of employees, but we want rather to emphasise that EU policy is not able to give proper value to the relationships that are created spontaneously between unions and employers of small and micro enterprises. This type of relationship, in fact, embodies the spirit of "working together" that is the essential spirit of the *acquis communautaire* on the issue of employee involvement, which favours economic and social planning closer to the needs of businesses and their workers.

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<sup>5</sup> Beginning in 2008, the EBC (European Builders Confederation) has implemented three projects entitled "Under Construction". It has involved its affiliates in a process of "capacity building" and the dissemination of best practices for business associations.

<sup>6</sup> These are approximate figures derived from national reports, with data from 2010 or 2011, after removing the number of enterprises possessing a VAT number with no employees (the self-employed) from the number of micro enterprises.

## 5. THE ISSUE OF POSTING AND RIGHTS TO INFORMATION AND CONSULTATION

We have mentioned above the positive and negative effects of the mobility of enterprises and services and the issue of transnational posting of workers.

This issue is intertwined with the issue of undeclared work, with the increase in false self-employed workers and with the applicability of collective agreements. In other words, the issue of posting has exposed the distance that exists between the narrowness of national employment protection systems and the dynamism of the transnational economy.

In this study we have tried to determine whether the exercise of workers' rights to information and consultation affects the ways in which transnational posted workers can be better protected by a larger number of safeguards.

National case studies show that the phenomenon regards mainly small and micro enterprises. As mentioned above, these are enterprises that occupy the lower part of the production cycle (*downstream operations*) and that depend on labour costs for their competitive edge.

The German model has chosen to strengthen legislation, and it imposes firm legislative constraints on enterprises providing their services in Germany through the posting of workers. In particular, the construction industry union seeks to impose a minimum wage by law, either by extending *erga omnes* the rate tables of collective agreements or by reinforcing required solidarity along the subcontracting chain.

Fees required by the collective contract include the financing of a bilateral fund called Soka Bau, constituted by employers' organisations in the sector and the IG BAU trade union. The fund manages supplementary pension plans and a compensation fund for the salaries and holidays of workers in the industry. Foreign companies operating in Germany are therefore obliged to pay into the fund and this enables the traceability of foreign workers in the sector.

The SOKA BAU fund is bound by specific legal and contractual terms, but is applied *erga omnes*, and so entrepreneurs are obliged to pay (about 20% of workers' wages) regardless of whether workers have adhered to the sector's collective agreement. Payments can be made by workers on a voluntary basis and are tax-free up to a maximum of 250 euro per year. The Fund manages approximately \$5 billion of assets, invested in insurance plans for pensions, holidays and professional training.

A similar experience in Italy is represented by the *Casse Edili* (Building Societies). Participation in the construction funds is required of all firms in the industry and all participants in the subcontracting chain must be registered. The required solidarity of all participants in the subcontracting chain should ensure the traceability of foreign subcontractors.

These mechanisms however offer only a partial solution to the problem. First of all, they give greater visibility to the phenomenon in the country of destination, but do not enable verification of the employment conditions that fall under the responsibility of the country of origin (for example, the existence and correctness of the employment contract and the payment of social security contributions in the country of origin).

The German model benefits also from union activities aimed at improving the quality of information to posted workers and the establishment of union-managed assistance centres. This practice conforms to what occurs in all the countries under study.

Though these forms of control and assistance focus on involvement and representation, they do not give a real voice to posted workers. In France, an attempt has been made to do so.

In France, the issue of transnational posting of workers is no less pressing than in Germany and Italy. There is no limit to the levels of subcontracting. Subcontractors perform about 40% of the value of the work in the construction sector and about 20% of the work in civil engineering. As mentioned above, a survey has indicated that the number of posted workers in the construction industry is approximately 190,000 units. The privileged observers involved in this study affirm that this figure represents a third of the real presence of transnational posted workers. Under the constraints imposed by EU legislation, it is always difficult to assess the lawfulness of companies' behaviour (see the case of Bouygues in the 'country' data sheet). It is believed that these practices could put the effectiveness of social policies aimed at improving the use and quality of human labour at risk.

The Labour Code does not provide tools for creating representation that correctly reflects the composition of enterprises which perform all the work a job requires. But some initiatives seem to be experimenting solutions that tend in this direction.

The construction of the Flamanville 3 nuclear plant involves 200 enterprises and 2,650 workers. The inter-company association AIE FLA3 was formed in order to ensure proper management of the work and the facilities common to the companies involved on the work site. This gave the trade unions the opportunity to seek and obtain a social dialogue committee, which now governs the policies of integration of workers from 26 different nations.

While waiting for future developments in EU legislation that recognise the social issues related to transnational posting of workers, the French, Italian and German experiences represent models of social dialogue activation aimed at mitigating the negative effects of posting and, more specifically, the fragmentation of the production cycle that is created when portions of a project are executed by a plurality of companies in the same workplace.

In Poland, the phenomenon of transnational posting of workers is subject to debate. There are two reasons for this. On the one hand, the demand for cheap labour from Europe is a work opportunity for Polish SMEs. In the absence of official monitoring of the phenomenon, the figure that best indicates the flow of posted workers from Poland to EU countries is the number of E101 request forms issued, now called A1 certificates. In 2010, 265,000 certificates were issued, 310,000 in 2011 and 241,000 in 2012. More than half were requested by companies in the construction sector.

Moreover, Poland is an attractive market for companies that provide services in neighbouring countries. From 2010 to 2012, Ukrainian workers employed in the construction sector increased from 29,000 units to 54,000 units. The 238,000 companies in the construction sector, which represent 99.2% of the total, are completely unknown to the union. In the absence of any form of representation, the employees of these companies are deprived of the benefits of consultation with employers, both on a company and local level, to discuss, share and regulate working conditions.

Italy, Germany and France indicate that the best route to follow is beyond the level of the single company. However, the solutions they have found differ. Italy and Germany are focusing on bilateralism. The case of AIE FLA3 represents a new form of association and representation.

All these experiences relate to social dialogue systems that are rooted in a culture of unionism and structured representation of the work. Where all this is absent, due to legislative limits or defects in industrial relations, the fragmentation of the workplace and the posting of workers are phenomena that weaken worker protection. But that is not all. Certain distorting effects are also reported by some employers' associations.

The issue of transnational subcontracting is linked to the issue of posting and is cause for concern for the Confederation of European SMEs in the construction sector (EBC) because it generates illegalities in the use of labour and by altering the rules of the market. Domestic entrepreneurs, and SMEs in particular, are penalised.

The transnational mobility of services has distorting effects also on the management of tools to support SMEs, and specifically those based on unions or on mutuality, whose sustainability is derived from the "critical mass", i.e. the participation of the majority of companies in the collective programmes.

The regulation of labour mobility, in all its forms, is a complex operation. Among the many aspects and kinds of labour law, the issue of information and consultation of workers has always been neglected, both on the national and European level.

The basic principle is this: where the continuity and quality of working relationships depend on the successful completion of the principal work project, the employee has an interest in knowing the future of that work and participating in dialogue to discuss the conditions under which the project is carried out, regardless of the employer that formally employs him, and regardless of the geographical origin of his employment contract.

Nevertheless, the right to information and consultation and the regulatory frameworks of labour mobility are simply ignored. Yet, the European legal system is not unaware of the transnational implications of workers' rights to information and consultation. The Directive on European Works Councils guarantees the sole representation of employees of multinational corporations in order to ensure the exercise of workers' rights to information and consultation. So why should it be so difficult to understand that the phenomenon of posting inhibits the orderly progress of social dialogue in both large and small firms?

A few weeks ago, the European Commission presented a proposal for a European directive which introduces measures to facilitate the exercise of workers' available rights within the framework of legislation on the free movement of workers. Among the rights that the European Commission wants to render enforceable are access to employment, decent working conditions, social and tax benefits, access to training, membership in trade unions, access to housing and access to education for workers' children [bibliographical reference].

The right to information and consultation does not appear in the list. Its inclusion would certainly have made it necessary to consider the most appropriate forms of representation for mobile workers.

The proposed Directive appears to exclude posted workers who move within the territory of the Union. It appears to close its eyes on a growing phenomenon throughout Europe, and one for which EU legislation is more ambiguous and difficult to apply. It also disregards the problems of application of the right to information and consultation and access to the protections of collective agreements (and, as domestic cases involving SMEs have demonstrated, the two are intimately linked.) Still, the dissemination of workers' right to be involved is a pillar of European social legislation and its application has helped to strengthen the right to representation in the workplace. It is a path that bases its rationale on adapting worker representation to structural changes in the form of enterprise in Europe.

The recognition that these rights are among the areas where the equal treatment of mobile workers must be ensured – whether they are European migrants or transnational posted workers – would make it possible to deal with the issue of the enforceability of rights and therefore the identification of which forms of representation contribute best to making these rights enforceable.

## **6. SMES AND FINANCIAL PARTICIPATION.**

*A way to define SMEs that is useful to the continuation of the study.*

We can define an enterprise as an entity engaged in an economic activity, regardless of its legal form. A self-employed person, a family company, companies and forms of association which imply an economically important activity can be regarded as enterprises.

The European Union has come up with a definition of small and medium enterprises in order to proceed with a harmonisation of the definition of the concept at a European level, as a precondition for the application of common policies (and above all, for the exceptions and exemptions).

There are three criteria qualifying the definition of SMEs in Europe and they relate to the number of employees, financial criteria and independence<sup>7</sup>.

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<sup>7</sup> The criteria were identified in 1995 and formalised in Recommendation 96/280/EC.

Table 1: Criteria that define SMEs. EU Definition.

Type of enterprise	Employees (AWU <sup>8</sup> )	Financial criteria (at least one criterion must be satisfied)		Independence criterion
		Annual turnover (in millions of Euro)	Balance sheet assets (Euro)	Valid for all categories of SMEs
Medium	< 250	<= 50	<= 43	A company can not be considered an SME if at least 25% of its capital or its voting rights are controlled directly or indirectly by one or more collective public entities or public entities, either individually or jointly. Some exceptions are admitted.
Small	< 50	<= 10	<= 10	
Micro	< 10	<= 2	<= 2	

Often, the number of employees is a criterion used to determine the size of the enterprise quickly.

The definition of employee valid for the calculation of the size of the enterprise includes:

- Employees who work in the enterprise
- The people who work for the enterprise and for national legislation are considered to be on a par with the other employees of the enterprise
- Owner-managers
- The partners who engage in the regular activity of the enterprise and benefit from the financial advantages produced by the enterprise.

This means that apprentices and students in training are not counted when calculating the size of an enterprise. Although not mentioned by EU law, it is possible to deduce that posted workers are not counted either, when calculating the size of an enterprise.

The criterion of independence is especially important for a negative definition, that is to say, to define what an SME is not. From the point of view of independence there are three specific conditions under which an enterprise can operate:

- Autonomous (there is no other enterprise that has a stake and no other enterprise or group of interrelated enterprises controls more than 25% of the capital)
- Associated (for companies whose capital is held by another company in an amount between 25% and 50% or where other equivalent forms of influence exist such as the right to vote in decision-making bodies or other contractual obligations between the partners)
- Affiliated (if more than 50% of the capital is held by another enterprise or there is a dominant influence exercised through the appointment of directors, the right to vote on matters of corporate governance or contractual relations between partners)

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<sup>8</sup> AWU stands for Annual Working Unit: the number of persons employed full time in one year, while workers employed part-time or seasonally are represented as fractions of AWUs. The year taken into consideration is the last approved accounting period.

In the case of associated or affiliated enterprises, the quantitative criteria that determine whether or not an enterprise belongs to the category of SMEs (or to the subclass of medium, small or micro enterprises) are evaluated on the basis of the consolidated financial statements of the associated or affiliated companies.

What is interesting to note is that, since the purpose of the definition is the uniform application of EU public policy, EU institutions adopt flexible definitions that are instrumental to the achievement of particular goals. In fact to facilitate access of SMEs to risk capital, some types of investment in SMEs may be excluded from the calculation of the quantitative thresholds. Indeed, certain enterprises can still be defined as independent companies if more than 25% of their capital is held by

- public investment corporations, venture capital companies, individuals or groups of individuals who conduct regular investment activities in venture capital (so-called "business angels") and invest their own funds in unlisted companies, provided that total investment in a single enterprise does not exceed 250,000 Euro;
- universities or non-profit research centres;
- institutional investors, including regional development funds;
- autonomous local authorities with an annual budget of less than 10 million EUR and whose area has less than 5000 inhabitants.

The definition of SME has legal, economic and organisational consequences. The definition used is important because the membership of an enterprise in the category of SMEs can determine access to opportunities, benefits or simplifications that would not otherwise be permitted. The legal, economic and organisational aspects have a considerable influence on the ability to convert industrial relationships with SMEs to the participative method.

Let us first examine the organisational element. The presence or absence of a particular type of investor in the share capital of an SME may result in the separation of governance and control. This organisational element can facilitate the activation of workers' rights to information, consultation and participation.

The organisational element is reinforced by the legal element: the simplification of legislation shelters SMEs from external constraints considered an obstacle to their development.

What we want to emphasise here is that in the absence of some form of complex governance, there are neither opportunities nor appropriate occasions for employees to express their ideas in a complete, autonomous and independent manner.

There are also economic implications. The arrival of external investors, whether public or private, breaks the operating constraints typical of companies where the same subjects both own and manage the company. Activating tools for the financial participation of employees may have implications very similar to the arrival of external financing.

But the arrival of external investors (often with exotic names such as private equity, business angels, white knights) is often viewed with suspicion by employees who are concerned about the more or less explicitly speculative attitude of these subjects. Forms of employee involvement appropriate to the size of medium, small and micro enterprises, however, can create an atmosphere conducive to this type of investment and strengthen SMEs, their growth and their ability to attract investment and to innovate.

The fact that local governments, universities and research centres can participate in the capital of the enterprise, without causing the company receiving the investment to lose its status as an SME, stimulates the growth of an enterprise by strengthening the link with the territory. Strengthening the link with the territory can only encourage dialogue with the people who work there, which of course includes the unions. This dialogue becomes even more desirable when the unions show willingness to dialogue with the economic actors in the territory in a perspective of sharing responsibility for the development of the territory.

This definition of an SME therefore entails a strategic vision for their management and development, their relationship with the territory and its social forces. This enables those companies that accept the challenge of working with external investors, at the same time creating the conditions for a more complex governance, social dialogue and a constructive relationship with stakeholders, to remain in the category of SMEs, which, in the humble opinion of the writer, is a positive consequence.

This is the approach that our proposals aim to reinforce.

### *Financial participation in SMEs in France, Germany and Poland*

As regards employee participation in company profits or results, it is worth pointing out that this form of compensation is used increasingly in Europe, and not only for management or specialised levels of employees. Profit sharing plans take on universal characteristics in order to insert new variables into the remuneration of all employees. These goal-based compensation plans can often be introduced unilaterally by the employer. According to the Dublin Foundation<sup>9</sup>, this is the most frequent case and the Anglo-Saxon culture is certainly the driving force behind it, in particular the trend in businesses based on the American cultural matrix to prefer the unilateral inclusion of elements rewarding the individual performance of employees.

The unions believe that negotiation has an important role in goal-based compensation plans. In particular, in this period of crisis in which the pressure on labour costs tends to reduce wages in a context characterized by a great variability in business performance, the pursuit of reward systems based on increased productivity or increased competitiveness reinforces decentralised negotiation in a logic of shared frameworks of action.

But in SMEs, company-level bargaining is rarely practised. Particularly in small and medium-sized enterprises, employers' associations appreciate multiemployer social dialogue, as they feel company-level bargaining is too costly. Small and medium-sized enterprises seek to optimise available resources through mutual or collective management. Similarly, the trade unions appreciate forms of joint management that deliver tangible benefits to workers, as in the German case of the SOKA BAU fund or the *Casse edili* (Building Societies) and supplementary pension funds in Italy. In France and Germany the reward mechanisms are rerouted, also through tax incentives, towards particular forms of savings or investment.

The issue of equity participation deserves special attention. When we talk about equity participation, through share ownership or other instruments that determine a co-ownership of

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<sup>9</sup> Eurofound Report, Performance-Related Pay and Employment Relations in European Companies. Authors: Aumayr, Welz, Demetriades, November 2012. Available at [www.eurofound.europa.eu/publications/htmlfiles/ef1144.htm](http://www.eurofound.europa.eu/publications/htmlfiles/ef1144.htm).

a company (be it large or small), we mean the possession of some financial security, either shares or other securities or debt instruments issued by the company where the employee is employed.

The national case studies help us to take stock of the equity participation in major European economies. France enjoys a legislative system that gives employees access to investment income and participation in business capital.

The main tools of the variable salary are *l'interressement*, which is the mandatory negotiation of compensation plans linked to the results of the enterprise, and the participation bonus, which requires all companies with more than 50 employees to donate part of the profits to the workers on the basis of a formula predetermined by law.

The various bonuses can be paid directly to the workers or transferred into company savings plans. Tax incentives and additional company contributions provide incentives for workers to channel their bonuses (from *l'interressement* or from participation) into savings accounts. Company savings plans accumulate resources to reinvest in companies or pension funds. The establishment and characteristics of savings plans must be negotiated with the union and works councils. The plan may be proposed in a form adopted unilaterally by the employer only when there is no form of representation in the company or when negotiations fail.

In SMEs, savings plans may be established on a level beyond that of the single company (inter-company savings plans). They can be established at the initiative of the social partners on a sectoral or territorial basis. The money collected goes into a mutual fund managed by a specialised company.

A study listed in the attached data sheet on France indicates that, in addition to what they receive as wages and social security contributions, employees of micro enterprises receive 11.2% of the profits, while those working for small enterprises receive 8.7%. This percentage rises to 15% for medium-sized enterprises. This surplus is generated through *l'interressement*, the participation bonus, tax benefits and other benefits of adhering to financial participation plans.

In the construction sector, the workers benefit more than in other sectors. The workers have access to an average of 12.7% of the profits thanks to a greater use of *interressement* and participation. Only the services sector does better (sharing 14.2% of profits with workers), but this is due to a variety of bonuses.

Another vehicle of economic democracy in France is represented by employee share ownership. The subject was discussed in a previous report of the Cisl, so here we will just recall the impact it had on SMEs<sup>10</sup>. Employee share ownership in SMEs in France may come about through the purchase of shares or financial securities, especially when companies are privatised, or when shares are allocated freely to employees. Employees can participate directly or through mutual funds. The financial securities used are generally bound to the company savings plans. The ownership of shares by employees is encouraged in order to address the generational change of company ownership, which has become critical in areas with a strong demographic decline.

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<sup>10</sup> Please refer to the data sheet on France in the report entitled "Economic Participation and Democracy in the car industry in Europe", prepared within the project PROEFP in 2012 and available at [www.proefp.org/app/images/stories/PRO2.pdf](http://www.proefp.org/app/images/stories/PRO2.pdf)

Thanks to these mechanisms, there are 3.7 million workers in France who are also shareholders. They represent 51% of the workers, compared to a European average of 30%. In small and micro enterprises, this percentage drops to 14% for the employees of 223,000 enterprises. This last statistic can be read in two ways. While it demonstrates the difficulty of extending the benefits of financial participation to SMEs, on the other hand we should remember that many of these tools are enhanced by collective bargaining. As can be seen from the 'country' data sheet on France, these plans are more widespread than representative entities in SMEs. This finding is encouraging for those who consider multiemployer social dialogue the key to strengthening small business owners and their employees.

This goal is achievable thanks also to the positive attitude of the social partners toward the instruments of economic democracy. In fact, the tools of financial participation are the technical device that allows the social partners to pursue the values of economic democracy. Four of the five French trade unions have formed an Inter-Trade Union Committee for Employee Savings. Among the various activities of the committee, we call attention to the attempt to channel the "workers' money" towards ethical or socially responsible forms of investment. The Committee invites investors to submit requests for the social responsibility label issued by the Committee itself. Among the funds that have obtained the social responsibility label, only one is sector specific, and it is the construction sector.

Among all inter-company funds, the construction sector fund allows all SMEs to participate in a collective plan funded by workers' savings plans. The savings plans are governed by a collective agreement for the sector. Individual employees can participate in the plan even if their company does not. The employer is required in any case to bear the costs of maintaining the worker's account in the fund.

Germany provides us with interesting data for the purposes of our study. In 2009, a law on workers' equity participation aimed to strengthen financial participation in SMEs. The law aimed at giving tax incentives to employees who used their savings for investments purposes and it established the Special Fund for Employee Participation. The workers buy shares of the fund, which in turn invests the money collected in SMEs. The fund gives the interest and profits earned from the investments back to the workers. The law also placed certain constraints on the management of the fund, relating to the diversification of the investments and the liquidity of the assets.

The fund invests 60% of the money it collects in companies that allow their employees to purchase shares of the fund and a maximum of 40% in other areas for diversification. The fund may not, however, invest more than 5% of its assets in a single company. The fund is fairly young, but in the opinion of the privileged witnesses consulted for the national case study in Germany, the tax issue is still an unresolved issue. The tax benefits granted to workers who invest in the fund are still too modest.

The position of the social partners on financial participation is controversial. The German trade unions, DGB and VerDi in particular, manifest a certain degree of scepticism. The possibility that the external management of "workers' money" could fail is still considered "excessive exposure" and is thus not supported by the union. A redistributive effect stemming from the ownership of financial securities by workers is not perceived.

On the employers' side, interest is growing, even if doubts remain about the joint management of the financial resources. Here, too, the pooling of resources is not perceived as promoting the value of the common good. Individual interests remain dominant. For example, the

interviews we conducted evidence that the rules of market investment would prevent a fund from investing in a business with a negative economic outlook, even if that same enterprise financed the fund (!).

The case of Germany gives us a picture of associations linked to a relational model whose values are strongly rooted in the participatory model. This model does not include, however, financial participation. This is a fairly common situation in many European countries. The social partners will have to be guided by practice and especially by good practices. In the data sheet on Germany, one of these good practices is illustrated.

The Hoppman Autohaus GmbH. A company that is not exactly small, given that it employs approximately 300 employees. The Hoppman company established a profit sharing plan many years ago in which half the benefits were paid in cash and the remaining part was left to accumulate in an account with the company. The savings gathered in this way are protected against annual budget losses (employees may not receive the bonus but their account cannot be reduced even if the company reports a loss) but are not 100% protected against the risk of bankruptcy. The plan is accompanied by instruments of co-management that would not normally be applied since the company has less than the legal limit of 500 employees. Today, the ownership of the company has been transferred to a foundation whose employees are part of the board, together with independent directors who are experts in corporate social responsibility

Our journey now takes us to Poland in search of practices and strategies for employee financial participation. As in all countries with an ex-socialist economy, employee ownership was one of the tools that accompanied the transition to a market economy. The case of Poland is relevant even in periods in which widespread employee ownership has gradually vanished due to the concentration of capital in the hands of managers or due to the arrival of foreign investors.

What is meaningful in this case is the theoretical basis of the construction of a market economy where the link between democracy and economic regime depends on the creation of domestic capital widely distributed among the population. Later, rapid development and a certain kind of economic and social planning ceased. If the multiple cases of equity participation have some residual value today, it is partly because in these twenty years of market economy, industrial relations have progressed little on their path towards the systems considered to be more mature. Collective bargaining in the private sector is marginal and virtually absent for SMEs. The tables for social dialogue are mainly national, divided into three parts and uninterested in collective bargaining strategies.

This does not preclude, however, the social partners from having a positive approach to the tools of financial participation. The Polish government in recent years has proposed a new model of company, the "company of civic activity", that has attracted the interest of the social partners. However, the project has not yet had success. Some surveys confirm, however, the interest of the social partners in the development of forms of financial participation. These are mainly related to the use of models of participatory business management in privatised enterprises. In fact, the negative perception of privatisation that is widespread among workers is transformed into a more positive attitude if the privatised enterprises provide a governance that involves employees in the ownership and management.

The experience of the 1990s has bequeathed a large number of enterprises that are co-owned by the company's employees. A closer examination of the numbers would not really mean

much because it would regard a residual and out-of-date phenomenon. There remain, however, a considerable number of subjects of various kinds who study and are anxious to disseminate financial participation in Poland, and who could become subjects for the reception and promotion of new forms of employee involvement within a strategic (though not necessarily a new) framework.

In the transition to a market economy, the construction sector has the highest number of enterprises with worker participation. This trend was reinforced in the 1990s by the growth of the sector, which prompted the entrepreneurship of the workers in that sector. There are still traces of this experience, even though it has not been possible to find data on the present scope of the phenomenon. In Poland, our reasoning may be assisted by the following good practice.

In the PCB Plecewice company, which produces mortar for the building sector, 60 employees, employee co-ownership has resulted in a progressive reduction of staff due to improved efficiency after being privatised without recourse to collective redundancies. Acquired by employees with a symbolic payment for the purchase of shares, the capital has always been hotly contested by the management group and the group of employees. The continuous adjustments prompted by the different interests of the owners of the company have not altered the management profile, which continues to be oriented to investments. The company's union density of 23% is absolutely exceptional for this type of company. In any case, the union presence does not prevent difficult choices impacting workers from being made, and especially in this period of sudden slowdown of the economy, problems appear to lie ahead.

## **SOME CLOSING THOUGHTS**

Participation is a European issue, but so far it has affected small and very small enterprises only marginally. In fact, on closer inspection, EU interventions aimed at participation have mainly regarded large companies (with the possible exception of Directive 2002/14). This has occurred for several reasons. Here we shall discuss two of them.

The first is that attention has been focused on multinational companies since the 1970s. They were the first to grasp the potential of the internal market. The job market has perceived mainly the negative social impact linked to the phenomenon of transnational relocation. It is no accident that the first legislative interventions regarding participation date back to 1975 with the Directive on collective redundancies.

The second reason lies in the persuasive power of the principle of subsidiarity in the exercise of powers of intervention of the European institutions. The principle of subsidiarity imposed a continuous search for the transnational aspect of issues that the European Communities intended to regulate. This led to the dual regulation of the economy: on the one hand multinational companies were subjected to a strong push towards harmonisation in a European perspective while on the other, the economy of small and medium-sized enterprises remained well anchored in a national regulatory dimension.

Both of these factors today appear to be at odds with the course of history.

European entrepreneurs have learned to make better use of the potential of the transnational market. The phenomenon of delocalisation is no longer new and now involves smaller

employers. The services market subdivides and internationalises its production cycles. The liberalisation of the services market brought about by the Directive of 2006 provides a boost to the mobility of small and medium-sized enterprises.

In addition there are new prospects for the common governance of the European economy. It is well known that the economic crisis has accelerated the process of building common institutions for the government of the European economy. To govern the economy means first of all to deal with small and medium-sized enterprises. This became quite evident in the definition contained in the Lisbon Strategy, which was supposed to complete the creation of the single currency (remember that after Maastricht, membership in the single currency has been a goal of all EU member states) with a coordinated economic and social policy. The first joint project for SMEs<sup>11</sup> appeared in 2005, and it led to the Small Business Act of 2008. The slogan "think small first" was intended to announce the new central role of SMEs in the formulation of political and economic policy of European institutions.

With the expansion of the field of action of the EU and the search for a unitary government of the European economy, social legislation – and with it the question of participation – can no longer put off the question of SMEs. If the government of the economy means governing also SMEs, the topic of participation will have to be taken into consideration in the attempt to define socially balanced economic policies. The EU's strength as a whole may thus be enhanced.

If the future of Europe can be seen through the initiatives undertaken in recent years, the government of Europe looks increasingly like a pre-federal model, in which national and European levels converge in programmes defined by the European Semester. EU policies will deal with the issue of SMEs in a logic of "mainstreaming" and it is supposed that social legislation, too, must emerge from a system of perpetual exemptions, which aim essentially to exempt SMEs from "administrative, financial and legal constraints in a way which would hold back ... development" (Article 153, TFEU). It is expected, however, that EU legislation will promote employee participation in accordance with recent relational models based on social dialogue and fundamental rights.

The Charter of Fundamental Rights in fact suggests how the question of the involvement of employees in SMEs might be interpreted in a European context.

Article 27 on the right of workers to information and consultation within undertakings comes before Article 28 on the right to collective bargaining and action. The ordering of these articles appears far from random, and their sequence seems to indicate that the legislator envisioned informed negotiation within procedures designed for employee involvement. We would like then to imagine a model of social dialogue that welcomes participation and negotiation in a synergy aimed at enhancing businesses and the people who work there.

For social dialogue to use these tools in a coordinated way, it must look at current challenges and find solutions to the problems of the present, while looking to the future.

The involvement of employees in SMEs is a difficult and complex challenge that this project wanted to address in part. But participation in a modern sense must have two missions: govern new processes and promote the redistribution of wealth.

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<sup>11</sup> "Implementing the Community Lisbon Programme - Modern SME Policy for Growth and Employment", COM (2005) 551 final, 10.11.2005.

The first mission is the government of processes. The fragmentation of the production process deprives labour representation of its consulting function in strategic decisions. The company is not the container in which the production cycle is completed. If the physical location of the production process is fragmented among several companies that simultaneously perform a fraction of the total work necessary, then the dialogue between employees and the company tells only a fraction of the truth, expresses only a fraction of the strategy and anticipates only a portion of the future of that cycle or project.

If this fragmentation should be made whole again to enable workers to exercise their right to be involved, a new law would become the necessary framework for action for the social partners seeking to identify shared solutions. Some examples reported in this study express well this coordinated interaction between laws and collective bargaining. The most advanced examples are those in which there is protection of the integrity of the workplace or access to continuous training or the use of mutualistic safeguards that enhance the protection of the worker. But in the case of some countries, new forms of association and representation are emerging.

The homogeneity of legislation is essential because laws need to be linked to well known and well established practises of industrial relations.

If laws and collective bargaining interact with different legal systems, the complexity sometimes becomes unmanageable. This is the case of the transnational posting of workers (as described in European Directive 96/71), a growing phenomenon related to the transnational provision of services. It involves the alternation of different legal standards in the protection of workers participating in the fulfilment of a specific production cycle or work project.

In fact, the location of the business of transnational posted workers determines the application of national legislation only in the areas dictated by Article 3 of Directive 96/71, referring all other aspects of protection of the employment relationship to the regulations of the posted worker's country of origin. This organisational and regulatory dispersion is exacerbated by the chain of subcontracting: the passage from company to company of responsibility for the completion of a fraction of the production cycle reduces the accountability of those who commission the work, those who are contracted to do the work and those who perform the work almost to nothing.

This report has examined events related to the posting of workers in order to understand how the fundamental right to information and consultation is exercised in companies which, although they may be small, in fact perform large-scale works. The exercise of the right to involvement serves to govern processes that affect a large number of people and impact the economic sustainability and working conditions on jobs that employ a large number of workers divided into small groups managed by many different small firms.

The whole thing is made more complicated by transnationality, which makes the boundary between what one can and cannot do highly arbitrary. This uncertainty leaves both the legislator and the social partners hesitant, given the constraints within which the need for worker protection either meets or clashes with the requirements of the common European market.

The struggle between labour protection and enterprise mobility is not just a dilemma for legislators. As we shall see below, in SMEs it also creates a dilemma for collective bargaining. In SMEs, especially, this is the tool that makes the contractual right to the

involvement of employees enforceable, in a mutualistic perspective beyond the single company level, in which widespread support for the contract is also a precondition for the existence of the contract itself.

EU legislators must take this into account. Strengthening participation within SMEs means strengthening collective bargaining. If transnationality makes the enforceability of negotiation and participation difficult, EU legislation must take responsibility for creating transnational tools or else encourage the social partners to create their own. The latter hypothesis is the key to making the rule imposing information and consultation in SMEs consistent with the exemption of SMEs from many bureaucratic constraints.

Legislation containing statutes "in derogation" in which SMEs are exempted from doing what big businesses are required to do should be abandoned in order to promote legislation that creates a framework of binding rules that are flexible enough to allow the parties concerned to identify the ways and means of achieving the desired objective.

Instruments of private welfare and other contractual elements can be considered elements of economic democracy. The social partners should activate mutualistic strategies that focus resources in order to supplement traditional components of a worker's salary. These operations, with their high degree of participation, make up the true economic value of a collective agreement. It is precisely through the "shared" use of financial resources that the world of labour can find new ways to express itself and increase its decision-making power, transforming it into new rights and opportunities for workers, with beneficial effects also on the competitiveness of enterprises. Indeed, the first issues to be subjected to joint mutual management should be factors considered essential to the competitiveness of the companies themselves, such as the health and safety of workers, the reconciliation of family and professional life and professional training. Health insurance and pension funds would also be among the rights strengthened.

As demonstrated by the case studies, territorial agreements can explore or support innovative ways of collective bargaining if they are based on the broad membership of enterprises in employers' associations. The EU legislator should reflect on this as well.

The issue of financial participation remains to be examined. It may be that tools of financial participation trigger forms of redistribution of wealth, as happens in large companies through the use of tools that help workers to increase their savings and share the company's profits and business results. We wonder if participation might also trigger new models of corporate governance that are better suited for the development of SMEs.

## COUNTRY REPORTS

### ITALY

#### Part 1: SME situation in general

##### 1.1. Statistical data (2010 and 2011 data) and qualitative data on SMEs

According to Eurostat, Italy is the EU Country with the largest number of registered enterprises: 3,8 million in Italy, 2,5 in France and 2 million in Germany, 1.4 million in Poland and 446 thousand in Belgium<sup>12</sup>. Italy and France are dominated by small and microenterprises. In Italy, self-employed (professionals or no employees) are 32% of total registered enterprises. A rate much higher than the other compared countries.

Shortage of medium and big enterprises makes the Italian economy weaker. Medium and big enterprises are those who invest in R&S or internationalise their businesses. According to the employer associations of SMEs, the Italian gap in labour productivity is due to a limited number of medium and big enterprises rather than to the average size of enterprises (3 employees as national average). The Italian productive system is composed by 4,460,891 enterprises employing 17million people generating an added value of 630 billion of added-value (CNA 2012 from ISTAT, 2009). Small and microenterprises are 99.4% employing 66% of the total workforce. Small and microenterprises represents half of the Italian economy according to many indicators but only 20% of the total industrial export. Out of 4.45 million enterprises, 1 million are self-employed. Only 17% are limited companies. The handcraft sector weights 28% on the total number of companies, 18% on total employment and 12.8% in terms of added value.

In 2013, the economic outlook in Italy is negative. The decline started 5 years ago as a consequence of the international crisis and has been worsened by structural weaknesses of the productive fabric. The Italian economy has shown poor capacities to react to economic shocks. An industrial system dominated by small and micro-enterprises has been penalized by cuts in the public expenditure (especially investments). Low profitability discourages private investments. Italian companies are often undercapitalized and unable to generate cash-flow and it hinders access to credit capital. During the first trimester 2013, the manufacture industry has lost 1.3% of the turn-over. Since the beginning of the crisis (January 2008), the turn-over of industrial production shrunk by 20%. In the same period the added-value has halved. In the eighties, public investments were above the 3% of the GDP. In 2013, public investments will likely be less than 1.5%. (ISTAT and CENSIS)

The economic decline means fewer companies and fewer jobs. Numbers in the manufacture sector are dramatic. A delay in structural reforms has left the Italian companies drifting away in a sea of overwhelming obstacles. The continued decline of the internal demand has been worsened by many other factors. The internal stability pact has blocked outstanding payments from the public administration, the debt crisis has brought to oppressive taxation and excessive red tape has not been reduced. Political instability has postponed actions to tackle credit crunch. The global market is far from being an opportunity for the majority of the Italian enterprises. Loans to companies have dropped another 6% in the first part of 2013. In 2012, 365thousand companies have shut down. 3 million workers are unemployed. Unemployment among young workers has peaked 38,7%.

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<sup>12</sup> The most recent census of enterprises at EU level dates back 2009. It means that data on stocks of enterprises does not take in due account the effects of the crisis. However the following figures reflect the structure of the productive fabric of the countries. Economic trends refer to the latest data available of year 2012 or the first trimester of year 2013.

Industrial relations in Italy must cope with a soaring social unrest. Many other arguments could be used to show the dim conditions of the Italian economy. It is important to retain that industrial relations have to tackle such demanding challenges.

## 1.2. SMEs in the construction sector

In the Construction sector there are 607,758 enterprises with 1,816,824 employees generating 59 billion of added value (CNA 2012 from ISTAT 2009). The Construction sector includes 13.6% of the enterprises and 10.5% of national employment. It generates 9.4% of the added-value to the Italian economy. In this sector, 75% are registered as handcraft enterprises (microenterprises) averagely employing 2 to 3 people. Three quarter of the enterprises produce half of the employment and added value of the entire sector.

The Construction has thrived during the last decade following a pro-cycle trend. Since 2002, the Italian economy was performing moderately well and the construction sector recorded the highest increase in number of enterprises (+14% against -20% in the manufacture industry and +9% of services). The same pro-cycle effect has hit the construction sector when the economy reversed its trend downward.

Employment in the construction sector is highly concentrated in micro-small enterprises. In Italy there is a high number of entrepreneurs without a proper entrepreneurship structure. In practice, 1 million people offer their services as self-employed. Women are underrepresented and migrants' entrepreneurship has shown higher activism in recent years. Against the highest EU percentage of self-employed, Italy is also the country with the highest rate of inactive population. The construction sector reflects these trends more than other sectors. Out of 1.81 million employees, 90.1% are employed in micro-small enterprises. Micro-enterprises employ 1.17 million people. 272 thousand companies have a single employee, 618 thousand rank between 2 and 9 employees. 127 thousand employ more than 10 but less than 20 employees.

The construction sector in Italy suffers of the structural weaknesses of the Italian economy. In time of crisis, the construction sector is penalized by cuts in public investments (effect of the public debt crisis), excessive taxation (total tax rate close to 70% in 2011, 22% above the German average), cost of energy (the highest in Europe), excessive red tape (all indicators above the OECD average), and the credit crunch (drop of 10 billion euro in 5 years of lent capital and interest rates from 0.5 to 4.2% for SMEs) and difficulties in obtaining outstanding payments.

The economic outlook for the construction sector stays negative in 2013. All subsectors are recording dramatic drops in aggregate production levels (exception made for maintenance of existing buildings) (ANCE). In 2013, beside the structural deficiencies of the economy, one specific factor is threatening the entire sector. The surviving of a largest number of enterprises lays on the capacity of the public administration to cash outstanding payments. In a so dark scenario, industrial relations are considered an asset for the entire sector. Social partners have implemented structures in order to address the main problems sharing responsibilities and co-managing actions. For the benefit of enterprise, they rationalise burocratic obligations, they improve safeness of the construction sites, they fight against undeclared economy. With the same structures, they ensure uniform remunerations and benefits for employees, they manage mobility and temporariness of employment, they implement training-work opportunities, they manage the labour market from vocational training, professional orientation and job matching.

## Part 2: Social dialogue and SMEs

### 2.1 Description of industrial relations with SMEs.

The Italian system of industrial relations is based on a balanced mix of collective bargaining and employee participation. An interprofessional agreement, signed in 1993, specifies features of collective bargaining in all sectors. It was reviewed in 2009 with the intention to adjust

industrial relations to the changed socio-economic situation. The collective bargaining system is organized by sectors and based on a national sector collective agreement (first level) integrated by local collective agreements (second level). The second level consists in a collective agreement covering a district and is normally applicable to SMEs, or in company-based agreements for medium-large enterprises. The three most representative confederations CGIL, CISL and UIL are the main players on the employee side. Recently a fourth confederation, UGL, has gained representativeness in many industry sectors. In total, trade union members in Italy are about 13 millions. The employer side is quite fragmented. Confindustria represents private companies and ABI represents banks. Confcommercio, CNA, Confartigianato, Confapi are the main employers' associations representing small, micro and individual enterprises. Three further associations represent cooperative companies.

In a nutshell, the national sector collective agreement determines general working conditions, wage increases according to the inflation rate, and industrial relations rules including the exercise of information and consultation rights of employees. Local or company-based agreements have the task to provide details on work organization and wage increases linked to productivity gains. Opening clauses entitle social partners at local or company level to derogate to the national agreement under certain conditions and for limited periods of time.

SMEs are often excluded from the most innovative practices of collective bargaining. Collective bargaining coverage is high and ensured by a consolidated jurisprudence. But it concerns the core provisions of the employment relationship like individual rights and trade union rights. Most innovative practices introduced by collective agreements are based on collectivization of resources (e.g. company-based welfare schemes) whose effectiveness depends on direct membership of both employers and employees.

Employees on small and micro enterprises do not have access to collectively agreed benefits. In micro and small enterprises, low trade union density and low membership in employer associations make difficult the implementation of innovative mutual schemes agreed in collective agreements. Market investigations carried out by companies providing services, like Sodexo, show a poor interest of the small and micro enterprises in introducing private welfare schemes. In times of stagnant wage trends, welfare schemes mitigate losses in purchasing power of households.

For the same reasons, information and consultation rights are not exercised in the greatest number of enterprises. Even if the EU legislation has been successfully transposed, lack of employee representatives on the workplace stays as an impediment to a meaningful exercise of information and consultation rights. It has pushed social partners to get the most from social dialogue and the multiemployer dimension to develop alternative practices of employee involvement.

Employee participation in SMEs is based on a system of joint-managed bodies called "Enti bilaterali". Collective agreements establish such joint-managed bodies according to needs and priorities agreed by signatory parties. As a general rule, they are self-financed by enterprises and employees and have a balanced presence of employee and employer representatives in their managing bodies. They work in specific industrial relations areas as health and safety, insurances and welfare facilities, labour market, vocational training, etc. The Construction sector is the most advanced in this field.

## 2.2 Description of industrial relations of SMEs in the construction sector.

In the Construction sector, the three most representative trade union organisations Feneal-UIL, Filca-CISL and Fillea-CGIL side sign national collective agreements with ANCE (for the Construction Industry Collective Agreement), Aniem-Confapi (for SME Construction Sector Collective Agreement) and different associations representing the craft enterprises or

cooperatives (for micro-enterprises, and cooperatives). A strong coordination ensures that the different agreements look very similar.

In the construction sector, joint-managed bodies have been established to protect employees, fight against irregular employment, increase competences of the workforce, promote an inclusive labour market. Such bodies are called upon to apply measures decided in collective agreements. The three areas in which the social partners have invested more are:

I. Casse Edili: these bodies exist since 80 years and provide a wide range of services for enterprises and employees. They manage part of workers' remuneration, ensuring uniform treatment and equal access to the different components of the wage formation, they provide insurance schemes and different forms of supplementary benefits. These bodies are present throughout the Italian territory and are coordinated by a National Committee of Casse Edili. Even though such bodies are private entities they perform activities of public interest. For instance they certify, issuing a document called DURC (literally: Single-Document-for-Regular-Contributions), the regular payment of all duties pending on the employer according to laws, administrative acts and collective agreements.

II. CPT: they are joint-managed local bodies for preventing accidents and promoting safe and sustainable workplaces. Established by collective agreements, they are now recognised by law. They are key players in the implementation of laws and policies for health and safety on the workplace. They provide training, information, consultancy and advices to enterprises, they can inspectorate workplaces with the aim to help employers to meet their legal obligations or to improve safety of the workplace.

Formedil and vocational training schools: FORMEDIL identifies labour demand, provides services for professional orientation of individual workers. It activates tools for certification of competences and collect individual profiles for job matching. It provides workers with a portfolio attesting training activities carried out and skills acquired. The skill repertory is continuously updated by the Vocational Training Schools of the Construction Sector, and accompanies the worker throughout his/her working career. The Schools provide for an extensive screen of training opportunities.

The multiemployer dimension means, geographically, a district (an intermediate portion of territory between an urban area and a region). At that level, social partners establish their structures, pool resources and provide their services. The national level has the task to coordinate and ensure mobility of people, portability of rights, etc.

Joint-managed bodies are financed by employers and employees themselves. Collective agreements identify sources for funding of co-managed activities. For instance, a Vocational Training Schools operate in a single district and receive funds up to 1% of the total labour cost from companies operating in that district.

Considering the dominant number of microenterprises, employee representation on the workplace is poorly meaningful. Employees are most effectively represented through external trade union structures. But microenterprises do not mean micro-workplaces. A construction site is often a place where employees from different employers work together for a single output (ex. a building). The multiemployer dimension is then essential to build solid industrial relations and also the concept of employee participation must be conceived with a multiemployer dimension. A clear example of it is the employee representative for health and safety. Whereas the size of the company or the workplace is too small for having a workplace representative (15 employees), this role is performed by trade union representatives appointed in a given district. The local TU representative for health and safety belongs to the complex map of people that should make a construction site a safe place to work. The joint-managed bodies for health and safety (see above CPT) create the enabling environment for that to happen. For instance, the appointed trade union representatives are trained and equipped to inspectorate workplaces. Inspections are not aimed at sanctioning but at helping the employer

to meet his/her obligations. In this way, what has been paid to the joint-managed body returns to employees and employers as a service.

The joint-managed bodies have shown to be able to pool resources and provide benefits to employees and companies. The capacity of social partners to engage further resources in collective schemes is not endless. The crisis hit the sector severely. Many enterprises, as well as unemployed people, cannot afford payments to the joint-managed bodies anymore. In this way, employers are not able to obtain the required certification to legally operate. It is a vicious cycle that is threatening the good functioning of the entire sector economy. But social partnership in the construction sector is a long-standing experience of employee participation. It encourages social partners to explore new directions exploiting the same industrial relation model. The attempt to establish a private joint-managed pension fund has not been fruitful so far. About 50.000 employees have joined the scheme out of 400.000 potential members. In the last collective agreement, social partners declare a common will to encourage people in joining the private pension fund.

Social partners address new and old challenges. In the bargaining platform for the next sector agreement, period 2013-2015, trade unions have pointed out the following priorities: limiting the extension of the subcontracting chain, updating in real time of the list of enterprises/employers engaged in a construction site, avoid the use of vouchers or job-on-call schemes, introduce the professional skills repertory as elaborated by Formedil, limiting fix-term contracts.

### 2.3 The question of contract chains and posted workers

Labour mobility is a major challenge for the construction sector. Mobility is meant as change of employer, geographical mobility of the worker, geographical mobility of the employer. Labour mobility together with other factors - as the fragmentation of the production cycle, undeclared economy, long subcontracting chains - make the Construction sector difficult to be regulated. That is why social partners at national and local level produce efforts to fight against undeclared economy and reduce the bureaucratic burden on enterprises.

Collective bargaining deals with condition of work of immigrants. Social partners recognize that the presence of non-national workforce is becoming dominant in the sector. For that reasons, the most recent collective agreements introduce new rights and facilities to help a full integration of migrants. But these measures cover workers that have settled in Italy and whose working contract is under the Italian legislation. But a different kind of labour mobility is growing in Europe in the construction sector: cross-border posting of workers.

Cross border posting of workers in the Construction sector often degenerate in elusive or unlawful practices of labour mobility. The issue of workers seconded from other EU-countries is partially addressed when addressing the issue of tax payments and payments to the social security system and implementation of health and safety measures. In order to help companies to lawfully operate, Casse Edili release a single document, called DURC. Each employer can obtain a DURC submitting a list of information whose details are agreed by social partners themselves. Social partners have agreed that , before the opening of the construction site, the main contractor has the obligation to transmit to the local Cassa Edile detailed information on employers and employees that will be present in the construction site during the entire duration of the works. A national database will ensure a cross-data analysis that will evaluate the congruity of the cost of the work with the workforce engaged and other parameters. In this way, the presence of foreign employers, posted workers, self-employed workers is continuously monitored and their lawfulness certified.

Cross-border posting of workers is an increasing practice in the construction sector. The Italian platform of joint-managed bodies is able to prevent misuse of this instrument and fight social dumping. But the measures agreed so far provide partial answers. Preliminary information to the Casse Edile allows a better monitoring of the subcontracting chain, it paves

the way for more effective inspections in a logic of cooperation. Health and safety on the workplace is ensured to all employees engaged in a construction site. Social partners and joint-managed bodies ensure 'representation' to foreign workers as well. But some weaknesses must still be addressed. For instance, local structures cannot control conditions of employment in the origin country. Temporariness of the presence of foreign workers in the Italian territory discourages posted workers from having active participation in the trade union life. Contributions to and obligations toward to local joint-managed bodies is still unclear for foreign employers. Undeclared economy is still a problem as many employer do not register in the joint-managed bodies and therefore dodge control and preventive informations established through collective bargaining.

### Part 3: Financial participation in SMEs

3.1 Recent developments in the implementation of EFP in Italy reflect the main features of the Italian industrial relation system.

EFP has progressed in Italy in recent years but in a stop-and-go process that has hampered the setting up of a comprehensive legal and policy framework.

Gain and profit-sharing appears in collective bargaining platforms for three decades. But only during the crisis it has become central in pinpointing a new system of labour relations. Collective bargaining reforms, dated 2008 and 2011, are radically changing the wage formation system. Trade unions and employers have accepted a further decentralisation of collective bargaining with the aim to better suit the specific needs of the single companies. Productivity gains are now largely paid off in company-based collective agreements.

The above mentioned reforms have also suggested trade unions to review their strategies and structures. First of all trade unions have shifted power and resources to the periphery. In their view, it will offer greater chances to govern processes within the company or in smaller territories. Social partners a national level will negotiate the sector national agreement and will coordinate decentralised negotiations.

In CISL, the coordination of collective bargaining includes more sophisticated monitoring of negotiations. The OCSEL database currently collects 2,360 thousand agreements signed in the framework of the national sector agreements (second level negotiations) between 2009 and 2011. Half of the censused agreements add a variable component on top of the salary paid to the employee in framework of the sector national collective agreement.

About 1600 agreements implement a diversified range of gain/profit sharing schemes. In these agreements, the parties have decided to opt for labour performance-based incentives in 48% of the cases and company-performance targets in 28% of the cases. In 8% of the cases, the awarding schemes refer to both performance of labour and business profitability. The amount paid under the scheme is distributed in equal parts among all employees in half of the cases. It happens more frequently in operations with lower specialisation of the workforce. In the remaining cases, the schemes award groups or workers, teams or individuals on the basis of the performances or the professional skills they have actually expressed.

The Observatory shows that social partners are able to elaborate sophisticated indexes for calculating their performance-related remuneration schemes. It also implies a greater capacity to master the business. The search for competitiveness remains a top priority while granting employees their share of 'success' normally measured in gains in productivity and profitability of the business.

The number of agreements dealing with EFP becomes lower in companies with less than 250 employees. But it is physiological. Nonetheless SMEs represent 99% of the Italian companies an half of the employed population. When company based bargaining is not possible or not efficient, the new collective bargaining structure gives greater role to multiemployer

negotiations (in a given area, industrial district or territory) to achieve a greater coverage of SMEs. About 100 agreements concluded at territorial level introduce profit and gain sharing schemes for all SMEs of the region. Most of them cover the SMEs of a specific sector in a given territory.

These agreements are too recent to allow a reliable assessment of how many SMEs actually apply the territorial agreement and how many employees in SMEs actually benefit from a surplus of salary coming from the application of a profit-gain sharing schemes. Anecdotic evidences show that, thanks to the reforms introduced in 2008 and 2011, this number is increasing. It is also thanks to the fact that the Italian Government has stuck with the engagement to ensure tax relieves for amounts paid under an awarding scheme agreed in company/territorial collective agreements. In 2013, the Government has allocated 950 million euro for applying a flat rate of 10% on remuneration received under a profit/gain sharing scheme for employees whose global gross income does not exceed 40.000euro. It must be said that the benefit is accessible to the largest part of employees even though it taps some few hundred euros per year. It is not a lot but it reverses a trend of tough austerity and soaring fiscal pressure on all labour income sources.

This approach has been confirmed in the recent interprofessional agreement setting Guidelines to Enhance Productivity and Competitiveness in Italy, signed by all social partners (except CGIL) on the 16 November 2012. In Chapter 4 on Employee participation, parties engage themselves in starting talks to encourage employee share ownership.

This measure deserves few words of explanation. In June 2012, the Italian Parliament, adopting a controversial reform of the labour market, decided that it was time to introduce a legal framework to encourage employee participation in the company governance, including forms of employee involvement in equity capital of companies. For that reason the Parliament gave mandate and 9 months time to the Government to issue a Governmental Decree.

The requirements which the Government had to transform into a law included a balanced mix of measures enhancing information and consultation of employees, employee involvement in corporate governance including the presence of employee representatives in the supervisory board, when existing and employee share ownership. Collective aspects of Employee share ownership had to be privileged with the specific aim to grant employees greater chances to be influential on the General Assembly or to achieve the appointment of a representative of employee-shareholders representatives in the company boards.

The law of the Parliament would have been worthy to be further analysed if it did not reach the deadlock provoked due to the premature end of the Government at the very beginning of this year (2013).

The above mentioned interprofessional agreement signed in June 2012, certifies that the path opened by the Italian Parliament was now on a dead track and brought the ball back in the hands of the social partners. The future of the agreement - and the engagement to open talks on employee share ownership - relies on the results of the next national elections and the coalition that will rule the Country for the next 5 years.

Support to SMES is thus at the core of the recent Decree for Economic Development issued by the Italian Government in the last autumn 2012.

The Decree of the Government entitled Growth 2.0 introduces the legal entity called Innovative Start-Up. It goes in application of the engagements taken in the EU2020 Strategy. The legal features of the entity Innovative Start-up reflects the recurrent features of the economic concept of a start-up in which the innovation is linked to additional criteria including for instance that at least a third of the workforce is composed by high qualified workforce with a doctorate, a PHD or university diploma with at least three year of experience in the field of advanced scientific research.

Some derogations in company law make easier for Innovative Start-Ups to transmit rates of the equity capital to their employees.

All kind of securities issued by the Innovative Start-Ups for the purpose of remunerating employees are exempt from taxation and any other social contributions linked to the taxable labour income. The capacity of the employees to be involved in their own company is also encouraged by a provision ensuring tax benefits for three consecutive years to those who invest in an innovative start up.

In a nut shell, the Italian legislator combines three key words that stands as three strategic factor of economic strength: innovation, human capital and employee participation.

### 3.2 Description and analysis of financial participation in SMEs in the construction sector.

Some practices of EFP can be detected in the Construction sector as well. According to recent reform of collective bargaining in Italy, the gain-sharing and profit-sharing schemes should be negotiated in the second level collective agreements to ensure wage increases linked to productivity gains.

Collective agreements in the Construction sector show how performance-related-wages can be introduced in micro and small enterprises. The problem for social partners is to find out indicators that could express the healthy condition of the local economy with regard to the construction sector.

National collective agreements fix the framework in which collective agreements in different districts determine criteria and formulas to work out the amount payable under the scheme. The national collective agreement points out 4 criteria to be used in local negotiations and leave local negotiators the possibility to add own criteria. The 4 criteria used at national level refer to indicators directly derivable from the activity of the local Cassa Edile (number of employees registered, aggregate wages trends, number of worked hours declared, services provided to local enterprises). These indicators certify the economic trend during three consequent years. Local indicators refer, for instance, to the average added value of the sector or thresholds related to the aggregate EBITDA. Combining the 5 criteria, it is possible to work out the amount payable as variable component of the wage. Companies which do not fulfill criteria (each district has its own conditions) are exempt from paying the entire or part of the amount due under the EFP scheme.

In the agreements signed in year 2012, it was agreed a ceiling to the performance-related payments up to 6% of the annual gross wage. Considering the poor economic performances of the sector, in all districts, the amount actually paid is lower and many companies have been exempted.

In the construction sector such schemes are accessible to employees in SMEs. This is thanks to the combination of advanced collective bargaining practices and the establishment of joint-managed bodies. These bodies cannot be only considered service-providers. They are instruments for employee participation. For instance, once the performance-related payments has certified the poor economic performance of the sector, social partners have jointly designed the economic outlook and engaged local authorities in planning policies that would help an economic recovery.

## *BELGIUM*

### **ABSTRACT**

Belgium is a federal Country composed of three Regions: Flanders, Wallonia and the Region of Brussels. It is governed by a national government but each Region is governed by its own Regional government with devolved powers relating to industrial policy, investment and infrastructure among many others.

In Belgium, the 99.8% of the business is represented of SMEs. In particular, in 2009 there were 855,897 SMEs providing 2.6 million jobs corresponding to the 41.1 % of total employment at national level.

Approximately in Belgium there are 38 SMEs per 1,000 inhabitants, which is not far from the EU-27 average of about 40. The proportion of SMEs and the share of total employment compared to all enterprises are also similar to their EU averages.

According to Small Business Act for Europe (SBA) annual fact-sheet 2012, the Belgian SME sector is positioned in the EU-27 average, except for a slight prevalence of micro enterprises in the total number of SMEs.

SMEs in Belgium proved to be more resilient to the crisis compared to the other EU Countries. This is particularly true in terms of added value. Policy efforts seem well targeted since many are focused on the SBA area with the lowest score (Entrepreneurship) or a negative trend (Internationalisation and Access to finance).

In this context, Flanders was more active with twice the number of company of the Wallonia Region.

In 2010 Belgium counted 83.948 enterprises in the construction sector, which gave work to 214.195. In 2011 the situation saw the number of enterprises grow to 86.896 (+ 3,5%) with 216.650 workers employed in the sector. For both years the 95% of the enterprises in the sector were micro-enterprises.

Unions are very active in Belgium and have a high level of representativeness in the construction sector, 98%. Social dialogue takes place primarily at federal level within specific joint committee. The joint committees are specific organs foreseen by the law for every business sector and are in charge of the negotiation of collective agreements, the prevention and solution of social conflicts, for advising the Government, the National Labour Council and the Central Council for Economics, and for every mission entrusted by law. Each committee is composed of a president and a vice president selected from social conciliators and appointed by royal decree, secretaries from the Directorate General for Labour Relations and representatives of employers and trade unions. Collective agreements are negotiated every 2 years within joint committees. Once the agreement is reached, it receives legal binding force for all the workers of the sector through a Royal Decree. Social Dialogue takes also place at Regional and company level, but in these cases is related to specific issues and the results have no legal binding force.

In Belgium, thanks to the high level of representativeness of the unions, the rights of information and participation are quite well respected. For the companies with more than 100

employees Belgian system foreseen the presence of a Conseil d'entreprise (within the premises of the enterprises), which are a forum of consultation between workers and employer. If the enterprises have more than 30 (but less than 100) unions' delegations are foreseen to tackle issues related to the working condition. However, also in companies with less than 30 employees (the largest majority) and without a stable presence of unions' representatives, social dialogue takes place efficiently.

Relations between unions and employers organisations are quite good in the Belgian construction sector. There are physiological conflicts but also some common causes. One of them is the fight against unfair competition of "wrong posted workers" and fake self-employed (particularly from other EU Countries) that are considered the main problem of the Belgian market of construction and the cause of possible social dumping.

As for financial participation, the first forms of EFP emerged in the Country at the end of the 19th century, but only in 1982 the Belgian government introduced its first incentives for employee share ownership to support the stock exchange in the wake of a financial crisis. Additional incentives were introduced in the early Nineties but, in Belgium, forms of EFP are not particularly widespread except for some forms of bonus connected to the results.

## GERMANY

### ABSTRACT

The construction sector itself is highly dependent on SME. 99.9% of the Enterprises belong to the group of SMEs and generate 82.8% of the total turnover and employ 91.7% of the workforce. In this group the micro enterprises with 83.4% play a very important role. In comparison between 1995 and 2012 there is a shift towards smaller enterprises. In 1995 companies with less than 20 employees generated 23.4% of the turnover, in 2012 this value raised to 33.8%. The number of self-employed is 21%, almost twice as high compared to the national average. Participation plays only a minor role in the construction industry. Only 3% of businesses that could have a works council have one too. As a result, only 21% of construction workers are represented by a works council. This lack of participation is largely due to the before mentioned corporate structure in the construction sector. In the last years the number of posted workers has risen strongly, from 51,420 posted workers in 2009 to 57,331 in 2010. In 2011 the numbers of posted workers nearly hit the mark of 70,000. The IG BAU as the trade union in particular concerned with the issue of posting workers in the construction industry and the DGB support the ETUC in its demand for a 'social progress clause' to be inserted into Community law. Besides that there are currently no major campaigns directed towards posted workers.

Collective bargaining is conducted by trade unions and employers' associations. In those negotiations the trade unions represent the employees and the employers' association the employer. In Germany there exist multiple trade unions, but most of them are part of the German Trade Union Federation called DGB (Deutscher Gewerkschafts Bund). Since 1990 the number of members in the DGB almost halved (from around 11 Million members in 1990 to 6 Million members in 2010). This loss is symptomatic for the German trade union scenery and causes a lack of assertiveness for example when it comes to negotiation on wages or working conditions. Companies that are not members of the employers' association are not committed to apply the collective agreement. Recently, regional collective agreements contain increasingly opening clauses that define exceptional situations which allows companies to deviate from regional collective agreements (e.g. to differ in payment to up to 8%). A negotiated collective agreement can be declared as generally binding if two criteria are satisfied. First 50% of the employer, who are bound to this collective agreement, must employ 50% of the employees who are covered by the scope of the collective agreement (50 per cent clause). Second the generally binding must be of public interest. Are both criteria met then the collective agreements not only apply to the member of Unions or Employers' Associations but for all who work in this sector. In Germany there are mainly regional collective agreements for individual sector or sector groups. Even over 20 years after the reunification of Eastern and Western Germany the salary levels are not equal. Basically the collective landscape is divided by framework, payment and special fare collective agreements, usually for the whole area of Germany. In the framework collective agreements, the entire working conditions are fixed, usually for three to five years, and they are generally binding for the workers. The special fare collective agreements regulate for example equal social funds and their procedures, mediation, collective supplementary pension, vocational training and winter construction support. An example for such a social fund is SOKA BAU which handles the holiday procedure for the whole construction sector. All regular employees and posted workers in the construction sector are registered at SOKA BAU. Due to that it provides information for the German customs. This information are very important, because, as shown

in several studies, the undeclared work and illegal employment in the construction sector accounts for nearly 15% of the total volume.

The construction sector itself draws a poor picture of financial participation in Germany. According to the IAB survey of 2000, 2001, 2005 and 2007 around 9.7% of the companies in the construction sector have any scheme of sharing, which is the third lowest branch value in Germany. Only in Health Services (9.1%) and Catering (9%) is less financial participation.

## FRANCE

### ABSTRACT

Microenterprises (TPE is the French acronym) with fewer than 10 employees make up 90% of the total building sector enterprises in France, a percentage in line with that registered in the country's other economic sectors. As for the number of workers, the concentration in microenterprises shows lower figures, with 40% of the building sector workers employed by microenterprises.

The small size of the enterprises has consequences on the sector's social relations, in particular due to the so-called "threshold effect" for the start-up of social dialogue (under the law, the election of workers' representatives is possible only for enterprises with more than 11 employees), as well as to the unionization difficulties. Social dialogue is practically non-existent within the microenterprises, while it is exercised at the regional level through the so-called "joint committees"<sup>13</sup>, set up at the interprofessional, and not the sectoral, level. The building sector is well represented in these committees which, however, according to union sources, allegedly operate in just five regions. Social dialogue is, in a certain sense, tempered within the CPRIAs, the Interprofessional Regional Joint Committees for the Handicraft Sector, where discussion revolves around topics such as social security, welfare, access to vocational training and preventive healthcare, but not those connected with wage matters (which, instead, are managed at the trade category level). According to union sources, "social dialogue is at a historic low". One of the ways to improve the situation would be to strengthen the union activity within the microenterprises; however, this result is far from being achieved. Merely by way of example, suffice it to point out that during the election of the union delegates held in December 2012, in the building sector only 21,919 voters out of the 343,777 members voted, equal to just 6.4% of the total electorate.

The social and economic challenges of the sector's microenterprises are becoming increasingly intense:

- reduction of the activity and, as a result, of the subcontracts on which numerous microenterprises depend
- a growing risk of bankruptcy because of transfer problems and/or economic difficulties
- an increase in the number of posted workers in France (of whom 80% work in the building sector), with a consequent risk of tension for the sector: problems concerning pay, safety, and working conditions.

It can thus be seen that new practices and initiatives are necessary, especially at the territorial level, in order to preserve the entrepreneurial fabric and protect the workers – including posted workers. Also observed is a growing demand for information and training from both entrepreneurs and workers: training of employers in preparation for the transfer of enterprises, training of employees in entrepreneurship, training of employees in complementary skills in preparation for market diversification. The social partners and joint bodies (OPCA<sup>14</sup> for the funding of training) provide the forces and means for dealing with these necessities.

The social partners also intend to structure a territorial social dialogue for the benefit of the workers – including posted workers – of the contracting firms present within a certain territory and/or within a particular work site, especially with a view to improving work and

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13 CPRIA : Interprofessional Regional Joint Committees for the Handicraft Sector.

14 OPCA : *Organisme paritaire collecteur agréé*, joint body for collection of funding for training (authorized by the Government)

safety conditions, in addition to those concerning worker transport and integration. However, these initiatives clash with the sizable problem of the lack of financing for interprofessional social dialogue.

Lastly, the topics of mobilization and dialogue of the social partners will not include, except to a small extent, that of the financial participation of employees. Even though instruments and supports such as the *Plan Epargne Interentreprise* or *PEI* (inter-enterprise savings plan) – one of which is devoted specifically to the building sector – are envisaged, the system of rewards and bonuses is still the one most frequently used. The social partners also point out the “threshold effect”, the minimum number of 50 employees necessary for organizing participation in the enterprises. Nevertheless, workers’ savings finance 16% of the enterprises with fewer than 50 employees, thus paving the way for development prospects and new areas of negotiation for the social partners.

## POLAND

### ABSTRACT

Small and Medium Enterprises (SMEs) dominate the Polish economy, as 99% of all enterprises employing 70% of the workforce belongs to that category. On average a Polish SME employs 4.7 persons. Individual entrepreneurs (who are not formally 'legal persons') account for 95% of microfirms, and 72% of such individuals do not employ staff. SMEs provide for nearly a half of Poland's GDP. In the construction sector, the supremacy of SMEs in numerical terms is even more evident, as only 0.1% of companies in the sector are deemed large, while SMEs have 87% share in sectoral employment, that is, over 800 thousand, of whom 64% are employees. SMEs in construction are relatively active outside the domestic market, as 23% are reportedly engaged in activities abroad. The prospects for the construction sector for 2013 are bleak, with major development drivers (housing development, public infrastructure projects) temporarily gone.

Employee participation in the SMEs is limited. Employees in microenterprises (almost 40% of all) hardly have access to organized representation of their collective interest: company-level trade unions can only be established by at least 10 employees, and works councils can be elected at employers with at least 50 staff. Financial participation has even more modest extent, as employee ownership scale is scarce, and the main form of employee participation, the 'employee ownership companies', once fairly popular, have been gradually diminishing. As survey research suggests, no more than 2% of the national workforce is employed by 'employee companies' (*spółka pracownicza*). A new concept (introduced in 2009) intended to revive the employee privatisation, namely a 'company of civic activity' (*spółka aktywności obywatelskiej*), arouse little interest.

Construction is no exception when compared to other sectors in terms of employee participation. There are only few examples of employee companies still in operation. One of them is a PCB Plecewice S.A., a medium-sized enterprise, whose main field of activity is 'manufacture of plaster products for construction purposes' (NACE 26.62.1). The company provides a 'good practice' example in the context of the employee participation, as it still retains a nature of an employee ownership company, even though the ownership concentration process proceeded over twenty years, resulting in seizure of majority of capital by two major stockholders. In 1992, the company (back then a state-owned enterprise) underwent privatization using so-called "leasing mode" of a direct privatization, in course of which, the state-owned enterprise was leased to a newly established employee company that took control over the privatized state-owned enterprise. Since its inception, the company has remained consistently 'investment-oriented', and only occasionally paid dividends, allocating vast part of its financial resources into technological modernization and development. Unionization in the company is exceptionally high (23%), which is double the national average. There is only one trade union active in the enterprise, so the company has never experienced a negative impact of the so-called 'competitive pluralism', which haunted Polish trade union movement for many years. There are stockholders among the union members. The union represents 'business unionist' model, and no industrial conflict in recent years erupted in the company.