
The crisis: catalyst for stronger worker participation in corporate governance?

Compilation of the country reports provided
by the experts of the SEEUROPE Network

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Norbert Kluge and Sigurt Vitols

Conference reader, 24 and 25 November 2010

etui.

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europaan trade union institute

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Introduction

Only a couple of months after the onset of the financial crisis, the European Trade Union Institute (ETUI) launched an enquiry among the experts of its SEEUROPE network on recent developments and discussions at national level addressing the palpable failures of systems of corporate control. These investigations were aimed at identifying signs of a higher attentiveness with regard to society's expectations in the formulation of company objectives (and those of their financiers).

In order to prepare a **report on developments in national corporate governance and the role of worker participation caused by the crisis (if any)**, we asked the authors to focus on four areas:

1. **Worker participation:** is there a discussion on worker participation and the crisis in corporate governance and demands to strengthen the role of workers in governance, particularly with regard to board-level employee representation?
2. **Corporate governance:** is there a debate critical of the shareholder model and demanding a stronger stakeholder orientation in company governance, either through corporate governance codes or legislation?
3. **Management remuneration practices:** is there public criticism of either the level or the structure of management remuneration and demands for greater transparency and regulation?
4. **Company disclosure requirements:** are there demands for greater transparency in company reporting, especially on so-called ESG (environmental, social and governance) issues?

By March 2010, we had received information from 21 countries. (From Estonia we received a note saying that none of the questions raised have been the subject of discussion at all.) This information was updated in April 2010.

We provided the SEEUROPE experts with a grid for structuring their research, which also structures this report.

Topic	Specific questions
Worker participation and the position/ activities of trade unions	<ul style="list-style-type: none"> – Is there a debate in your country on worker participation – namely representation in company boardrooms? – Are the trade unions in your country demanding the extension of worker participation? – Are there any new legislative requirements with regard to worker participation due to the crisis? – Is there a discussion in your country about the need for strengthening workers' rights within the framework of company restructuring? If yes, please give details (for example, the French requirement for reaching agreement with the trade unions on the use of government restructuring funds)
Corporate governance	<ul style="list-style-type: none"> – Are there any debates on changing the rules and provisions of the national corporate governance code(s)? If yes, please describe. – Are these changes strengthening the role of stakeholders in corporate governance?
Management remuneration	<ul style="list-style-type: none"> – Is there a debate in your country on the level of management pay and whether it played a role in the crisis (for example, through stock options?) If so, please give details. – Are the trade unions in your country making any demands or recommendations regarding the level of remuneration, its composition (for example, breakdown between variable and fixed pay), and/or disclosure requirements? – Are there any new legislative requirements in your country, or any new requirements in national corporate governance codes?
Disclosure of company information	<ul style="list-style-type: none"> – Is there a debate in your country on more far-reaching disclosure, in particular on environmental, social and governance issues (ESG)? If so, please describe possible demands and agreements resulting from debates. – Has this discussion led to proposals for and consideration of new legislation?

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Worker participation and the position/activities of trade unions

Is there a debate on worker participation in company boardrooms?

Bulgaria

No such debate has yet been launched officially – only at a number of conferences and informal meetings have comments been made and discussions held between the social partners, sometimes also with the participation of government institutions. In Bulgaria, there were some structures of workers' participation in 1986–1989, but they were purely formal. Employers usually do not favour such suggestions, claiming that workers do not have the necessary knowledge. Currently, according to the Companies Act, in some companies (with 50 or more employees), the participation of employees' representative(s) at the shareholders' meetings with a consultative vote is possible. Also, in other companies employees' representatives may attend the meetings of management or administrative boards, during discussions of labour or social issues.

Germany

The financial and economic crisis has led to new thinking on the importance of and reasons for codetermination. On the one hand, many see a special responsibility for codetermination as a corrective to one-sided, short-term shareholder-value behaviour on the part of investors.¹ On the other hand, it is being discussed whether codetermination has sufficient means at its disposal to perform this task.

Nevertheless, currently many politicians are talking up codetermination as one way of meeting the challenges of the crisis. They see the advantages of efficient social dialogue. For that reason, even the conservative-liberal government denies any plans to reform codetermination, although the Liberals (Free Democratic Party – FDP) persistently demanded a scaling back of codetermination from parity to one-third participation during the election campaign and during coalition negotiations with the Christian Democrats (CDU). Chancellor

1. Government Commission on the Modernisation of German Codetermination, Biedenkopfkommission 2006, p. 53f; see also Results of the 'Biedenkopf Commission' – Executive Summary by the Hans-Böckler-Foundation. Available at: http://www.boeckler-boxen.de/files/Zusammenfassung_Biko-Englisch.pdf.

Angela Merkel (CDU) pointed out in her address to Parliament on 10 November 2009: ‘Many countries look up admiringly to our culture of cooperation between employees and employers. Therefore I say very clearly: We will not change codetermination and the industrial relations code.’² Furthermore, Jürgen Rüttgers (CDU), prime minister of the state of North Rhine-Westphalia, said: ‘Codetermination has fundamentally supported many companies in coping with the crisis with the aid of the workers and the trade unions. Hence we must not reduce co-determination.’³ Even Federal President Horst Köhler (CDU) stated: ‘They [co-determination and worker participation] are ... – as convincingly described recently by the government commission led by Kurt Biedenkopf⁴ and established by Gerhard Schröder – a first-rate factor of production and innovation and one of the big advantages of German economic culture.’⁵ Besides, many CEOs cite the importance of codetermination in managing the crisis. For instance, Peter Loescher, CEO of Siemens, recently approved codetermination explicitly: ‘I believe that this crisis proves once more that this is an important competitive advantage in the international context.’

Thus, the **coalition agreement of the new federal government (CDU/FDP)**,⁶ elected in September 2009, does not mention codetermination at all. **However, that does not mean that codetermination is not affected – and at risk.**

The coalition agreement contains some crucial plans with regard to corporate governance that affect codetermination in supervisory boards indirectly, however. They include:

- Discussions on the size of supervisory boards.
- Creation of a plan to increase the proportion of women in supervisory boards.
- Enhancement of the responsibilities of members of the supervisory board.
- Strengthening the right of the annual general meeting with regard to its ‘say on pay’ in relation to top management.
- Further development of legal rules on liability and remuneration for board members (although the law on management remuneration was just reformed in August 2009; see below).
- Support for European plans on the creation of the **European Private Company**. However, due to the opposition of the German government and other countries the latest proposition of the Swedish presidency on this matter failed in December 2009, particularly because of the insufficient protection it afforded to codetermination.

2. Government declaration, delivered in the German federal parliament, 10 November 2009. Available at: www.regierung-online.de.

3. Handelsblatt, 13 October 2009.

4. See: Results of the ‘Biedenkopf Commission’ – Executive Summary by the Hans Böckler Foundation. Available at: http://www.boeckler-boxen.de/files/Zusammenfassung_Biko-Englisch.pdf.

5. Speech on the occasion of the 60th anniversary of the German Trade Union Confederation (DGB), 5 October 2009.

6. Wachstum, Bildung, Zusammenhalt. Koalitionsvertrag zwischen CDU, CSU und FDP, 17. Legislaturperiode. Available at: <http://www.cdu.de/doc/pdfc/091026-koalitionsvertrag-cducusu-fdp.pdf>.

- Creation of an ethical code for works councils.
- Vague commitment to further possibilities regarding workers' financial participation. Current plans are to increase annual tax benefits on employee shares from 360 euros to 2,600 euros.

Hungary

The crisis had an important impact on industrial relations. In addition to financial assistance, the government initiated an employer-friendly modification of labour laws to tackle the economic crisis. Allegedly, the modifications were lobbied for by employers' organisations and have two main aims. The first is the further flexibilisation of working time provisions, which have already been considerably flexibilised in the past few years. The second was to amend the former very strict rules on exclusion from state subsidies (such as active labour market policy measures) and public procurement, due to which companies could not receive state subsidies or take part in public procurement tenders if they committed only relatively minor breaches of labour law.

As far as industrial relations are concerned, according to the trade unions, the modifications of labour law made within the framework of crisis management have had an adverse effect. Whereas flexibility in terms of working time can already be ensured without concluding a collective agreement, employers' willingness to bargain has diminished.

In the automotive industry it has been a definite policy of the Metalworkers' Union (Vasasszakszervezet) to prefer job security to income security. This policy has sometimes met with resistance from the rank and file, but company unions have adopted this policy during local negotiations. Although such concession bargaining has been the prevailing pattern, trade unions have achieved many good compromises, mainly at such companies as Audi or ZF. It is worth noting that consultation practices have improved during the crisis. There are instances of managers and employee representatives meeting regularly to evaluate the situation.

Ireland

Before the requirements for employee involvement were laid down in EU legislation, including EWCs and the information and consultation Directives, employee representatives – known as worker directors – were elected to the boards of public sector companies and agencies, as far back as 1977.

In recent years, however, this representative process has been eroded through the privatisation of a number of state-owned companies, such as Telecom and Aer Lingus, and, more recently, the closure of many government agencies. Moreover, new agencies established by the government in recent years, such as the agency that will take control of the banking sector's toxic loans, NAMA, and the Health Services Executive (HSE), which is the largest employer in Ireland

with some 130,000 employees, do not have employee representation arrangements. The political climate is, therefore, not friendly towards worker participation or, indeed, to workers' rights in general. Nor do the trade unions prioritise worker participation in their dealings with and demands on the government.

The trade unions have influenced national social and economic policies since 1987 via the Social Partnership Agreements. These are a series of national agreements between the trade unions, employers' organisations, farming, community and voluntary organisations and the government on all aspects of economic and social policy (including pay increases). The last of these agreements was entitled 'Towards 2016' (known as T16) which was signed in 2006 and was intended to run for ten years, with a review of pay every two and a half years.

In the aftermath of the global financial and economic crisis, the government has abandoned Social Partnership, ignored proposals for recovery put forward by the social partners and is now in serious conflict with the public sector trade unions over its unilateral decision, in Budget 2010, to cut the incomes of public sector workers.

Within the public sector the unions have adopted disruption tactics, such as bans on overtime, works-to-rule, non-cooperation and so on, which is resulting in major disruption to public services across the country. While talks have been held to resolve the underlying dispute – a restoration of pay levels – the government has repeatedly stated that this is not negotiable, while the unions will not accept anything less. An impasse has been reached and relations are at an all-time low between the trade union movement and the government.

With regard to workers' rights, the National Employment Rights Authority (NERA) was established on an interim basis by the government in February 2007 to meet a commitment in the most recent social partnership agreement, T16. NERA was to be established on a statutory basis in 2008 but this has not yet happened.

NERA aims to secure compliance with employment rights legislation and to foster a culture of compliance through its five main functions:

- Information
- Inspection
- Enforcement
- Prosecution
- Protection of young persons

Italy

Turning to Italy and the Italian trade unions, one must first distinguish between the debate about corporate governance, on the one hand, and the debate about worker participation, on the other.

One could put it this way: there is a debate – sometimes more, sometimes less intense – about worker participation, but with reference to corporate governance.

There has also been a – separate – debate on corporate governance for a long time. In 2003, the Companies Act was fundamentally reformed and since then companies can choose freely between the monistic and dualistic systems. .

So far, only the big banks and a few public service providers have chosen the dualistic system, mainly for opportunistic reasons (that is, they have more posts to distribute in case of company mergers).

The Italian version of the dual system also has other problems, such as the unclear separation between the tasks of the managing board and those of the advisory board, and in particular the latter's president.

Both aspects together have triggered a discussion, to which the trade unions have not made a significant contribution. The trade unions do not have a position and therefore remain silent, observing the debate from the sidelines.

This is also true with regard to the question of 'management remuneration', although this is not such a hot issue as elsewhere. From time to time there is an article or an interview in the newspapers, but there have been no original contributions to the general debate. In short, there is no 'Italian variant' of this debate and also no facts worth reporting.

Conversely, there is a debate on participation which recurs regularly. Why? Because 'participation' has been a buzzword of one of the trade unions, namely CISL. Participation is considered as a means for CISL to assert its identity and to mark its difference from CGIL.

Until 2008, the debate on worker participation remained at the discursive level without making a real impact. Moreover, participation remained limited to 'financial participation' (that is, through shareholding).

Since 2008 this has partly changed, however. Two main reasons explain why things have begun to move:

- First, the representatives of the new Berlusconi government, as well as the head of the post-fascist party, Fini, now President of Parliament, took up the issue. They advocated that cooperative relations in companies should be promoted. Their ideal was the company community.
- The second reason is linked to the recent takeover of Chrysler by Fiat. The Canadian trade unions negotiated that they would receive a block of shares. This also prompted a debate in Italy, at least for a while. If such a deal was accepted (or even called for) by Fiat in Canada, why should it not be good for Italy as well?

The CISL has no problem with this. Their concept of ‘worker participation’ remains unclear, however. They have always put more emphasis on the involvement of workers via share ownership, and they have claimed implicitly – sometimes even explicitly – that the unions should represent the interests of the workers as shareholders. In my view this is a very questionable position.

The CGIL for its part still does not have a clear position or strategy. In a recent interview on the case of Fiat-Chrysler CGIL President Epifani brought up the idea again, along with the codetermination model. He did not add anything concrete, however, nor has anybody else from CGIL.

Since the beginning of the legislative term four bills have been tabled in Parliament regarding ‘participation’, both from the government and representatives of the opposition.

On 20 May 2009, a new proposal was tabled jointly by both sides, which attempts to unite the different ideas in a single document.

However, in Italy, bills have frequently been proposed in Parliament, but remained on the table for the entire legislative term, and nothing happened.

One point is worth mentioning, however: the main issue which has been addressed concerns the holding of shares and not the participation of workers in company decision-making (in other words: participation ‘lite’). Any form of worker participation in the sense of involvement in decision-making is strongly rejected by the employers.

Should these developments become more concrete, and go beyond ritual discussions among the trade unions, there will be a further report to the Network.

Luxembourg

Recent months have been marked by the elections of June 2009 and the new tripartite negotiations (March to April 2010). Government exit strategies concerning the current financial and economic crisis, which has hit most business sectors in the country, have been at the core of political debates, together with a recent tripartite package of cost-cutting and tax increasing reforms. Among the more general consequences of the crisis has been a steady rise in unemployment (5.9 per cent in March 2010 compared to 2.8 per cent in July 2002), an increase in part-time unemployment measures (involving 8,434 employees, with 136 new applications analysed recently by the National Economic Committee), a slowing down of economic growth (from more than 5 per cent between 1985 and 2007 to 0 per cent in 2008), as well as major cases of company or bank restructuring (Duscholux, Villeroy & Bosch, Delphi, Dresdner Bank, Commerzbank, Fidelity and so on). The number of cross-border unemployed has also been on the increase. These developments gave rise to instances of social unrest (for example, Villeroy & Bosch), although in most cases negotiations on redundancy plans managed to avoid a further increase in unemployment.

However, a direct impact on worker participation is inevitable due to the rising number of restructuring cases in a country famous for a culture of strong social cohesion among its heterogeneous population. Thousands of employees gathered in May 2009 for a march through the capital, side by side with the major trade and employee unions. After consultation talks with social partners as part of Luxembourg's traditional tripartite negotiation procedure, in March 2009 the government put forward an ambitious economic stimulus package⁷ to support household consumption, business activity and national competitiveness in general.

It is therefore not surprising that the economic and social repercussions of the crisis have dictated both the elections and the post-electoral coalition negotiations. The post-electoral debate did not specifically touch upon the issue of worker participation as a single, prioritised item, which was publically debated. Discussions focused rather on the future of Luxembourg's social model with its consensus-seeking tripartite mechanism, the financial burden of social spending and how to find or invest in new economic sectors if growth, stemming from the monolithic financial sector, should diminish in the future.

However, in its government programme 2009–2014, the Christian-conservative/Socialist government pointed to an assessment and modernisation of the current legislation on worker participation (that is, of workers' councils). A draft project has been submitted to the Economic and Social Council (Conseil économique et social), whose assessment will form the basis for the final draft bill.

Among the package of measures, the following are of particular importance and touch more globally on worker participation:

- As regards part-time employment as a tool to counter the crisis, working time is reduced at company level and grants may be allocated to companies which, rather than have recourse to redundancies and contribute to an increase in the unemployment rate, try to keep employees in work and pay compensation. For 2009 and 2010, the government economic stimulus package put forward an extension of the reimbursement system of part-time unemployment by modifying the existing law if the company has concluded a job retention plan with staff representatives. If employees affected by a measure of part-time unemployment participate in tailor-made training measures – offered mostly by the new Chamber of Wage Earners (Chambre des salariés) during their time in a partial unemployment measure – the rate of wage compensation increases from 80 per cent to 90 per cent, up to a ceiling of 250 per cent of the current minimum wage. The government coalition programme also underlined that the current 'maintien dans l'emploi' legislation is going to be evaluated and, if necessary, adapted to future economic developments.

7. Plan de conjuncture. Available at: www.gouvernement.lu/salle_presse/actualite/2009/03-mars/06-plan/plan-soutien.pdf

- The Christian-conservative/Socialist government further introduced the ‘contract d’initiation à l’emploi – expérience pratique, CIE-expérience pratique’ to reduce the number of those at risk of becoming unemployed despite holding a higher education degree.⁸

Only the Chamber of Wage Earners called strongly for revision of the existing legislation on worker participation. In its assessment of May 2009 on the transposition of Directive 2005/56/EC on cross-border mergers of limited liability companies into national law,⁹ the Chamber emphasised that ‘the national legal framework dealing with worker participation in companies dates to a large extent from the 1970s and is not necessarily adapted to current developments in the labour market’. The Chamber therefore put forward an amendment to the 1915 company law legislation through the addition of an article stipulating that ‘lorsque la société réceptrice du patrimoine issu de la scission transfrontalière de sociétés telle que prévue par les articles 287, paragraphe 1 et 288, paragraphe 1 de la loi modifiée du 10 août 1915 concernant les sociétés commerciales, est une société de droit luxembourgeois régie par un régime de participation des travailleurs conformément aux articles L. 426-13 et L. 426-14 du Code du travail, celle-ci prend obligatoirement la forme d’une société anonyme’.¹⁰ However, this amendment has not been incorporated into the final bill.

The recent tripartite talks (March–April) should have led to consensus-based guidelines for government action at national level to counter the crisis. Negotiations centred on public finances, competitiveness and employment. As no consensus between the government and the social partners could be reached (with the two major trade unions opposed to tax increases and to a modification of the current index system), it is now up to the government to get the cost-cutting package (including an increase in the solidarity tax and a new ‘crisis tax’ on incomes) through parliament.

Among the taxes, an upper limit on the tax deductibility of management pay is expected to be introduced. The discussion is still ongoing. Although the issue of worker participation has again not been on the agenda as a topic, the two major trade unions OGB-L (independent union) and LCGB (Christian union) underlined the importance of reform of the codetermination law. The first noted in their proposal to the tripartite negotiations that it is vital to ‘strengthen legislation for employees in enterprises to ensure that the survival and proper functioning of the company prevails over the short-term interests

8. Projet de loi 1. concernant certaines mesures temporaires visant à atténuer les effets de la crise économique sur l’emploi des jeunes; 2. modifiant certaines dispositions du Code du travail. Available at: www.chd.lu

9. www.csl.lu

10. ‘When the company receiving the assets from cross-border companies such as stipulated by article 287, paragraph 1 and 288, paragraph 1 of the amended law of 10 August 1915 on commercial companies, is a Luxembourg company governed by a system of worker participation in accordance with Articles L. 426-13 and L. 426-14 of the Labour Code, it necessarily takes the form of a limited company.’

of shareholders and managers'.¹¹ The LCGB highlighted its vision of modern workers' participation in a booklet entitled 'La démocratisation du monde de travail: un engagement pour une gestion moderne des salariés'.¹²

Transposition of Council Directive 2003/72/EC of 22 July 2003 on the Statute for a European Cooperative Society

Directive 2003/72/EC was implemented at the national level by a bill passed in Luxembourg's House of Representatives in March 2009.¹³ The law introduced a new Title (Title V) into the existing Labour Code ('Code du travail'), comprising Articles 451-1 to 454-11. The initial text of the draft bill was supplemented by a single parliamentary amendment, adopted in November 2008: as regards the information and consultation procedure, the House of Representatives adopted an amendment underlining that, in the event of a refusal of information, the National Conciliation Office (Office national de conciliation) can be called on to intervene.¹⁴

Transposition of Directive 2005/56/EC on cross-border mergers of limited liability companies

Despite the fact that parts of Directive 2005/56/EC have already been transposed by a 2007 law¹⁵ and that cross-border mergers can take place according to existing law, Directive 2005/56/EC was transposed into national law in its entirety in June 2009.¹⁶ Approved by the House of Representatives on 10 June 2009 and entering into force on 3 July 2009, the law adds a series of amendments to the 1915 law on commercial companies¹⁷ with the aim of introducing more flexibility as regards the management of commercial companies' capital.

11. www.ogbl.lu

12. www.lcgb.lu

13. Loi du 18 mars 2009 portant 1. transposition de la directive 2003/72/CE du Conseil du 22 juillet 2003 complétant le statut de la société coopérative européenne pour ce qui concerne l'implication des travailleurs; 2. modification du Code du travail.

14. Art. L.454-3. (4) of the Labour Code: 'En cas de contestation du refus de communication une des parties ou les deux conjointement peut saisir l'Office national de conciliation ...'

15. Loi du 23 mars 2007 modifiant 1. la loi modifiée du 10 août 1915 concernant les sociétés commerciales, 2. la loi du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et modifiant certaines autres dispositions légales, et 3. la loi du 25 août 2006 concernant la société européenne (SE), la société anonyme à directoire et conseil de surveillance et la société anonyme unipersonnelle.

16. Loi du 10 juin 2009 relative aux fusions transfrontalières de sociétés de capitaux, à la simplification des modalités de constitution des sociétés anonymes et de maintien et de modification de leur capital, portant transposition: – de la directive 2005/56/CE du Parlement européen et du Conseil du 26 octobre 2005 sur les fusions transfrontalières des sociétés de capitaux; – de la directive 2006/68/CE du Parlement européen et du Conseil du 6 septembre 2006 modifiant la directive 77/91/CEE du Conseil en ce qui concerne la constitution de la société anonyme ainsi que le maintien et les modifications de son capital; – de la directive 2007/63/CE du Parlement européen et du Conseil du 13 novembre 2007 modifiant les directives 78/855/CEE et 82/891/CEE du Conseil pour ce qui est de l'exigence d'un rapport d'expert indépendant à réaliser à l'occasion des fusions ou des scissions des sociétés anonymes, ainsi que modification – de la loi modifiée du 10 août 1915 concernant les sociétés commerciales, et – du Code du travail.

17. Loi du 10 août 1915 concernant les sociétés commerciales

This is one of the reasons why the State Council (Conseil d'état) in its assessment¹⁸ of the draft bill remarked that the transposition of this directive should be analysed in tandem with a draft bill that was introduced in 2007 and that is currently still stuck in the legislative procedure on the modernisation of the 1915 company law, especially with regard to aspects of better regulation introduced by the new law.

Two elements of the law are worth highlighting: first, a previous requirement, in the case of contributions in kind to the capital of public limited companies and capital stock, that an auditor's report be submitted, has been amended and the law now requires that such reports are unnecessary in the case of contributions of transferable securities and money market instruments traded on a regulated market and evaluated by an auditor. The law has further introduced a section 4 into the Labour Code, dealing with the participation of employees in the case of cross-border mergers, thus replacing Chapter VI of Title II and comprising articles L.426-13 to L.426-16.¹⁹

In addition to remarks by the Chamber of Wage Earners on the general need for a better legal framework for worker participation, the Chamber of Trade (Chambre de Commerce) underlined that the law would impact positively upon Luxembourg's competitiveness, the financial burden on companies and better regulation in general, which is to be considered as one of the fundamental policy objectives of the new government.

Malta

The worker participation schemes introduced as part of the decolonisation strategy in the 1970s were not backed by a legal framework to govern their operations. This lack of a statutory provision proved to be their most vulnerable point as they could easily be abolished at the whim of the relevant policy-maker. This is in fact what has happened during the past six years. In the few instances where these schemes were governed by legal provisions, such as the post of worker director in Maltacom (provider of telephone and other communication services), they were dismantled either following takeover by private firms in the government's privatisation drive or, as in the case of Enemalta (generation, delivery of electricity and distribution of fuel) by amendments to the law to abolish this post. Where a legal provision was lacking they were abolished by ministerial decision.

The financial crisis has put the Maltese trade union movement more on the defensive than on the offensive. Having become increasingly concerned about bread-and-butter issues they tend to perceive such procedural issues as em-

18. Available at: <http://www.conseil-etat.public.lu/fr/avis/index.html>

19. Art. L.426-16: 'Toute société issue d'une fusion transfrontalière qui est régie selon un régime de participation des salariés est tenue de prendre les mesures nécessaires pour assurer que les droits en matière de participation des salariés soient protégés en cas de fusion nationale ultérieure pendant un délai de trois ans après la fusion transfrontalière.'

ployee board-level representation as peripheral. It must be borne in mind that Malta is a micro island sovereign state whose economy depends heavily on exports generated by a clutch of foreign-based enterprises. Practically all the major manufacturing firms are subsidiaries or branches of MNCs, which are constantly seeking to relocate their operations to places with lower unit labour costs and where there are less of what they refer to as 'rigidities' in the labour market. This vulnerability of the Maltese economy tends to restrict the trade unions' room to manoeuvre.

This still makes it difficult to explain their feeble protests at and sometimes even their tacit approval of the abolition of the post of worker director in state-owned or run enterprises. In the case of GO, a private telecommunication company set up in the privatisation process of Maltacom, the post of worker director was abolished following an agreement signed between management and the trade union.

In the case of the abolition of the post of worker director at the Bank of Valletta (where the government holds the majority of shares) there was a reaction from the General Workers Union (GWU), Malta's largest union, representing about 50 per cent of unionised workers, but tacit approval from the Confederation of Malta Trade Unions (CMTU). A spokesperson for the Ministry of Finance, under whose portfolio the operations of the bank fall, was quoted as saying that, due to the global financial crisis, the government felt the need to strengthen its own representativeness on the board in order to safeguard 'the overarching needs of the bank'.

The issue of worker participation shows Malta's ambivalence towards reform. Although a shift has been made overall from the Anglo-Saxon system of industrial relations to the European model through the transposition of the EU Labour Directives, in the specific case of worker participation the change has been in the reverse direction. The financial crisis in Malta was used as a pretext to abolish the post of worker director. The existing practices of worker participation were dismantled rather than consolidated, even though workers' councils were introduced in two firms, Air Malta and GO, to replace the worker director.

The Netherlands

The crisis has had a major impact on the Dutch banking system, which is relatively large compared to many other EU countries. Not long before the outbreak of the crisis, a consortium of Fortis, Banco Santander and Royal Bank of Scotland had taken over ABNAMRO. After the outbreak of the crisis, the debts that especially Fortis had incurred to finance the takeover appeared to cause major problems, finally resulting in the splitting up of Fortis and the nationalisation of the Dutch part (including ABNAMRO). Several other banks (for example, ING) and insurance companies (for example, Aegon) received state support in order to survive. In October 2009, the relatively small bank DSB went bankrupt.

Production and GDP fell, but unemployment is still relatively low (around 5 per cent in November 2009).

To cope with the crisis, the government has introduced a part-time unemployment arrangement. If firms apply for this arrangement for 20 employees or more, they must consult the unions (and in the absence of unions, the works council).

There is at present no major debate on EBLR, or employee involvement through works councils, in the Netherlands. The Ministry of Social Affairs and Employment is preparing a discussion paper on the future of worker participation, but one may doubt whether this will result in any big changes. The present government view is that worker participation rights are strong enough (certainly in comparison to most other EU countries), and that workers might gain by making better use of existing rights.

There is some debate on the question of whether shareholder rights have been strengthened too much in the recent past (especially since 2004). In early 2008, the tripartite Social and Economic Council (SER) issued advice to restore the balance between the different stakeholders in companies. Partly following this advice, the government has issued a bill to make it somewhat harder for activist shareholders (hedge funds and some private equity firms) to influence company policy.

As elsewhere and at the EU level, the unions have argued that the crisis has made it crystal clear that the shareholder-value approach and the bonus culture lead to disaster, and that the stakeholder model should be restored and strengthened.

Since spring 2009, the main issue for the trade unions has been the government plans to raise the retirement age from 65 to 67 in the coming years.

Poland

The measures intended to combat the crisis in Poland were discussed by the Tripartite Commission for Social and Economic Affairs. The social partners – representative trade unions and employers' organisations – proposed an Anti-crisis Package. This list of necessary measures contained, among other things, the demand that the so-called 'social packages' (agreements signed by the trade unions of state-owned enterprises with investors on guarantees of employment, dismissal compensation for employees and so on) form a basis for labour law, which would allow their direct application before the courts by the employees. The change of the legal status of the social packages would increase the role of trade unions in restructuring. This demand has not yet been met.

Moreover, the social partners have also asked the government to repeal the legislation which establishes remuneration limits for the managers of state-

owned enterprises and companies with more than a 50 per cent state shareholding (Ustawa o wynagrodzeniu osób kierujących niektórymi podmiotami prawnymi of 3 March 2000, JO 26.306.2000). This concerns several hundred companies. The elimination of remuneration limits in this sector (six times the national average wage in Poland) would make it easier, according to employers' organisations, to select the most talented managers in the period of crisis.

As a result of the Anti-crisis Package, the Law on diminishing the effects of the economic crisis on employees and entrepreneurs (Ustawa z dnia 1 lipca 2009 o łagodzeniu skutków kryzysu ekonomicznego dla pracowników i przedsiębiorców, JO 09.125.1035) was promulgated. Among other things, this law allows for extending the settlement period in individual employment relations to 12 months due to objective, technical reasons or working time organisation, as well as establishing individual working timetables (Article 9 and 10 of the Law). These measures may be decided upon in collective agreements or in the agreements signed with trade unions or, in their absence, with other worker representatives.

Similarly, the reduction of working time (no more than half of full-time), with the simultaneous proportional decrease in remuneration for a period of six months at establishments suffering from temporary financial difficulties may be co-decided in the collective agreement or an agreement signed with trade unions or, alternatively, with other employees' representatives (Article 12). As may be seen from this brief presentation the above cited Law increases the competencies of trade unions or, in their absence, those of employees' representatives in decisions concerning the modification of work organisation. The Anti-crisis Package does not contain demands on worker participation, including board membership.

On 19 January 2010, the government presented²⁰ its draft law on the principles governing the exercise of certain competencies by the Treasury. This Law is aimed at consolidating the rules governing the operations of formerly state-owned companies. Article 135 of the draft law repeals the Law on commercialisation and privatisation of 1996, which was promulgated during a period of massive transformation of state enterprises into privately-owned companies.

In relation to the board-level participation of employees in privatised companies the draft law introduces important changes, the result of which is to weaken the position of employee representatives on boards.

- First, the supervisory board of privatised companies would no longer be required to number five members (composition would be more flexible, ranging from three to five); in supervisory boards with fewer than four members only employees would have the right to elect an

²⁰ Available at: <http://bip.msp.gov.pl>. The draft law was submitted for debate by the standing committee of the Council of Ministers.

interest representative (at present also additional representatives for fishermen, in the relevant companies) (Article 28 (1) and (2)).

- An explicit provision in the draft law that the failure to elect an employee representative to the supervisory board or to the management board shall not be an obstacle to registering the company in the company register (Article 28 (7) and Article 24 (4) of the draft law, respectively).
- Introduction of the right to dismiss employee supervisory board members by the general shareholders' meeting at any time (at present there is no such possibility) (Article 28 (6) of the draft law).
- Candidates for membership of supervisory boards, employees' representatives included, would be required to confirm their competency by examination before the state commission (Article 29 (3) of the draft law). However, privatised companies would be obliged to cover the costs of such examinations for employee candidates to the first supervisory board (Article 31 (7) of the draft law).
- The general shareholders' meeting may dismiss the employee member of the supervisory board if they act in a way contrary to their duties as board members or arouse suspicion regarding partiality or the existence of personal interests (as an example the draft law cites being elected to a position in the establishment-level trade union – Article 32 (4) and (5) of the draft law). It should also be noted that, at present, functions in the establishment-level trade union organisation are not compatible with membership of the supervisory board.

Portugal

Transposition of Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees

The transposition of Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, approved by the Portuguese Parliament on 17 July 2007, was published as Law no. 8/2008 of 18 February 2008, and came into force on 23 February 2008.

Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies

Finally, after receiving a reasoned opinion from the European Commission (second stage in the infringement procedure for failure to transpose directives within the prescribed period), Portugal transposed Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.

The transposition was realised through Law no. 19/2009, approved on 19 March 2009 and published on 12 May 2009, which came into force on 11 June 2009.

Besides the 10th Directive, it also transposed into Portuguese law Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of the merger or division of public limited liability companies.

The law is structured in three chapters. The first contains object and scope, as well as general definitions. The second regulates labour participation. The last introduces the necessary amendments to the Portuguese Companies Act and the Company Registry Act.

Companies Act

As to the Companies Act, the prescriptions related to the 10th Directive are implemented in the Portuguese Companies Act (CSC) as a new section entitled 'cross-border mergers' in Article 117 A–L. The regulation of national mergers in Articles 97 to 117 applies to subsidiaries, especially with regard to the process of deliberation, the protection of creditors' and workers' rights.

Article 117-A CSC defines a cross-border merger as the unification of two or more companies, one of them having its registered office in Portugal and another being formed in accordance with the law of a member state and having its registered office, central administration or principal place of business within the Community.

Ordinary partnerships and limited partnerships are excluded, so the special regulation on cross-border mergers applies only to mergers of public limited companies, private limited companies and partnerships limited by shares.

Among other things, the common draft terms of cross-border merger shall include, where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the company resulting from the cross-border merger are determined (Article 117-C lit. e)), as well as the likely repercussions of the cross-border merger with regard to employment (Article 117-C lit. d)).

Control of the legality of cross-border mergers is incumbent on the company registry service (Article 117-G para 1), and consists of two procedures:

As a first measure, at the request of each participating company with their registered office in Portugal, the service issues a pre-merger certificate to confirm its compliance with all acts and formalities previous to the merger (Article 117-G para 2 lit. a)).

Later, during the registration of companies with a registered office in Portugal, the authority scrutinises the legality of the cross-border merger, in particular to ensure that the merging companies have approved the common draft terms of the cross-border merger in the same terms and, where appropriate, that arrangements for employee participation have been determined (Article 117-G para 4).

It is interesting that, also in respect of the national merger rules, the workers' position has been strengthened. For example, if there are no creditors, the workers have the right to consult and receive the merger documents (Article 101 para 1). Worker's representatives may even issue an opinion on the draft terms, which must be attached to the report of the corporate bodies and experts (Article 101 para 2).

Worker participation

With regard to the provisions on worker participation, in general for the company resulting from the merger with its registered office in Portugal, the national regime of worker participation shall apply (Article 3 para 1 of Law no. 19/2009).

However, Article 3 para 2 of Law no. 19/2009 states an exception:

The national regime of labour participation shall not apply where at least one of the merging companies has, in the six months before the publication of the draft terms of the cross-border merger, an average number of employees that exceeds 500 and is operating under an employee participation system (Article 3 para 2 of Law no. 19/2009 lit. a), or where Portuguese law does not provide the same level of employee participation as in the relevant merging companies, or provide for employees of establishments of the company resulting from the cross-border merger that are situated in other Member States the same entitlement to participation rights as is enjoyed by those employees employed in the Member State where the company has its registered office (Article 3 para 2 of Law no. 19/2009 lit. b).

In this case, the regime is to be determined according to Articles 4 to 14 of Law no. 19/2009, whereas Articles 4 to 11 regulate the constitution, composition and functioning of the SNB, as well as other aspects of the negotiation process, while Articles 12 to 14 deal with the possible failure of negotiations and the establishment of the regime of participation under the standard rules.

Articles 15 to 17 of Law no. 19/2009 lay down general rules for the allocation of seats, the designation or election of members to the supervisory board or the board of directors, and their legal position.

Article 18 of Law no. 19/2009 establishes the obligations of participating companies with regard to the financial resources and materials of the SNB, while Article 19 refers to the Labour Code with regard to the provision of information to the members of the SNB and questions of confidentiality.

Articles 20 to 24 of Law no. 19/2009 contain provisions of a national character, applicable to companies, subsidiaries and establishments situated on Portuguese territory, with regard to members of the SNB and the supervisory board or the board of directors, protection of workers' representatives and subsequent mergers.

Articles 26 and 27 of Law no. 19/2009, finally, lay down provisions concerning fines in case of violations of legal obligations.

Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

Portugal has already transposed Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. The respective law, Law no. 96/2009, was approved on 23 July 2009, published on 3 September 2009 and will enter into force on 2 November 2009.

Romania

Implementation of the Directives

- Law 217/2005, as amended by OG 48/2006, transposes Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.
- The new Directive on EWCs (2009) has not yet been transposed into Romanian law.
- Law 467/2006 transposes the Directive of the European Parliament and of the Council 2002/14/EC establishing a general framework for informing and consulting employees in the European Community.

The current law lays down the framework for minimum standards with regard to workers' rights to be informed and consulted.

Workers' representatives (persons representing the trade unions, or, if no trade unions exist, the persons elected and granted the power to represent the workers, as stated by the law) have rights to:

- information – data and other details made available by the employer to workers' representatives to enable them to familiarise themselves with the topic of discussion and to address it with adequate knowledge;
- consultation – exchange of views and subsequent dialogue between the employer and workers' representatives.

The current law is applicable to Romanian companies with their headquarters in Romania and employing at least 20 workers.

The current law transposes the European Parliament and Council Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community. Regulation no. 187/2007, published on 20 February 2007, establishes the procedures for informing, consulting and involving employees in other ways in the activities of SEs. The current legislation establishes regulations for informing, consulting, participation and other mechanisms for involving the employees in the activities of a European Company (SE) set up according to Council Regulation no. 2157/2001 on the statute for a European Company (SE).

Members of the special negotiating body

In Romania, members of the special negotiating body are designated by legally established trade unions. If no such trade unions exist, the members of the special negotiating body are designated by employees' representatives or by a vote of the majority of the Romanian employees of the SE, if no such representatives have been designated.

Employees will be allotted a seat for every 10 per cent or fraction of thereof, out of the total number of employees of participating companies, their subsidiaries, branches or other secondary headquarters of the SE in all the member states of the European Union or belonging to the European Economic Area.

Fallback provisions (applicable in case no agreement is concluded):

- the representative body shall comprise employees of the SE and their subsidiaries, branches or other secondary headquarters of the SE, elected or nominated among their members by trade unions or, if no trade unions exist, by employees' representatives or, if no such representatives exist, by all the employees;
- the members of the representative body shall be elected or nominated by trade unions or employees' representatives, according to the procedure they themselves have laid down for the SE and its subsidiaries, branches or secondary headquarters;
- if the number of members is large enough and it is demanded, the representative body shall elect three of its members – at most – to a 'select committee';
- the representative body shall draft and adopt its own statutes;
- the members of the representative body shall be elected or nominated in proportion to the total number of employees in each member state by participating companies and their subsidiaries and branches or other secondary headquarters. Each member state is allotted a seat for every 10 per cent of the workforce or fraction of thereof, calculated on the basis of the number of employees of participating companies, including subsidiaries, branches or other secondary headquarters in all member states.

Participation

Employees' representative bodies or employees' representatives may influence the activities of companies by exercising their right:

- to elect or nominate members of the administrative or supervisory board, or
- to issue recommendations.

The current regulation transposes Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees .

- Emergency Ordinance no. 52, issued by the Romanian government on 30 April 2008 amends both Law 31/1990 on companies and Law 26/1990 on the Company Register, introducing two new concepts from EU legislation, namely the European Company and cross-border mergers.

Emergency Ordinance no. 52 modifies the Companies Act and includes provisions on European companies and their applicability in Romania. This topic is tackled separately under Part VII of the Companies Act. While SEs with headquarters in Romania are subject to Council Regulation 2157/2001, Emergency Ordinance no. 52 stipulates the ways in which an SE may operate within the Romanian legal framework. SEs registered in Romania may transfer their headquarters to any other member state by means of a transfer plan which must be approved by the Company Register. The transfer plan must also be published in the Romanian Official Gazette so that all interested persons may have access to it.

When mergers are debated, companies need to take into account any ways in which this may impact on the employees and find ways for them to be represented within the company's decision-making bodies. Consequently, the merging or new company must develop ways of protecting the employees and of including them in decision-making, according to Directive 2001/86/EC and any relevant national provisions. Such mechanisms of employee involvement may include information and consultation.

Slovakia

The economic crisis has had a national impact, especially on manufacturing companies, due to the fall in demand.

The government has adopted measures to help both employers and employees weather the storm, hoping that the situation is only temporary.

In the first quarter of 2009 the Parliament passed an amendment of the Labour Code. The rules shall apply for a definite period, from 1 March 2009 to 31 December 2012, by which time, it is believed, the crisis may be over.

The amendment states: *‘If the worker cannot perform his or her work due to serious operational reasons between 1 March 2009 and 31 December 2012, the employer may, after reaching agreement with the trade union, lay the worker off. During this period the worker is entitled to his or her basic salary.*

When the obstacles to production no longer exist, workers shall work off the time they were laid off and without payment, which they already received for the period of the lay-off. What’s more, the employer can always reach agreement with the trade union organisation on more favourable conditions.

The hours worked by employees working off the time they were laid off shall not be considered overtime. At the same time, the layoff period is considered to be a period of work.

The employer is obliged to keep detailed records of time worked and time laid off.

This measure, known as a ‘flexi-account’, was adopted on the demand of several powerful companies in Slovakia, including Volkswagen.

As a ‘flexi-account’ can be agreed only with the trade union (that is, not with a works council), companies in which trade unions are active have a considerable advantage.

Spain

There is no general right to employee board-level representation in Spain in either the public or the private sector and there is no tradition of employee involvement at board level. There are a small number of union representatives on the boards of some public and recently privatised companies and employees also have rights to be represented in regional savings banks (*cajas de ahorro*). The latter are stakeholder organisations with regional and local governments, independent experts and political and social organisations represented on the management board. They are explicitly tasked with developing social and cultural activities for the benefit of society.

The current financial and real estate crisis, however, is threatening this traditional structure of regional savings banks and putting them under pressure to merge and convert into ordinary financial institutions. Several of these banks are suffering from the real estate downturn and the high number of bad mortgage loans. They now have large portfolios of flats and houses but are suffering from liquidity problems. Liberal and conservative groups, encouraged by the private banking sector, are taking advantage of this situation and trying to undermine the traditional participatory stakeholder structure of these savings banks. The public fund for the restructuring of the banking sector (Fondo de Reestructuración Ordenada Bancaria – FROB) – established to organise the restructuring of the sector in the financial crisis – and the government are or-

ganising mergers of the regional savings banks which may bolster their capital but undermine their regional links and social networks.

The outcome of this process, still in its initial phase and characterised by complex multilateral bargaining processes, remains to be seen, but there is a serious threat that one of the few exceptions with regard to worker board-level representation in Spain will be eliminated.

In the following countries, there is currently no debate on worker participation:

Greece

At the general election in October 2009 a new PASOK socialist government took over from the centre-right New Democracy government. In the election debates, worker participation was not an issue. However, both before and after there has been minor criticism of the conduct of union representatives sitting on the boards of semi-public companies. This is partly a matter of accountability.

Sweden

In Sweden there is no debate on the link between worker participation and corporate governance. Consequently, there are no demands for extending worker participation within the framework of corporate governance. Nor are there any legislative requirements for worker participation due to the crisis or any discussion about the need to strengthen workers' rights in restructuring processes.

Switzerland

In Switzerland, there is no new debate on worker representation in company boardrooms. However, there is a discussion on how to strengthen workers' and unions' rights in case of restructuring, mergers and acquisitions.

United Kingdom

While there is a vigorous debate in the UK on the issue of management remuneration, particularly in banks and financial institutions (see below), there is almost no discussion on employee participation at board level.

The issue of greater employee influence over directors' remuneration was raised in a report by a House of Commons Committee in May 2009. It stated that 'remuneration committees [the bodies that effectively set directors' pay in large companies] would also benefit from having a wider range of inputs

from interested stakeholders – such as employees or their representatives and shareholders’ (*Banking crisis: reforming corporate governance and pay in the City*; House of Commons HC 519). However, this recommendation has not been taken up in the public debate.

Looking specifically at the issue of employee representation at board level, the Walker Review,²¹ which was set up by the then government to look into corporate governance in UK banks and other financial institutions, examined the issue of extending the statutory responsibility of boards beyond the current position, which is that they have a primary duty to shareholders. The review referred specifically to suggestions made in the consultation process, which proposed ‘raising the priority to be accorded to employees’ and other groups, such as depositors or tax payers. However, in its final recommendations the Walker Review concluded that this would be the wrong approach. Specifically, it stated that ‘broadening the range of board responsibilities and, to take one suggestion, statutory provision for addition to the board of a representative of a particular stakeholder interest (such as that of employees or of minority shareholders) would distract and dilute the ability of NEDs [non-executive directors] to concentrate in the boardroom on the most important strategic matters’.

The Walker Review also looked at the possibility of introducing two-tier boards, although it pointed out that there is currently nothing to stop UK companies adopting them. However, it concluded that such boards offer no advantages. ‘The two-tier model did not in general yield better outcomes than unitary boards in the period before the recent crisis phase and recent experience, in particular in Germany, Switzerland and the Benelux makes no persuasive case for departing from the UK unitary model’.

There was no debate in **Austria, Cyprus and Sweden**.

Trade union demands to extend worker participation

Bulgaria

With regard to boardroom representation, CITUB representatives initiated discussion of this issue in the late 1990s, but it was postponed until the economic situation had improved. The trade unions would prefer to extend board representation, but with their full involvement. Currently, this issue is not under debate, probably because the implementation of workplace information and consultation is still experiencing difficulties.

21. The Walker Review, led by leading City figure Sir David Walker, has been the main mechanism used by the UK government to examine corporate governance in the UK banking industry following the financial crisis. It began its work in February 2009, published interim recommendations as a consultation document in July 2009 and issued its final report in November 2009.

Cyprus

Attitudes to the issue are generally positive, but it is not a priority. It has come to the fore only on an ad hoc basis. For instance, there was a debate on whether the MPB group, which is based in Cyprus, should relocate to Athens. In Cyprus, there is an employee representative on the board, and one of the minor issues in the debate concerned whether relocation might change this. The presence of an employee representative on the board is not a legal obligation, but a voluntary management concession. At the end of the day, MPB decided not to move to Athens.

France

The CGT and the CFE-CGC, the two union confederations which provide the majority of employee board representatives in France and who also most actively coordinate the work of their board-level representatives – ‘administrateurs salariés’ – have reiterated their demands to generalise board-level representation beyond its present legal obligations (public and privatised companies). In a document presented in January 2009, the CFC-CGC coordination group ‘Cercle des administrateurs salariés CFE-CGC’, proposed that public listed companies should either voluntarily accept employee representatives or should explain why they reject them (‘comply or explain’). This proposal was initially formulated by the French Institute of Board-level Representatives IFA (Institut Français des Administrateurs), an independent association of board-level representatives of all kinds whose aim is to organise training seminars and to influence the public debate. Unlike most other French union confederations, the CFE-CGC also advocates financial participation in order to stabilise shareholder structure and to prevent hostile takeovers.

Germany

The trade unions support some of the general plans – for example, they support more women on boards. Furthermore, the German Trade Union Confederation (DGB) supports **workers’ financial participation**, as long as it represents a supplement to wages, not a substitute. During crisis periods, such participation must not be without fair compensation in terms of rights of ownership and participation (for example, Schaeffler KG and former plans for Opel to be owned by Magna).

But the German trade unions are strongly opposed to expected plans to **reduce the size of supervisory boards**. They claim that the efficiency of supervisory boards does not depend on size but on organisation. They also underline the importance of the participation of different stakeholder groups in the decisions of supervisory boards. This allows different views to be taken into account. Furthermore, supervisory boards are not as large as is often suggested: 67 per cent of supervisory boards with parity representation have 12 members.

The unions support efforts to improve **qualifications and the professionalisation** of supervisory boards by training. But they are sceptical with regard to legally binding provisions dictating specific qualifications.²² They stress the essential importance of the specific internal knowledge and experience of employee representatives on supervisory boards, as well as the importance of not restricting the democratic election of employee representatives.

Furthermore, the unions criticise demands to strengthen the **annual general meeting** compared to the supervisory board in general and in particular with regard to management board remuneration. Together with the appointment of the managing director, the latter remains the sole responsibility of the supervisory board. Therefore the situation is not comparable to monistic systems with a single board (see below, Section II).

The trade unions have criticised the comparison of a Management Code of Corporate Governance to an ethical code for works councils and oppose the idea of the latter. They say there is no need for such a thing because all the relevant rules are already codified in law and because works council membership is on a voluntary basis.

The trade unions demand the further development of codetermination and of company law to **strengthen codetermination**. They stress that codetermination is one way of supporting a long-term orientation on the part of management and demand further employee rights. In their view, codetermination especially is to be strengthened in the case of **restructuring** and with regard to takeovers, investment and the choice of production locations.

Specific **trade union demands include:**

- Extension of codetermination and the responsibilities of the supervisory board to cover further fundamental corporate decisions by the creation of a binding minimum standard list of such decisions (for example, acquisitions and corporate sales, construction or closure of production locations).
- Extension of codetermination to companies established on the basis of foreign legal forms in Germany.
- Lowering of the threshold for parity on the supervisory board.
- Strengthening sustainability within corporate governance.
- Clarification of the pluralistic stakeholder approach with regard to the interests of the enterprise and the directors' duties by a new definition in the German Companies Act (so far, clarification was achieved only in the German Corporate Governance Code 2009).

²² For example, the Law on strengthening the supervision of financial markets and insurance for the boards of banks and insurances, which came into force in August 2009.

- Further employee rights in the case of takeovers: for example, further consultation rights when selecting a buyer and information rights for employees with regard to new investors.²³

Greece

Demand for more influence in policy-making in the current crisis exists only at sectoral or plant level, but not at national level.

Switzerland

The Swiss TUC (SGB/USS) recently demanded the following improvements:

1. In the case of mass redundancies, restructuring and so on, workers must be informed and consulted, but the wording of the law is rather vague. SGB/USS demands a better definition of consultation in order to improve the ability of workers' representatives to influence management decisions. Moreover, the sanctions for companies that fail to consult or do so inadequately are weak and must be tightened.
2. The obligation to negotiate a social compensation plan in the case of collective redundancies, restructuring and so on, does not exist in Swiss labour law (only in some collective agreements). SGB/USS demands that employers be obliged to negotiate such plans with worker representatives and trade unions.
3. In situations of economic crisis the position of worker representatives and their bodies comes under pressure. There have been particular cases in which worker representatives or union members were dismissed because of their – legal – activities. In November 2007, the ILO declared that the protection of worker representatives in Switzerland is not adequate. SGB/USS demands corresponding improvements in labour law.

Slovakia

After the amendment of the Labour Code, the Trade Union Confederation adopted a nine-measure proposal to help reduce the impact of the crisis. It was submitted to the Committee for Economic Crises at the Ministry of the Economy.

As far as the Labour Code is concerned, the Confederation declared that it was adequate as it is and did not want further amendments.

23. Following the new (but weak) right of the finance committee and works councils with regard to information in the case of a change of control (30 per cent) in unlisted companies, established by the Risk Limitation Act in 2008.

Two points were accepted by the Committee:

- creating favourable conditions to help increase demand for goods by investing in infrastructure, especially highways, social housing for workers and thermal insulation;
- negotiating with the banks to adopt measures more favourable to debtors who become insolvent due to job loss or salary decrease and cannot pay their mortgages. This also concerns the provision of better conditions for small enterprises or entrepreneurs to take out loans required to continue operations.

A proposal to lower VAT on basic food items was rejected. Other suggestions were passed to the Ministry of Labour, Social and Family Affairs for further consideration (including extended entitlement to social benefits in the case of unemployment and various issues concerning pension contributions).

United Kingdom

The trade unions in the UK are not calling for the extension of worker participation in terms of board-level representation. At the 2009 annual Congress of the TUC, a motion was passed on reforming the financial and banking systems. However, while it called for ‘banks to have public interest representatives on their main boards’, it did not call for them to have employee representatives. In its submission to the Walker Review, the TUC criticised the fact that, in its interim recommendation, the Review had rejected the idea of two-tier boards, saying that it had not done so on the basis of an objective assessment. However, the TUC did not propose that they should be introduced.

In terms of influencing corporate strategy, UK unions have for some time sought to make greater use of employee representatives on pension funds, which have substantial shareholdings in UK companies. This, rather than board-level participation, is the main aim. In addition, there continues to be union pressure to make information and consultation rights at the workplace more effective.

Are there any new legislative requirements with regard to worker participation as a result of the crisis?

Bulgaria

At the moment, no new legislative requirements are on the table. It is worth mentioning, however, that even the existing requirements are not implemented properly. In Bulgaria, some amendments should be introduced to the Law on workers’ information and consultation rights in multinational companies, groups of companies and European companies, in line with the amendments to the EWC Directive of 2008.

France

There are no new legislative requirements, but in a working document sent to the social partners in October 2009, the Conseil d'Analyse Stratégique (CAS) (Council for Strategic Analysis), a government think tank, proposed extending employee board-level representation. The CAS emphasises the need for the presence of a sufficient number of independent board-level representatives, including from the employee side. The CAS made reference to studies which suggest that the presence of directors representing employees makes companies more efficient, for example, through their inside knowledge of the company and additional control over top management.

With regard to employee share ownership, the CAS considers that there should be at least one employee representative on boards. Presently, companies with one or more elected employee director on the board are not legally bound by the obligation to have representatives of employee shareholders, even if they hold 3 per cent of capital or more. The CAS proposes to retain this requirement, even in the presence of elected representatives, in order to allow greater 'shareholder democracy' in corporate governance and to raise awareness of the risk borne by employee shareholders. In order to extend employee ownership, the CAS proposes the allocation of free shares in proportion to employees' annual earnings.

Concerning the presence of employee representatives in boards' remuneration committees, the CAS does not ask to make it mandatory. It proposes, however, information or even consultation of employee representatives on the criteria and method for calculating the variable parts of the remuneration package. More generally, the CAS asks the state to develop public information and communication on employee participation. A code of good practice governing the inclusion of employees in corporate governance should be developed by the social partners. Furthermore, an evaluation programme on corporate governance and corporate social responsibility should be launched.

The proposals of the CAS are intended to be integrated into the ongoing negotiations of the union and employers confederations on the 'modernisation of social dialogue', which includes the reform of employee representation and corporate governance. The first meetings of this negotiation round were dedicated to settling procedures and the agenda. There will be monthly meetings, starting in January 2010, in order to establish an inventory of existing employee rights compared to economic needs (investments, management remuneration, employment, training and so on). It is not yet clear when the actual negotiations will start.

United Kingdom

There are no new legislative requirements for worker participation due to the crisis.

Is there a discussion in your country about the need to strengthen workers' rights in restructuring?

Austria

Due to the crisis, works councils and trade unions are involved in many measures to ameliorate the situation.

One of the main aims of the Austrian trade unions is to keep employees in employment during the economic crisis. The most important instrument here is short-time work or reduced working hours. The regulations governing this instrument are influenced to a large degree by the trade unions.

The regulations on short-time working (reduced working hours) are negotiated by the government in close cooperation with the social partners. Short-time working arrangements can be finalised only if the works council and trade unions are involved. The trade unions also play an important role in the field of qualification measures for improvement of employees skills.

Besides rising unemployment the credit crunch is another major problem. Although banks deny a credit crunch, many enterprises report difficulties in borrowing. To solve the problem the government has passed a new law, the so-called *Unternehmensliquiditätssicherungsgesetz* (Law on ensuring company liquidity). It provides for government guarantees of €10 billion for industrial enterprises and SMEs in the form of corporate bonds or borrowing.

The Austrian system of worker participation at company level (supervisory board) is not on the agenda. There is social consensus concerning works councils' right to choose one-third of representatives on the supervisory board of most limited companies with at least 300 employees and all listed companies. There is no debate on the expansion of codetermination at board level.

Currently, the government is working on a reform of the conditions applying to limited companies with the aim of lowering the minimum capital from €35,000 to €10,000. Within the scope of the reform discussion the Chamber of Labour, in cooperation with the trade unions, is demanding the closure of some loopholes with regard to codetermination in limited companies. But there is no discussion on reducing the threshold for implementing a supervisory board or strengthening workers' rights on the board.

Belgium

The recession led to a large number of restructuring processes and collective redundancies throughout the first trimester of 2009. According to the latest statistics, the number of unemployed people increased by 5 per cent in comparison to 2008. The increase is higher in Flanders, the region most affected by significant restructuring, with an increase of 11.8 per cent.

No specific measures or ad hoc debate have developed in Belgium with regard to worker participation and the current economic crisis. In other words, so far there has been no debate on revising (extending) worker participation rights under restructuring as a possible solution to the crisis. From an analytical point of view this reaction is to be expected given the already relatively strong information and consultation obligations of companies vis-à-vis their employees in situations of company restructuring (see, among the other things, the transposition of Directive 2002/14/EC into Belgian law at the end of February 2008). Restructuring plans and other crisis-related measures must be discussed with employee representatives.

Conversely, anti-crisis measures have been introduced by the Belgian government since 2008 to sustain employment under the current crisis. The principal method adopted to protect employment is the use of labour market flexibility. There has been no debate on worker participation, but social dialogue has been strengthened. At the end of December 2008, the Belgian government agreed a stimulus plan (first recovery plan) to boost the economy in the crisis. This plan essentially integrated the inter-professional agreement concluded by the social partners in 2008 (with regard to striking a balance between company competitiveness, purchasing power and employment in light of the current economic crisis) and added some measures to implement the agreement. This plan was integrated in the *Loi de relance économique/Economische Herstellwet* of 7 April 2009. The law includes measures aimed at sustaining corporate competitiveness and protecting employment. The most relevant restructuring measure concerns tax exemptions for employers and incentives, benefits or social provisions for workers in the context of restructuring. In the Walloon region, the Walloon government established a framework for taking action against the crisis (5 December 2008). The plan includes measures to sustain employment in companies faced by falling demand. The government extended the loan facilities provided to enterprises and extended the funds available for vocational training. Besides permanent workers, temporarily laid off workers, workers from subcontractors, workers employed on fixed-term contracts and temporary workers will benefit from vocational training. These measures shall apply to all companies located in the Walloon region, but not to the public administration. On 25 June 2009, a new law implementing measures to sustain employment in times of economic downturn was published in the Official Journal. Three types of specific measures, applicable during the second half of 2009, aimed at decreasing the amount of time worked and reducing salary costs, while maintaining workers' purchasing power: (i) temporary unemployment for white-collar workers, (ii) crisis-related time credits and (iii) temporary collective reductions in working time. Only companies experiencing serious difficulties can apply for temporary unemployment for white-collar workers and crisis-related time credits, such as companies facing a decrease in turnover or production of at least 20 per cent compared to the previous year or companies with blue-collar workers who are already temporarily laid off for at least 20 per cent of their normal working time. In addition, the company must have a sectoral or company CBA, or an approved company plan. Under these conditions, the employer can suspend the employment contract of a white-collar worker entirely for a maximum of 16 weeks; they can also partially suspend the employment contract for

a maximum of 26 weeks. In case of partial suspension, the white-collar worker should work at least two days a week. The employees in question will receive unemployment benefit from the National Employment Office (RVA/ONEM) and a supplementary sum from the employer, which must be at least equivalent to the one received by temporarily laid off blue-collar workers. In addition, by means of an individual written agreement between employer and worker, the working time of a full-time worker can be reduced by one-fifth or by half, over a period of one to six months. During this time, the worker is entitled to receive compensation from the RVA/ONEM. An additional voluntary contribution can be paid by the employer. Crisis-related time credits are to have no impact on regular time credits. The employer can reduce working time by one-fifth or one-quarter by means of a CBA. In this case, a social security contribution exemption is applied (EUR 600 for a one-fifth reduction and EUR 750 for a one-quarter reduction) per worker and per quarter. When the reduction in working time is combined with a four-day working week, this amount is increased to EUR 1,000 and EUR 1,150, respectively, per worker per quarter. However, it must be noted that at least three-quarters of the social security contribution exemption must be passed to the workers by means of a wage supplement.

Bulgaria

There are discussions and even some initiatives, but trade unions are more likely to insist on the realisation of such rights through their own structures and through the mechanisms of social partnership and collective bargaining. In 1997–2009, trade unions managed to participate in a number of partnership forums and structures concerning privatisation and restructuring – for example, the Council for Post-privatisation Control, where the implementation of social agreements concerning privatised companies was observed. Also, with regard to the funding of activities for workers made redundant by privatisation and restructuring (consultations, training and so on), many sectoral agreements were signed and the implementation of measures is monitored by the trade unions.

Initially, the trade unions were not entitled to attend the supervisory committees for pre-accession programmes for most of the period of their implementation, with the exception of SAPARD. However, in 2004, after a critical report and joint declaration passed at the meeting of the Joint Consultative Committee EU–Bulgaria in Brussels, trade unions and employers' associations were allowed to attend the supervisory committees of the PHARE programme. However, not much has been achieved. Since the beginning of 2007 trade union representatives have been members of the supervisory committees of all operational programmes (OPs), most important being their participation in the OPs 'Human Resources' and 'Administrative Capacity'. They were already implementing their own projects.

Currently, trade union structures at all levels – company, sectoral, national and regional – are organising discussions on issues related to the crisis, with the aim of better protecting their members' interests. However, the issues un-

der discussion are focused mainly on the consequences of the crisis and the social dimension, not on prevention and corporate governance. Some agreements have been signed on the use of funds intended to ameliorate the consequences of restructuring and some common decisions have been taken at national level (together with the government), including on the Bulgarian application to the European Globalisation Fund in relation to activities concerning redundant workers and employees from the large metallurgical company Kremikovtzi.

In some companies, information and consultation are used (usually involving trade unions), but this mainly concerns companies un- or little affected by the crisis. In companies which have been hit harder and have introduced reductions of working hours, redundancies and even temporary closure of most of their operations, there have been negotiations to protect workers' interests and agreements have been signed, although only where the workforce is organised.

Cyprus

There is some debate on the enforcement of labour legislation in crisis-hit sectors, such as tourism and construction, as well as on social dumping.

France

In order to encourage the anticipation of change, a French law of January 2005 introduced an obligation to negotiate, every three years, in companies with more than 300 employees, framework agreements on 'forward-looking employment and skills management'. This law is intended to improve the adaptation of employment to economic developments and to diminish the risk of painful restructuring. It strengthens the negotiation rights of the unions compared to the traditional consultation rights of works committees. Its implications are controversial among the unions, however: some are in favour, others – namely the CGT and FO – are more reluctant because they refuse to share responsibility for employment management, in particular of 'voluntary' redundancy plans.

A government decree of 30 March 2009, adopted the same day as another one on management remuneration (see below), provides that the works council (*comité d'entreprise*) must be informed if a company receives public or EU subsidies which exceed a certain threshold. It must be consulted on the use of these subsidies. The information must appear in the company's annual business report.

Germany

Meanwhile, in the summer of 2009, a group of law professors came forward with a **new suggestion on a system of negotiated codetermination for German companies**, aimed at replacing the current legal provisions

in company law. Although they refer to the current codetermination law as constituting the standard rules, they claim that the relevant regulations are not flexible enough and, in view of the alleged popularity of the SE and ongoing EU discussions on a Private European Company, they fear a flight from codetermination and other German legal forms. Others (especially the trade unions) consider this suggestion to be merely a Trojan horse, the aim of which is to reduce codetermination and weaken the trade unions. They argue that there is no need for negotiations since, in contrast to SE negotiations, different forms of worker participation do not exist that have to be unified within German limited companies. After all, with regard to codetermined supervisory boards, the SE is not as popular as often suggested: by August 2009 no more than nine companies with more than 2,000 employees in Germany (threshold for parity on the supervisory board) had assumed the legal form of SE.²⁴

Greece

The debate has been growing on the unilateral right of companies to introduce a shorter working week. They are entitled to do so after consultation with the unions, but are not obliged to accept their views. In some cases, bargaining was involved, but in most instances the managerial prerogative was exercised. Many critics say that this should change, and that, if any state or EU money is used for this purpose, workers should be given more rights.

United Kingdom

Although one of the direct results of the financial crisis was the merger of two of the UK's largest banks – Lloyds-TSB and HBOS – it did not provoke a substantial discussion on worker's rights in cases of restructuring. This debate received more impetus subsequently, following the takeover of the UK confectionery company Cadbury by the US food group Kraft. Unite, the UK's largest union, has called for changes in the law to 'amend takeover regulations so that the loss of a great UK manufacturer can never happen again'. Among the suggestions raised by the union are that long-term shareholders could have enhanced voting rights, or that there could be greater state intervention to prevent foreign takeovers judged to be against the public interest, or that articles of association could be changed to ensure that the directors are obliged to act in the best strategic long-term interests of the enterprise. However, the details of these proposals remain uncertain, as is the level of priority the union will devote to the campaign. This debate is to some extent reminiscent of the concerns expressed with regard to the activities of private equity companies before the financial crisis.

²⁴ See: <http://www.boeckler-boxen.de/5686.htm> and <http://www.boeckler-boxen.de/5586.htm> and Koestler, Der Aufsichtsrat 10/2009, http://www.boeckler.de/pdf/bb_mitbestimmung_europa_se_position_koestler.pdf.

Corporate governance

Are there any debates on changing the rules and provisions of the national corporate governance code(s)? If yes, please describe.

Belgium

The past 20 years have been characterised by an increasing focus on recommendations on good governance, not only within Belgium but also at the European and international levels. This has resulted in various governance codes for listed companies. More specifically, within these codes recommendations were made in order to guarantee good governance, enhancing long-term shareholder value. In Belgium, this was foreseen in the 'Code Lippens', introduced in 2004. It should be noted that the Code Lippens is not obligatory and is to be considered only a guideline for good governance.

With regard to boards of directors and executive management, the Code Lippens recommends the disclosure of information on a number of topics: remuneration criteria; the existence of a range of remuneration instruments; level of remuneration; termination agreements; and how remuneration is determined. This information is important for shareholders in their pursuit of long-term value creation. However, the development of these codes could not prevent the financial crisis which started in autumn 2008 (Van den Berghe, 2009). Regarding the crisis, two things are important here: the extent to which the recommendations on disclosure have been followed by listed companies and the level of executive remuneration in Belgium.

The first topic is important because implementation of the recommendations would provide shareholders with information in making important strategic choices. Based on investigations and analyses of the annual reports of listed companies by the Vlerick Leuven Gent Management School, it can be concluded that a large proportion of companies do indeed follow the Code Lippens. More specifically, in 2008, 44 per cent followed the recommendations of the Code Lippens; 35 per cent of companies did not engage in full disclosure; and 17 per cent did not disclose any information on executive remuneration. Although the percentage of companies not disclosing any information on executive remuneration decreased (from 29 per cent in 2007 to 17 per cent in 2008), 17 per cent of shareholders had no information on executive remuneration (Baeten and Vandewalle, 2008).

Bulgaria

Debates on this issue were initiated and conducted mainly among management and by employers' organisations, but as these issues are also part of the codes of conduct and CSR policies, trade unions could also participate. Examples include the projects already mentioned, national roundtables, the development of the National Strategy for CSR, and also CSR agreements at company level and provisions in collective agreements.

In 2006–2007, a task force to prepare the draft Code of Corporate Governance was established on the initiative of the Bulgarian Stock Exchange, in partnership with a number of government institutions, such as the Financial Supervision Commission (which is elected by parliament). The group was coordinated by a non-governmental think-tank, the Centre for Economic Development, although experts from government institutions, business and employers' associations, NGOs and academia were also involved. The Code was adopted by the business and investor community in 2007.

At the end of August 2009, a number of organisations and institutions decided to establish the National Commission for Corporate Governance, in which business and employers' associations, managers' associations and representatives of the Bulgarian Stock Exchange and of the Financial Supervision Commission participate. As the first chair of the Commission, a representative of the Bulgarian Industrial Capital Association – one of the main employers'/business associations – was elected.

In September 2009, the Board of Directors of the Bulgarian Stock Exchange agreed to implement a Code of Corporate Governance. The code was planned to be compulsory for the twenty largest 20 companies and holdings. For other companies eligible for listing on the Bulgarian stock exchange and for certain other types of company the National Code has an advisory character. Another 39 companies signed up voluntarily to the Code of Corporate Governance.

Among the companies and holdings in question many have organised workforces. However, the trade unions were not really involved in the preparation of the national Code. The trade unions are free to join the relevant national commissions or participate in their meetings, although the conditions are still not clear.

Cyprus

There has been a formal debate that was concluded with a new Central Bank directive, published in the Gazette in October 2009, that brings about significant changes in the structuring of the boards of directors of the three largest Cypriot banks. With the directive, the Central Bank urges the banks to evaluate the degree of independence of their directors on the basis of strict criteria and opens the door to restructuring.

This directive is the biggest change in banking governance since 2006, when the Central Bank published a directive on the framework of principles governing bank boards. One of the changes is that the chair and deputy chair must be non-executive board members.

The new directive concerns the independent non-executive directors, adopting eight criteria to define their independence.

One of the main criteria concerns the business relations that the director has with the bank. In order to be regarded as independent, such directors must not have received a loan of more than €0.5 million from the bank in the past three years and must not receive more than 10 per cent of their business revenues from selling products or services to the bank. Independence also requires that they were never external directors or external auditors or partners or executive directors of the bank or the Group. They must not have served as employees in the past five years.

Another criterion concerns directors' relations with the major shareholders. The directive provides that, in order for a director to be regarded as independent, they 'must neither be a major shareholder nor represent a major shareholder in any way or have a relationship with a board member or a major shareholder'.

The inclusion of all those who have been board members for a consecutive period of more than nine years among the non-independent directors will also be discussed.

The last criterion concerns the relationship with other board members and the senior management. In order to be an independent board member, a person must not have a relative belonging to the senior management or a board member of the bank.

The Central Bank has also tried to instigate direct communication with independent directors. 'An independent board member who disagrees with any decision of the board of directors may inform the Central Bank of this disagreement.'

In general, independent directors must maintain 'independence in thought and opinion', not accept benefits that might compromise their independence and oppose anything that adversely affects the bank's interests.

Apart from these changes, the Central Bank announced changes in the composition and role of bank committees (for example, those concerned with remuneration, risk and so on). After the publication of the directive, the Central Bank urged the banks to screen all directors classified as 'independent' and to explain why they meet the eight criteria. In case they do not meet them, the banks must take corrective measures to comply with them within a year. The banks must take the 'independence test' every year and inform the Central Bank accordingly.

The new directive does not define the number of independent directors in each board but urges the banks to have a sufficient number to meet the needs of the Committees and to avoid the assignment of multiple roles to the same persons.

According to the amended Code of Corporate Governance adopted by the CSE in 2007, at least half of the directors – except for the chair – must be independent.

France

In the context of the public debate on management remuneration, the French employers' confederation MEDEF, in cooperation with the French association of large private companies, AFEP (Association française des entreprises privées), presented a corporate governance code for listed companies on 6 October 2008. Its rules are based on expert reports on corporate governance, in particular, the Vienot Reports of July 1995 and July 1999, the Bouton Report of September 2002, and a previous report by MEDEF and AFEP of October 2003, as well as recommendations on management remuneration from January 2007 and October 2008.

Germany

From a stakeholder perspective the German Corporate Governance Code of 18 June 2009 contains one essential amendment. It **clarifies and confirms the pluralistic stakeholder approach** with regard to the interests of the enterprise and the directors' duties. As one of the main differences between the German and the Anglo-Saxon systems of corporate governance, this pluralistic approach had lately been contested. Beyond the Code's provisions the trade unions and the Social Democrats are demanding further clarification within the Companies Act. However, resulting as it did from a trade union request, the amendment of the Code must be viewed as providing support for worker representatives and other stakeholders.

- Preamble of the Code: 'The Code clarifies the obligation of the Management Board and the Supervisory Board to ensure the continued existence of the enterprise and its sustainable creation of value in conformity with the principles of the social market economy (interest of the enterprise).'
- Provision 4.1.1 of the code: 'The Management Board is responsible for independently managing the enterprise with the objective of sustainable creation of value and in the interest of the enterprise, thus taking into account the interests of the shareholders, its employees and other stakeholders.'

Furthermore, the Code contains new provisions on the **diversity** of the supervisory and management boards, as well as the **professionalisation and qualifications** of the supervisory board, and a recommendation that members of the management board not accept more than three supervisory board mandates in non-group listed companies.

There were a number of other changes in the law concerning corporate governance:

- **‘Comply or explain’** instead of ‘comply or disclose’: German listed companies formerly only had to disclose *which* provisions of the Code they did not comply with; but now they also have to explain *why* they do not comply (§ 161 AktG). Many companies have already done so voluntarily.
- Management board members may not become supervisory board members at the same company within two years of the end of their appointment unless they are appointed on a motion presented by shareholders holding more than 25 per cent of the voting rights in the company (§ 100 AktG).

Greece

The only current debate that might be categorised as such is related to open governance practices for the public sector and state controlled companies.

Hungary

Given the country’s state socialist past, the early waves of CSR development (from the 1960s to the 1990s) had no impact. Thus, CSR first reached Hungary when the country was opening up to foreign investment and working heavily on deregulating state welfare and central redistribution, guided in large part by neoliberal ideas. CSR started to gain importance in Hungary from the second half of the 1990s, and so far it has mainly been advanced by companies, mostly multinationals, and not so much by other stakeholders. Similarly, CSR’s institutional background was established relatively late. In 2006, with reference to the relevant EU initiatives, the Hungarian government issued government ordinance 1025/2006 (III.23) on the promotion of employers’ social responsibility and incentives. In the same year, an ad hoc multi-stakeholder forum, representing employers, trade unions, civil groups and so on, was set up within the Economic and Social Council (Gazdasági és Szociális Tanács, GSZT) to prepare recommendations on the active enhancement of CSR in Hungary.

The crisis has resulted in a palpable shift in stakeholders’ importance. Prior to the crisis, according to a survey, employers valued their workers more than twice as much as their shareholders, according to their answers to a ques-

tion on ‘the most important assets of their company’. Nevertheless, as the crisis unfolded redundancies were frequent in pursuit of a return for investors, demonstrating the supreme importance of shareholder value above other stakeholders. Despite such actions, there have been no changes in the wording of CSR declarations.

Economic depression has also changed the lobbying capacity of some stakeholders. For instance, consumers’ price sensitivity has increased, which obviously has an adverse effect on demand for CSR. It also has a negative impact on NGOs and other civil society actors as their funding base has been weakened substantially.

Ireland

Corporate governance has followed British legal tradition since before independence in 1922 and many of these laws are still in force, including the Partnership Acts, 1890 and 1907, and the Insider Trading Act, 1900. There has been a tradition of ‘light-touch’ regulation in Ireland until recently, but this is now changing following the banking scandals that brought the economy close to collapse.

Under the Company Law Enforcement Act, 2001, a Company Law Review Group (CLRG) was established on a statutory basis. The Group has recommended a complete overhaul of Irish company law. Such legislation would contain legislative proposals to reform and consolidate all existing companies legislation in a single companies code, including EU legislation. It is a complex and very comprehensive proposal.

The CLRG submitted the General Scheme of the Companies Consolidation and Reform Bill to the Minister for Enterprise, Trade and Employment in March 2007. In July 2007, government approval was granted for its drafting by the Office of the Parliamentary Counsel. Drafting began in December 2007, and the process was expected to be completed by the end of 2009, with the proposed legislation being introduced into the Oireachtas (parliament) in 2010.²⁵

Concerning the reaction of enterprises in the private sector to the economic crisis, the employers’ organisation IBEC’s quarterly business sentiment survey for the final quarter of 2009 showed that the total wage bill decreased in 54 per cent of companies during the year. Looking ahead to 2010, 47 per cent of companies expect their total wage bill to remain constant, 33 per cent expect it to decrease, while just 14 per cent expect their wage bill to increase. The majority of respondents expect to implement pay freezes in 2010.

25. See R. Keane and A. O’Neill (eds), *Corporate Governance and Regulation – An Irish Perspective*, Dublin: Thomson Reuters, 2009. See also www.clrg.org

Two other important surveys are under way in 2009–2010 to assess the levels of employee involvement in Irish organisations, in both the public and private sectors:

- the National Centre for Partnership and Performance (NCP) is undertaking a new National Workplace Survey, which will be published shortly;
- a survey of HR managers and employee representatives on the various committees and fora required by law – including EWCs, company-level works councils and health and safety committees – has been organised through the ICTU as part of a European Commission-funded study.

Malta²⁶

The principal Maltese legislation regulating companies and partnerships is the Companies Act 1995 (Chapter 386), which is mainly based on English law and the European Union harmonisation directives. The shareholder model is very much to the fore in this Act.

A report on corporate governance by a working group of the Malta Stock Exchange (MSE) in 1994 reaffirmed the constituent model of corporate governance, arguing that labour interests do not constitute a matter for corporate law as these interests ‘have always been regulated by industrial legislation and collective bargaining characterised by a strong trade union presence’. The working group’s report stated that:

a restatement of the classical shareholder model might be more conducive to attaining the proper balance within the parameters of corporate law. A restatement of that model would extend the responsibility of corporate directors to take account of all other interests in the decision-making process, with the principal focus, however, remaining the shareholder. (MSE, 1994:4)

This report has never been challenged or debated at tripartite level. Indeed, there has hardly been any debate about new forms of corporate governance. The reluctance of the European Commission to impose legislation in the field of corporate governance and corporate social responsibility, relying instead on the voluntarism of the state and/or the discretion of companies to design their CSR policies, has not been conducive to bringing about sustainable changes in the way business operations are run in Malta. There has been no Maltese representative in the European Alliance on CSR, created by the European Commission as an initiative to promote active measures by businesses in the promotion of CSR.

26. The main source of material in this section is Harwood (2007).

This does not mean, of course, that there have not been any initiatives in the Maltese business sector to adopt CSR measures. These initiatives – or lack of them – depend on the size of the company as well as its relationship to the market; whether its production or service operations are geared purely to exports or for local consumption. Given the lack of a legislative framework these initiatives are generally propelled by internal or external drivers. Internal drivers are more readily associated rather with business motives for the adoption of CSR measures, while external drivers include agents such as investors, consumers, public authorities, NGOs, trade unions and other companies (European Multi-Stakeholder Forum on CSR, Final Report, (2004), p. 9).

In **export-oriented MNCs**, internal drivers rarely, if ever, act as a stimulus to adopt a CSR policy, as such firms feel that there are few public relations benefits to be gained. Although they benefit from the research and methods adopted by the parent company they do not feel the need to adopt the same corporate governance in their operations in Malta, so that little effort is made to publicise widespread CSR practices. Any CSR practices in which they may be involved are mainly of a charitable or philanthropic nature.

On the other hand, **the MNCs operating for the domestic market**, such as HSBC and Vodafone,²⁷ are driven by ‘feel-good factors’ in order to boost the company brand among the local population. Towards this end they tend to implement the corporate governance practices of their parent company. It is in these firms that employee financial participation schemes are to be found, often adopted from the parent company. Overall, they have a positive and widespread impact as they act as external drivers for other companies. **Maltese businesses which are relatively large** and may not be considered micro-level employers have also made branding their company as CSR leaders a major public relations exercise. These firms, found mainly in the hotel industry, banking²⁸ and beverages, are trying to capitalise on increasing awareness of environmental issues among the Maltese public.

Conversely, there is a **second type of local business** large parts of whose workforce are employed under socially unacceptable conditions (for example, illegal immigrants). A significant number of such firms are to be found in the construction industry and the retail sector. Since the government is generally the main customer of firms operating in the construction industry it can act as a lever to effect changes geared towards a more socially and environmentally friendly policy. However, the government has not shown any willingness to exercise such leverage. Finally, there is a significant number of **micro firms** which consider CSR a luxury which they can ill afford, especially when they are still adapting to the EU Single Market.

What may be inferred from the foregoing is that the Maltese government and the European Commission have not acted as effective external drivers. The

²⁷ Since it started its operations in Malta Vodafone has published two CSR Reports. The second covers April 2006 to March 2008.

²⁸ Bank of Valletta, Malta’s leading bank, has published a CSR Report.

lack of concern with regard to corporate governance exhibited by government policy is complemented by the cautious approach of the European Commission, which is wary of imposing additional obligations and administrative requirements on member states, fearing that these might be counterproductive and contrary to the principles of better regulation. The Maltese trade unions have also failed to exert pressure in this regard. Thus, CSR practices in Malta, such as they are, have been induced by internal drivers, such as the need to enhance the brand or the retention of employees. Overall, the gap between rhetoric and practice is very wide.

The Netherlands

There are no plans to make major changes to the corporate governance code (except on the issue of remuneration – see below). The focus is not so much on corporate governance in the private sector (listed but also non-listed companies), but on corporate governance in the non-profit sector (housing corporations, health care institutions and so on).

Portugal

The proposal for a new Corporate Governance Code (the Recommendation) considerably expands the provisions regarding remuneration. From now on, these are supposed to be in line with the *long-term* interests of the company and based, not only on performance, but also on avoidance of *excessive risk taking*.

Regarding the declaration on remuneration policy by the supervisory board and the board of directors, it should, besides specifying the amount of remuneration, as foreseen in Law no. 28/2009, also identify the companies taken as reference for the policy and disclose information about payments due to contractual dismissal or cessation.

The latest news in this regard concerns indemnities for managers in case of early cessation or rescission of their contract: Law no. 100/2009 of 6 September establishes a special regime to subject these indemnities to up to 42 per cent personal income tax and 35 per cent corporate tax. The law came into force on 8 September 2009.

Romania

At present, there is no National Corporate Governance Code but the legislative framework contains various provisions on corporate governance, included in a number of different laws: the Companies Act, the Commercial Code, the Capital Market Act, with all its amendments, the law on insolvency proceedings, the law on accounting, with all its amendments, the Labour Code and so on.

Two important initiatives should be mentioned:

- (i.) The project conducted by the Strategic Alliance of Business Associations (SABA), sponsored by the International Centre for Entrepreneurship in Romania. Its concrete outcome was the **Voluntary Corporate Governance Code (2002)**, a collection of best practices.
- (ii.) *The creation by the Bucharest Stock Exchange (BSE), in August 2001, of a virtual tier – the plus tier* – for listed companies that wanted to implement the principles of corporate governance. All the companies that wish to be included in this tier must commit themselves to introducing all the provisions of the *Code of Corporate Governance* elaborated by the BSE in their Memorandum of Association within three months at the latest, as well as to eliminating all principles which contravene this Code.

The positive attitude of the local social partners towards corporate governance principles has been greatly overestimated..

Obviously, it is necessary to have a public debate to develop understanding and implementation of these standards in the Romanian business environment. Romanian managers should become aware of the overwhelming importance of implementing corporate governance practices and the benefits it brings, so that they will be able to make proposals for the improvement or modification of some of the Code's clauses.

The awareness-raising campaign must also include intensive training programmes for managers.

(References: Implementation of Corporate Governance Practices in Romania – achievements, defects, items requiring further action.)

The Council of the Bucharest Stock Exchange approved a new Code of Corporate Governance, which comprises a set of recommendations on corporate conduct and ethical rules applying to companies traded on the regulated market.

Companies whose shares may be traded on the regulated market of the Bucharest Stock Exchange (BVB) ('issuers') shall comply with the provisions of the present Corporate Governance Code (the Code) on a voluntary basis.

The present Code contains a number of recommendations which supplement existing legal obligations (for example, under the Companies Act, the Accounting Act, the Capital Market Act and so on).

The Bucharest Stock Exchange shall monitor the implementation of this Code and its ongoing annual development, in accordance with the legislation in force.

The present Code replaces the BSE Corporate Governance Code adopted in 2001.

Issuers are obliged to include in their Annual Report, starting from fiscal year 2009, a Corporate Governance Compliance Statement (the 'comply or explain' statement).

The BSE Code was drafted in accordance with mature capital market models in order to increase the level of communication and transparency of the capital market in Romania, after a series of consultations with the issuing companies. The BSE will launch a series of activities intended to acquaint listed companies with the recommendations contained in the Code, which came into force simultaneously with requirements on company reporting in 2009.

Principle I

Issuers will adopt a clear and transparent corporate governance framework, which shall be adequately disclosed to the general public.

Principle II:

Issuers shall respect the rights of their shareholders and the holders of other financial instruments and ensure they receive equitable treatment

Principle III:

Issuers shall make every effort to establish a policy of effective and active communication with their shareholders and the holders of other financial instruments.

Principle IV:

Issuers are governed by a board of directors that meets at regular intervals, and that adopts decisions which enable it to perform its functions in an effective and efficient manner.

Principle V:

The board of an issuer will be responsible for its management. It will act in the best interests of the company and will protect the general interests of the shareholders by ensuring the sustainable development of the company. It will function as a collective body and ensure that it remains well informed.

Principle VI

Without prejudice to the principles of board decision-making processes, the composition of an issuer's board should ensure a balance of executive and non-executive directors (and, in particular, independent non-executive directors), so that no individual or small group of individuals can dominate the board's decision-making.

Principle VII

An adequate number of non-executive directors shall be independent, in the sense that they do not maintain, nor have recently maintained, directly or indirectly, any business relationships with the issuer or persons linked to the issuer, of such significance as to influence their autonomous judgement. The withdrawal of an independent director shall be accompanied by an extensive, detailed statement regarding the reasons for such action.

Principle VIII

The board shall have a number of members, thereby granting it an effective capacity to supervise, scrutinise and evaluate the activities of the executive directors and the fair treatment of all the shareholders.

Principle IX

The appointment of directors should be based on a formal, rigorous and transparent procedure. Such procedures shall use objective criteria and ensure timely and adequate information on the personal and professional qualifications of the candidates. Cumulative voting shall constitute an adequate procedure for the appointment of directors.

Principle X

The Board of Directors shall evaluate whether to establish among its members a nomination committee made up, mainly, of independent directors.

Principle XI

The company will secure the services of good quality directors and executive managers by means of a suitable remuneration policy that is compatible with the long-term interests of the company.

Principle XII

The corporate governance framework must ensure that timely and accurate disclosure is made on all material matters regarding the company, including financial situation, performance, ownership and governance.

Principle XIII

The board will establish strict rules, designed to protect the company's interests, in the areas of financial reporting, internal control and risk management.

Principle XIV

The Board of Directors shall adopt operating solutions suitable to facilitate the identification and adequate handling of those situations in which directors are bearers of interests on their own behalf or on behalf of third parties.

Principle XV

The directors will take decisions in the interests of the company and will refrain from taking part in any deliberation or decision that creates a conflict between their personal interests and those of the company or any subsidiary controlled by the company.

Principle XVI

The Board of Directors shall, after consulting with the internal supervisory body, establish approval and implementation procedures for transactions carried out by the issuer, or its subsidiaries, with related parties.

Principle XVII

Directors and managers shall keep confidential documents and information acquired in the performance of their duties and shall comply with the procedure adopted by the issuer for the internal handling and disclosure to third parties of such documents and information.

Principle XVIII

The corporate governance framework must recognise the legally established rights of stakeholders and encourage active cooperation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.

Principle XIX

When a two-tier management and control system is adopted, the above articles shall apply insofar as they are compatible, adapting individual provisions to the two-tier system, consistent with the objectives of good corporate governance, transparency of information and protection of investors and markets pursued by the Code and in conformity with this article.

Negotiations on new legislation

The trade union confederations have requested that the following laws should be amended:

- the Trade Unions Act;
- the Collective Labour Contracts Act;
- the Collective Labour Conflicts Act.

The main changes are related to new ways of organising, representativeness and the conduct of strikes.

There have also been calls for modification of the pension law and the unification of the pension system. Discussions have commenced on the legislation on labour courts.

In the coming period, there will be large-scale protests against the unitary wage law in the public sector. This law enables the accelerated increase of low wages up to 2015 and the freezing of high salaries for a certain period, until the difference between the lowest and the highest wages is reduced, the Romanian Prime Minister has said. He has reiterated that the government's plan is to make the minimum wage equal to one-twelfth of the highest wage, in comparison to the current ratio of 1:29. He has also declared that existing gross wages will not decrease as a result of the new law.

The basic wage will become the main component in the wage income of public sector workers, which will include some general bonuses, which shall not exceed 30 per cent of the basic wage.

Apart from the general bonuses mentioned above, related to such things as seniority, there will also be a number of specific bonuses in certain activities, for example, for confidentiality, loyalty and exposure to electromagnetic radiation.

Bonuses for adverse working conditions will continue to be paid separately. The share of bonuses paid on a cumulative basis cannot exceed 30 per cent of the total sum allotted for wage expenditure. The ratio between national gross minimum wages and gross average wages is expected to reach 50 per cent by 2015. The new law is also aimed at simplifying the wage system by reducing the number of grades and professional levels to a maximum of three for each occupation, in comparison to the current five in most contract-based occupations. The implementation of the new wage system will be gradual.

The basic wage will be the main element in calculating income, and a new hierarchy of wages will be drafted, based on the complexity and importance of the activity and on level of education.

The unitary wage law in the public sector was adopted in early September.

There were negotiations on the law with the social partners, but the government imposed various conditions in accordance with the agreement reached with the IMF.

New legislation (Law 268/2009)

When work is temporarily interrupted at a company, the employees will be paid a minimum of 75 per cent of their basic wage. Under these conditions, neither employer nor employee are required to pay taxes on the relevant sum (health insurance, pension insurance, income tax, social security, unemployment insurance).

Also under this law, sectoral committees at branch level (comprising trade union and employers' representatives) will be established as institutions of 'public utility' and receive financial support from the state through the Ministry of Labour.

Bucharest Conference on Applied Ethics 2009: 'Ethics committees and other ethical tools'

This year's topic reflects the growing interest in *institutionalising ethics*. Relevant topics include:

- ethics committees and their role in developing effective policies;
- codes of ethics: typology, role, structure;
- ethics (and compliance) training;
- ethics audits, social audits, CSR reporting;

- ethics (and compliance) policies;
- awareness programmes;
- other ethical tools.

(For more information, see http://www.bcae.ro/2009_cfp.php)

PFS Programme, 13th Regional Survey – Reporting on corporate social responsibility (CSR) by the largest listed companies in 11 CEE countries

The Partners for Financial Stability (PFS) Programme has published its 13th semi-annual Survey of reporting on corporate social responsibility (CSR) by the ten largest listed companies (by market capitalisation) in 11 Central and Eastern European (CEE) countries (including Romania).

PFS Programme surveys analyse the annual reports and websites of the listed companies in question in order to document the current disclosure practices of this 'blue-chip' peer group and to identify best practices. This survey analyses company disclosure in English (English-language annual reports and English-language company websites) during the period 1 August–16 September 2009, covering the following three topics: (i) corporate governance, (ii) environmental policy and (iii) social policy.

(For more information, see http://www.pfsprogram.org/capitalmarkets_research.php)

Sweden

The corporate governance of Swedish companies listed on the Swedish stock exchange is regulated by a combination of statutory rules – the most important being the 2005 Companies Act – self-regulation and unwritten practice and traditions.

As of 1 July 2008, the (revised) Swedish Code of Corporate Governance was applicable to all Swedish companies whose shares are traded on a regulated market in Sweden.

Several changes due to the implementation of EU legislation have been made to the Companies Act. As a consequence, the Swedish Corporate Governance Board has proposed changes to the Code. The EU measures include amendments to the fourth company law directive on annual accounts and the seventh company law directive on consolidated accounts. New legislation was also proposed with regard to the implementation of the revised eighth company law directive on statutory audits of annual accounts and consolidated accounts. The Code was also amended in the wake of the removal of rules on directors' independence from Nasdaq OMX Stockholm's Rule Book for Issuers.

The Code was also to be amended as a result of the European Commission's Recommendation 2009/3177/EC on remuneration of directors of listed companies (see the following section).

Whether these changes are to strengthen the role of stakeholders in corporate governance is not explicitly stated in the proposals or in the amended legislation.

The adjustments to the Code will probably enter into force in spring 2010.

Switzerland

Corporate governance is the subject of debate, in particular, with regard to the financial sector. The trade unions are demanding a stronger and more independent supervisory body for the financial sector and more government influence over the big banks (UBS, Credit Suisse and so on).

United Kingdom

The debate on corporate governance has not been structured around the overall terms of the national corporate governance code, known since 1998 as the 'Combined Code'. Instead, it has concentrated on the position in the banks and the financial sector, where a failure of corporate governance is seen as one of the contributory factors causing the financial crisis in the UK, which led to the near failure of several major financial institutions. Without government intervention the Royal Bank of Scotland (now 84 per cent owned by the UK government), Lloyds Banking Group (now 43 per cent owned by the UK government) and Northern Rock (entirely owned by the UK government) would now almost certainly all be bankrupt, with seismic effects on the UK economy.

The debate has concentrated on remuneration (see below), the management of risk – in other words, how the directors of the banks approved actions which would have led to bankruptcy but for state intervention – and the extent of external influence on directors' actions.

The main official response to that debate is contained in the Walker Review, which, besides proposals on remuneration (see below), makes a series of recommendations on corporate governance. These are largely technical, dealing with the size, composition and qualifications of the board, its functioning and how its performance is evaluated, as well as the governance of risk (banks and other financial institutions should set up a separate risk committee). There is also greater emphasis on the role of institutional investors, with a new 'Stewardship Code' being proposed (see below).

The Walker Review's recommendations require action by a number of regulatory bodies, and the government said that it accepted the proposals and would seek to implement them.

This includes making changes to the national corporate governance code which, since 2003, has been the responsibility of the Financial Reporting Council (FRC), an independent body largely funded by a levy on large companies and professional accountancy bodies. The FRC plans to change the corporate governance code to give effect to the recommendations of the Walker Review. The name of the code will also be changed from 'Combined Code' to 'UK Corporate Governance Code'.

Do these changes strengthen the role of stakeholders in corporate governance?

Bulgaria

According to the new Code of Corporate Governance, corporate governing bodies should establish and promote effective communications with all stakeholders, such as suppliers, clients and consumers, creditors, employees and social pressure groups. Corporate governance should also take into account the interests of stakeholders and ensure legal compliance in all cases.

Some issues concerning communications with stakeholders are also mentioned in company CSR policies, codes of conduct and codes of corporate governance. In the National Strategy for CSR, some issues related to company relations with stakeholders are also mentioned.

France

The MEDEF-AFEP code does not add anything new with regard to the recommendations of previous codes. Stakeholders are supposed to be represented by independent board-level representatives. The code explicitly states that 'it is not desirable to multiply the representatives of special interest groups on boards'. As far as employee representation is concerned, the code merely repeats the existing legal obligations and limitations.

Greece

The changes concern mainly the state sector and strengthen transparency and possible accountability.

United Kingdom

If shareholders are excluded from the concept of 'stakeholders', the answer is no. However, the Walker Review recommendations are intended to strengthen the involvement of institutional investors, such as pension funds, insurance companies and other fund managers, through the introduction of a new 'Stewardship Code', for which the FRC will also be responsible. Consultation

on the Stewardship Code began in January 2010. The new Code will be based on the existing Institutional Shareholders' Committee (ISC) Code on the Responsibilities of Institutional Investors. The aim of the ISC Code is 'to enhance the quality of the dialogue of institutional investors with companies to help improve long-term returns to shareholders, reduce the risk of catastrophic outcomes due to bad strategic decisions, and help with the efficient exercise of governance responsibilities'. The new Stewardship Code is expected to have very similar aims.

Management remuneration

Is there a debate in your country on the level of management pay and whether it played a role in the crisis (for example, through stock options?) If so, please describe this debate.

Austria

Experts and even the European Commission agree that remuneration systems for managers have become a major problem. For years now, the share of so-called ‘variable’ salary components in manager salaries has been expanding significantly. These include so-called success fees, bonuses or share options, which were supposed to provide an incentive to company managers to perform better. In reality, however, this – on the surface plausible – idea, which was imported from the Anglo-Saxon remuneration model, has spiralled out of control.

According to a study by the Chamber of Labour, manager salaries in 100 publicly traded Austrian corporations have increased by 130 per cent since 2003, while over the same period, the lower level employees of these companies experienced real wage losses of 4.5 per cent.

Five years ago, a manager of a listed company earned 20 times as much as his subordinates; now his earnings are 48 times higher. In particular, the variable part of manager salaries has increased significantly in recent years. No social or, for example, environmental criteria are used in assessing manager salaries; and nothing changed even after the outbreak of the financial crisis. The figures show that distribution policy is getting out of control and that the management stratum is becoming increasingly out of touch with reality.

New rules are necessary, therefore. Germany has already reacted, bringing in a new law aimed at preventing excessive management remuneration. In Austria, the political will is not yet there to pursue the German path. Recommendations for more transparency in management remuneration are to be found only in the Austrian Corporate Governance Codex. The Codex is not mandatory and is based on self-regulation of listed companies, pursuant to the ‘comply or explain’ principle. The provisions on transparency of management remuneration were upgraded in 2009 to a ‘comply or explain’ rule, which states that the fixed and performance-linked annual remuneration of

each individual management board member must be disclosed in the Corporate Governance Report for each financial year. This shall also apply if the remuneration is paid through a management company. Are listed companies generally in compliance with this? Only half of all listed companies publish individual management remuneration, clearly indicating that a voluntary approach does not work in this field.

The Chamber of Labour, in cooperation with the trade unions, is demanding the following:

- Individual management remuneration must be published by law.
- Social and environmental criteria must be considered in the assessment of success and management remuneration.
- Reduction of the depreciation allowance with regard to management remuneration. Only salaries up to €500,000 should be recognised as expenditure and set against corporation tax.
- More transparency in the supervisory board: management remuneration should be worked out by a special supervisory committee (*Aufsichtsratspräsidium*). Employee representatives should not be members of this committee, but all members of the board shall have the right to examine the remuneration arrangements.
- Reduction of management remuneration in case of economic crisis.
- The length of management contracts shall be limited.

Belgium

The recommended principle is that management remuneration should be arranged in such a way as to promote long-term value creation. On this basis, it might be expected that share-based remuneration would often be resorted to and the use of annual bonuses fairly limited. Analysis of annual reports does not fully confirm this expectation, however. More specifically, most bonuses are paid annually. As a consequence, executives have an incentive not to create long-term value, but to take short-term decisions. Overall, it can be questioned how much the crisis has affected the debate on corporate governance and the level of executive remuneration (Baeten and Vandewalle 2008).

In 2009, changes occurred in two areas: new recommendations were made with regard to the Code Lippens, and for the first time legal provisions were introduced. The new recommendations should be considered as preparatory to the legal provisions. The bill consists of two parts: provisions to guarantee good governance and provisions related to executive remuneration. The first part focuses mainly on the remuneration committee, providing for its composition and tasks. The regulations on remuneration include the following:

- listed companies should set up a remuneration committee within the board of directors;
- the members of the committee shall be non-executives;
- the majority of the members of the remuneration committee shall be independent;
- the remuneration committee shall advise the board of directors on remuneration of executive managers as well as of “independent” board directors;
- the remuneration committee shall explain the remuneration report at the annual shareholders meeting.

A second important governance topic is remuneration policy. The disclosure of remuneration applies to remuneration principles (link between pay and performance) and the relative importance of each remuneration instrument in the whole remuneration package, as well as the characteristics of performance-based pay in terms of shares, share options or other share-based remuneration and information on remuneration policy for the next two years. In addition, the annual report should disclose information on important changes regarding remuneration policy that have taken place during the past year and so-called ‘golden parachutes’ (the basis for termination arrangements). Finally, the annual report should also disclose information on the composition and functioning of board committees and information on risk-taking.

Regarding the level of executive remuneration, the bill recommends detailed disclosure concerning levels of remuneration, both for the CEO individually and for the other members of the executive management collectively. The report on the level of executive remuneration should contain the following information:

- the level of basic remuneration;
- the level of variable information: not only the level should be mentioned, but also whether the bonus is paid in cash, share-based remuneration, pension schemes or other remuneration instruments;
- pension schemes: the cost to the company should be mentioned, as well as the type of pension scheme;
- other remuneration instruments: this paragraph should give information on the cost of other remuneration instruments, such as insurance;
- with regard to share-based remuneration, information on the number of stock options, shares or other share-based remuneration should be disclosed on an individual basis. Its main characteristics, such as lock-up and price, should also be disclosed.

Bulgaria

Concerning the remuneration of top managers, the debate has mainly been conducted among managers and employers' associations and at informal meetings. As far as the payment of middle managers and supervisors is concerned, these issues are discussed with trade unions at the sectoral and company levels. As some of them are also trade union members, there are some provisions in collective agreements concerning their payment and working conditions. The payment of top management is not officially a topic of debate by the unions, but it has sometimes been discussed in inter-union discussions and in informal discussions with employers and government.

According to the survey carried out in 2006 (Vatchkova 2007a, 2007b), in 29.1 per cent of companies engaged in production (including manufacturing and mining) profit sharing is used, while in 22.1 per cent there are stock options and in 19.8 per cent employee share schemes for all personnel. Variable pay systems (VPS) are based on individual performance in 47.7 per cent of companies, on company-wide performance in 40.7 per cent and on team performance in 22.1 per cent. In 10 per cent of organisations in the financial sector (including retail banks), profit sharing is used, while stock options and also employee share schemes exist in 10 per cent of them. VPS are based on individual performance in 80 per cent of the organisations surveyed and on company-wide performance and team performance in 60 per cent.

According to the survey conducted in the breweries in 2009,²⁹ 47 per cent of managerial personnel declared they usually receive company shares as bonuses. At the same time, 53 per cent have the right to buy shares on preferential terms. Concerning profit-sharing, 53 per cent of managers said that they receive such bonuses in cash. Also, more than 50 per cent of them declared that their compensation included pay for performance and team bonuses and more than 70 per cent individual bonuses. However, VPS and compensation are also implemented for other categories, such as professionals, clerks and workers, but they are less likely than managers to receive such compensation. Both managers and other categories of personnel are entitled to additional pension insurance (in two-thirds of cases – 57 per cent said that the contribution is fully paid by the employer) and to social benefits (40 per cent of respondents).

In many MNC subsidiaries, according to the ISTUR survey in 2008 (Daskalova 2009), variable pay systems, including bonuses, profit sharing, stock options and other things, are in use for the whole workforce, but for managerial personnel in particular. Variable pay systems include monthly bonuses, annual bonuses according to results, bonuses for implementing health and safety standards, bonuses for saving resources or for preventing excessive staff turnover. The companies at which bonuses are used most often include Kraft

29. The survey was commissioned by the National Trade Union of Workers in the Brewery and Allied Industries (affiliated to CITUB) and carried out by a team of researchers from the International University Sofia and ISTUR.

Foods, Vidima, Mirolio, Instrument-Zeratizit and Mondy-Packaging. The following examples may be given of the proportions between the permanent and variable shares: 50:50 (SKF Berings); 65:35 (CEZ); and 70:30 (Mondy-packaging and Zagorka-Hainecken). In 95 per cent of the subsidiaries surveyed, managers are involved in the appraisal systems and usually are assessed by their superiors. In 47 per cent of cases, their individual salaries are negotiated individually with the company headquarters management team or with the management team of the subsidiary (for middle managers and supervisors). In 40 per cent of cases, the salaries of middle managers and supervisors are negotiated at the company level (under collective bargaining, if it exists) and in 11 per cent of cases basic salaries are negotiated in the sectoral or branch agreements. Stock options are used for compensation in 47 per cent of cases (for all categories of personnel) and profit sharing (also for all categories of personnel) in 52 per cent of cases.

Against the background of the current economic crisis, management remuneration has been a topic of public debate and after the last general election there were public and media debates on a number of scandals concerning some public-owned companies, such as Information Services and National Energy Holding.

There are other debates, but mainly among HR professionals employed in companies and agencies for consulting and recruitment.³⁰ They usually take place online, which at least allows all who wish to do so to participate. The hottest issue seems to be management pay in banks, but also in some other sectors. According to HR managers and agency specialists, people looking for new jobs (usually employed, but wanting to change and to get more money) have higher expectations, in comparison to their capacities, because of employment shortages in finance, banking, construction, IT, telecommunications and business services in 2005–2008. In some cases (mainly in banks), employers have to offer salaries twice as high as the previous salary of the candidate, but usually the figure is about 10–15 per cent, or perhaps 20–30 per cent. More specifically, salary demands varied from BGN 2000 to 8000 (between EUR 1000 and 4000), which are much higher than the national average wage (currently, about BGN 590 or EUR 300). Some HR professionals at agencies think that money does not tend to be the main reason for changing jobs, especially among successful managers. Since 2009, wage demands have become more realistic, as labour market supply increased after some initial redundancies and even many professionals are now looking for a new job.

The National Corporate Governance Code includes a number of criteria with regard to the remuneration of members of boards of directors, management boards and supervisory boards, such as tasks and results; attracting and keeping qualified professionals; and coordination of company interests and personal interests. Possibilities related to variable pay systems are also mentioned.

30. See www.humancapital.bg; www.capital.bg

Cyprus

There have been some criticisms, not related to the causes of the crisis, but rather to the fact that, while the economy continues to decline, the banks continue to prosper.

Germany

As in many other countries, against the background of the financial crisis, levels of management remuneration were widely discussed in Germany in 2008/2009. Criticisms relate to the vast increases and short-term orientation of bonuses and incentives. To provide a brief overview: from 1975 to 2005 annual workers' earnings in Germany doubled, but the remuneration of executive directors of the 100 largest German companies rose by 7.45 per cent a year, an eightfold increase over the same period. Among the DAX 30 companies, the average remuneration of members of management boards amounted to €2.32 million in 2008: 32 per cent of remuneration was declared as fixed and 68 per cent as variable, 60 per cent of the latter comprising short-term incentives.³¹ The structure of compensation, questionable incentives and the lack of control exercised by supervisory boards, together with some deficiencies with regard to the (lack of) accountability of managers in respect of risk taking are seen as significant causes of the crisis.

As a result of all this, the former government coalition CDU/SPD passed the **Appropriateness of Management Board Remuneration Act** (*Gesetz zur Angemessenheit der Vorstandsvergütung*), which came into effect on 5 August 2009. When assessing this reform one should keep in mind that in the German two-tier system the (codetermined) supervisory board is solely responsible for appointing the members of the management board and for deciding on contract provisions. The most important changes to German company law are as follows:

- Specification of the **appropriateness of remuneration** (§ 87 sec. 1 Aktiengesetz (AktG)):
 - in proportion to the performance of the board member;
 - not exceeding the usual amount without good reason.
- For listed companies:
 - obligation to orientate remuneration towards sustainable company development;
 - variable remuneration should consist only of long-term incentives (several years) (§ 87 sec. 1 AktG).

³¹ Arbeitshilfe 14 für Aufsichtsräte der Hans-Böckler-Stiftung, *Angemessene Vorstandsvergütung*, Düsseldorf 2009, p. 8.

- Possibility of a **reduction in remuneration** if a company's situation deteriorates (§ 87 sec. 2 AktG).
- If the company takes out a D&O (directors' and officers' liability insurance) policy for the management board, a deductible of at least 10 per cent of losses up to at least the amount of one and a half times the fixed annual compensation of the management board member must be agreed upon. A similar deductible must be agreed upon in any D&O policy for the supervisory board.
- The supervisory board should agree on an **overall cap** for remuneration (§ 87 sec. 1 AktG).
- It should be the responsibility of the **whole plenum of the supervisory board** (employee and shareholder representatives) to decide, not only on appointments to the management board, but on all remuneration measures. Delegation of decisions on remuneration to a committee within the supervisory board is no longer permitted (§ 107 sec. 3 AktG).
- Possibility for the **annual general meeting** to decide on the remuneration of executive directors ('say on pay'). This decision is in no way binding on the supervisory board, however; the supervisory board remains solely responsible (§ 120 AktG).
- Clarification of the **liability of supervisory board members** for voting for inappropriate remuneration (§ 116 AktG).
- Further **transparency obligations** for listed companies (§ 285 No. 9a, § 314 Handelsgesetzbuch (HGB)).

The demand for a limitation of the tax deductibility of remuneration above a certain level – similar to existing rules for supervisory boards – did not become part of the reform. In addition, it should be noted that, due to crisis legislation, the members of management boards in banks which receive government aid must not earn more than €500,000 per annum.³²

Concerning codetermination the shift of responsibility to the **supervisory board as a whole, from small committees within it, is very important** for the practice of boards. This represents a new challenge, but also a new opportunity for worker representatives and codetermination, since not only the overall level of remuneration, but also the strategic aims of incentives now belong within the responsibility of the supervisory board as a whole (including employee representatives). The focus on adequacy and sustainability opens up new possibilities to create appropriate long-term incentives that are not linked merely to shareholder value but also to social, societal and envi-

³² Financial Market Stabilisation Act (FMStA) of 17 October 2008 and additional regulations.

ronmental responsibilities and to workers' interests, such as job satisfaction, employee development, health and safety, customer focus and so on. Some large companies have already adopted such criteria, for example, Allianz SE, Fraport AG and VW AG. Besides, the DGB has demanded the creation of simple and transparent compensation structures, linked to the development of employees' income. The DGB suggests limiting the proportion of incentives and strengthening fixed remuneration instead (for example, it should comprise at least 60 per cent of the total).

Greece

There has been increasing criticism and debate on so-called 'golden boys', mainly in state controlled companies. This coincided with the recent election campaign. It has been related not so much to the financial crisis but to public sector finances and the national debt. The new government has initiated stricter controls on pay, as well as pay cuts, and has adopted an 'open government' approach in filling public sector posts.

Hungary

Management pay is a highly topical issue in Hungary. The recent debate was fuelled by a series of scandals related to extremely high bonuses and severance pay in the public sector, for instance at the Budapest Transport Company (Budapesti Közlekedési Vállalat, BKV).

Following a couple of law suits initiated by journalists and civil society groups, first the court ruled that management pay in the public sector qualifies as information in the public interest. Then the government issued a decree in September 2009 (No. 175/2009. (VII.27.)), which required public sector companies and institutions to make remuneration of managers and board members public. Not surprisingly, the published data showed that the highest management remuneration was paid by state-owned financial institutions. Another scandal revealed that university rectors also received extremely high remuneration compared to professors and other staff. The body of university rectors, however, was reluctant to publicise remuneration details, declaring that they were the subject of private law contracts. In another lawsuit the court decided that universities, under the auspices of the Ministry of Education (Oktatási Minisztérium, OM) also qualify as public institutions which must be accountable in terms of the utilisation of public monies. Finally, the Parliament passed a new law (Act CXXII of 2009) on the 'thrifter operation of publicly owned companies' which, among other things, sets definite limits on the remuneration of CEOs and board members. The law stipulates that at publicly owned companies managers' pay must not exceed 25 per cent of the pay of the President of the National Bank of Hungary (Magyar Nemzeti Bank, MNB), established by Parliament. At the moment, 25 per cent equals HUF 2 million a month (€7,400 at the current exchange rate). Nonetheless, the regulation is still being debated, with opponents claiming that in private companies man-

agers are better paid, especially in the financial sector, and so it may have an adverse effect on the selection of public sector managers.

While public sector management pay became subject to strict regulation, private sector management pay was not on the agenda at all. Management pay in banks was not regulated when the competences of the financial watchdog, the Hungarian Financial Supervisory Authority (Pénzügyi Szervezetek Állami Felügyelete, PSZÁF), were recently widened.

Basically, the major trade unions have refrained from issuing official opinions or demands with regard to management pay. Ironically, smaller unions at the companies affected by the various scandals merely repeated the official company communiqués, saying that paying very high bonuses and severance pay was lawful.

Ireland

The main debate on management remuneration is focused on banking executives, employed in banks that have been kept afloat by injections of substantial funds from the government (taxpayers), including one bank (Anglo-Irish Bank) that has been nationalised to save it from collapse. The government referred the remuneration of bank executives to the body that sets the remuneration of senior management in state-owned companies, the Covered Institution Remuneration Oversight Committee (CIROC). The Finance Minister, speaking in the Dáil (lower house of parliament), said that

total remuneration for all senior executives in the banks benefiting from state capital, AIB and Bank of Ireland, will be reduced by at least 33% and no performance bonuses will be paid for these senior executives and no salary increases will be made in relation to 2008 and 2009. The two banks have also accepted that, for non-executive directors, fees will be reduced by at least 25%.

CIROC recommended a cap of €500,000 per annum for top banking executives.

Luxembourg

There have been no official reactions by trade unions or public debates. Moreover, the new government programme does not mention any intention to produce legislation in the field of remuneration. However, this does not hide the fact that the government has been aware or even critical of developments in the field of management pay. Asked on several occasions about the issue during interviews (for example, *Luxemburger Wort*, 29 October 2009; *Deutschlandfunk*, 17 September 2009) Prime Minister Jean-Claude Juncker declared himself disappointed that globally accepted norms had not been worked out yet.

Malta

There has been no debate about this issue. There have been cases in which trade unions, not satisfied with the way the closure of a firm has been handled, have referred to or even questioned the pay of executives. A case in point was the closure of Malta Shipyards in 2008.

The Netherlands

Management remuneration is highly topical in the Netherlands. The focus is on bonuses in the banking sector, remuneration in the non-profit sector and bonuses paid when managers leave a company (either voluntarily or not) or when a company is taken over. According to the government, managers should receive no more than one year's salary when leaving a company. The proportion of variable pay should be subject to a maximum.

Since September 2006, works councils have had the right to receive information on the remuneration of the different categories of personnel, including top management. It is still unclear to what extent works councils receive this information and/or put it to use.

A bill has been introduced to give works councils of listed companies the right to speak at the general meeting of shareholders on the remuneration policy of the company and on major strategic decisions. Whether this right will have more than symbolic value remains to be seen.

Poland

The debate on management remuneration concerns in particular the disclosure of information on the criteria used to determine this remuneration and the necessity of linking it to the long-term results of the company. According to the report prepared by Deloitte (Report, Wynagrodzenia prezesów największych spółek giełdowych, www.deloitte.com), the information disclosure requirements stemming from the Good Practices Code of the Polish Stock Exchange and the Regulation of the Polish Finance Minister are inadequate in comparison to the European Commission and ABI Guidelines.

For example, the Polish documents do not contain a requirement of disclosure regarding remuneration policy, the justification of levels and mechanisms of specific elements of remuneration or the criteria governing the variable part of remuneration. According to the report, Polish companies disclose less information than is recommended by the European Commission (p. 5).

On the other hand, the latest Good Practices Code of the Polish Stock Exchange requires that the remuneration of members of boards of directors be related to the tasks and responsibilities of the given person, as well as the size and financial results of the company. In case of an incentive scheme based

on shares or similar instruments, the company should disclose the estimated costs of such a scheme on its website. The companies which were analysed by the report's authors have generally respected these guidelines.

The report underlines the need to disclose individual information on remuneration for the purposes of stockholders and potential investors. Moreover, according to the report, management remuneration should be more strictly based on long-term factors. The relationship between pay and short-term performance, in particular, is seen by the authors as one of the reasons for the financial crisis (p. 19).

Portugal

There is some news to report in Portugal in respect of corporate governance issues:

- 1) As an important step towards more transparency, on 30 April 2009 the Portuguese parliament approved Law no. 28/2009, which was published on 19 June 2009 and entered into force the next day.

This law establishes rules on the approval and disclosure of remuneration policy in relation to members of supervisory boards and boards of directors in public-interest entities, as specified by Decree-law no. 225/2008. These include, in particular, listed companies, investment funds and public companies of a certain size.

Art. 2 establishes the obligation of boards of directors or remuneration committees to submit annually for the approval of the general meeting a declaration on the remuneration policy with regard to members of supervisory boards and boards of directors.

Approved remuneration policies must be disclosed in the annual financial report, as must the remuneration paid to each member (Art. 3).

Violation of these rules shall incur a fine (Art. 4).

- 2) In the context of government financial guarantees, the possibility of direct intervention is foreseen. According to Law no. 60-A/2008 of 23 October and Regulation no. 1219-A/2008 of the same day, in relation to the beneficiaries of such guarantees the state can, among other measures, decide on the remuneration policy governing members of the supervisory board and the board of directors.
- 3) There are also new developments to report in respect of Portuguese corporate governance rules.

The Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários – CMVM) launched another public consultation and

published a draft amendment to CMVM Regulation no. 1/2007 and a draft amendment to the Corporate Governance Code.

CMVM Regulation

The principal amendment to the CMVM Regulation is a proposal to grant listed companies the option of choosing other corporate governance guidelines, besides the 'official' Corporate Governance Code, as long as these guidelines obey the same principles, provide similar protection of the interests and level of transparency, cover at least the same subjects and are issued by an acknowledged institution with specialists in matters of corporate governance.

Regarding the remuneration policy governing members of the supervisory board and the board of directors, the proposal establishes the obligation to disclose in the corporate governance report, not only the approved remuneration policy and the amount of remuneration paid, specified for each member, as mandatory under Law no. 28/2009 with regard to the annual financial report, but also detailed information in respect of fixed and variable remuneration, remuneration received by other companies of the same group and companies held by principal shareholders, as well as obtained pension rights.

Sweden

There is some debate in the media about the level of management pay, bonus schemes and other remuneration schemes. However, at present the debate is focused mostly on the banks.

The debate is similar to the one at EU level and thus to some extent concerns how to modify bonus models according to the demands presented at the G20 Pittsburgh summit in September 2009.

The Swedish government recently issued a request to the boards of directors of the 53 state-owned companies to renegotiate both currently applicable management remuneration agreements and upcoming agreements so that in future management remuneration does not exceed a specific level.

In spring 2009, however, a vigorous debate was occasioned by the approval by the board of AMF of a very generous pension agreement for a former managing director. AMF is a limited liability life insurance company, owned equally by the Confederation of Swedish Enterprise and the Swedish Trade Union Confederation (LO). One of the members of the board that granted the pension agreement is also the president of LO and the European Trade Union Confederation (ETUC).

Switzerland

There is currently a big debate on the level of management pay. Management remuneration in large Swiss companies is among the highest in the world and

the gap between workers' wages and top management salaries has steadily increased.

The trade unions are demanding a maximum level of management remuneration and that salaries include a large fixed element.

At the moment, two initiatives are under way that will lead to a referendum within the next two years:

- (i) One initiative demands that decision-making competence with regard to management remuneration be transferred from the governing body to the general shareholders' meeting. This reform was initiated by a liberal entrepreneur. The trade unions regard this as a reasonable proposal to be supported within the framework of corporate governance, but it is far from sufficient to solve the problems of excessive management pay.
- (ii) The second initiative was launched by the youth section of the social democratic party (Jungsozialisten). They demand that the highest management pay in a company shall not be more than 12 times the minimum wage. The collection of signatures has just started (100,000 are needed for a referendum) and support for this initiative seems fairly strong, particularly among trade unionists. The trade unions will therefore certainly support this initiative.

United Kingdom

The issue of directors' pay has been a topic for debate in the UK for many years and there is general acceptance that the way in which pay has been structured in banks and other financial institutions contributed to the financial crisis. As Alistair Darling, the Chancellor of the Exchequer (finance and economics minister) under the then Labour government, stated when the Walker Review was published in November 2009, 'pay and bonuses encouraged reckless risk taking instead of responsible behaviour'. More recently, the fact that banks bailed out with public money have again started to pay large bonuses to some staff, has produced renewed public outrage at top pay in banks.

Details of board-level remuneration in the UK have been published for several years. All limited companies above a certain size must include information about director's remuneration in their annual report and accounts, which are publicly available. In addition, the directors of quoted companies are legally required to provide a directors' remuneration report providing greater detail on the pay of individual directors and the rules used for determining pay linked to performance. Under the corporate governance code, the pay of individual executive directors should be set by a remuneration committee made up of non-executive directors. In addition, since 2002 listed companies have been obliged to present the directors' remuneration report to the shareholders' annual general meeting, where it is voted on. This vote is advisory rather

than binding but, on the rare occasions the report has not been accepted by the AGM, there has normally been some change in remuneration practice.

Most UK commentators consider that banks' remuneration structures played a role in causing the financial crisis by rewarding actions that were profitable in the short term but extremely damaging in the long term. A report by regulatory body the Financial Services Agency (FSA) concluded in March 2009 that, 'There is now a consensus amongst both regulators and industry practitioners that inappropriate remuneration practices contributed to significant losses at major firms and therefore to the severity and duration of the current market turmoil' ('Reforming remuneration practices in financial services', FSA). Lord Turner, head of the FSA, writing in the same month, explained how this had come about: 'past remuneration policies, acting in combination with capital requirements and accounting rules, have created incentives for some executives and traders to take excessive risks and have resulted in large payments in reward for activities which seemed profit making at the time but subsequently proved harmful to the institution, and in some cases to the entire system' (*The Turner Review: A regulatory response to the global banking crisis*, FSA).

This analysis came shortly after the FSA had produced a draft code of practice on remuneration policies in financial institutions. However, in a statement accompanying the draft code in February 2009, the FSA made clear that it was only concerned to ensure that 'firms have remuneration policies which are consistent with sound risk management, and which do not expose them to excessive risk'. It stressed that 'it is not concerned with setting levels of remuneration, which are a matter for the boards of companies and their shareholders'.

This approach – namely, that pay structures but not pay levels are a matter for regulation – was also the one adopted by the Walker Review. As stated in the interim report, published in July 2009, it made 'no proposal that levels of remuneration should be capped; the focus throughout is on the structure of remuneration, provisions for deferment, appropriate linkage to performance and fuller disclosure' (*A review of corporate governance in UK banks and other financial industry entities*). The final report which, as already stated, was accepted by the then government, does not refer to the level of pay but only how it is decided, the form it takes and how it is disclosed.

Walker's key recommendations on remuneration are that:

- remuneration committees should deal with the pay of all high paid employees, not just with that of board members, as in the past;
- remuneration committees should disclose the basis on which this 'high end' remuneration is made and the total number of employees whose pay exceeds the median of board members' pay, with details provided on pay bands;

- incentive payments should be deferred, with at least half the variable (performance-related) pay being in the form of a long-term incentive scheme, paying out over three and five years;
- high paid employees should be expected to hold a shareholding in the company at least equal to their total pay over a period to be defined by the remuneration committee;
- if the vote on the directors' remuneration report, which is voted on at the annual general meeting of shareholders, is supported by fewer than 75 per cent of the votes, the chair of the remuneration committee should be compelled to stand for election the following year;
- there should be a code of conduct for consultants providing advice on remuneration to companies.

These recommendations, like the other Walker recommendations, will be incorporated into the corporate governance code.

The Walker approach, leaving the level of pay to the shareholders, appeared initially also to be the then government's approach. However, as the public became aware of the large bonuses that banks and other financial institutions were expected to pay out on the basis of excellent 2009 results, the mood changed.

On 9 December 2009, then Prime Minister Gordon Brown, together with French President Nicolas Sarkozy, contributed an article to the *Wall Street Journal* in which they stated that 'a one-off tax in relation to bonuses should be considered a priority'.

On the same day, in the pre-budget report, Alistair Darling, Chancellor of the Exchequer, announced that he was imposing a special one-off levy of 50 per cent on any individual discretionary bonus above £25,000. This levy was to be paid by the banks, not the individuals. The Chancellor justified this levy on the basis that all banks had benefited from government help; that banks should be using their profits to rebuild their capital base; and that, if they were determined to pay substantial amounts in bonuses to staff, the government would 'claw money back for the taxpayer'. The full impact of this decision is not yet clear, but it appears that many banks have chosen to pay the levy rather than cut back bonuses to high-paid staff.

Have the trade unions in your country made any demands or recommendations regarding the level of remuneration, its composition (for example, breakdown between variable and fixed pay) and/or disclosure requirements?

The trade unions have regularly complained about the high pay of directors and other high paid individuals. For example, Tony Woodley, joint general secretary of the UK's largest union, Unite, is one of a number of figures who have called for a 'High Pay Commission' to 'address the institutionalised culture of excessive pay' (letter to *The Guardian* newspaper, 13 October 2009).

In its evidence to the Walker Review, the TUC opposed the prevailing thinking on executive pay, arguing that ‘a far smaller proportion of the total pay of directors ... should be based on performance’ – it suggests 10 per cent would be an appropriate proportion. (The Combined Code calls for ‘a significant proportion of executive directors’ remuneration’ to be linked to ‘corporate and individual performance’.) In its evidence, the TUC also criticised the Walker Review’s failure to look at pay levels. It stated: ‘we believe that the Review’s failure to consider issues of remuneration levels and differentials leaves a gaping hole in this area of its analysis and is out of touch with the scope of reform that the public wants to see in this area’. The TUC believes that total remuneration levels in banks and other financial institutions, ‘as well as being too dominated by incentive-related elements, are too high’, both in relation to other staff in finance and the economy as a whole. On disclosure, it would like remuneration reports to include information on the distribution of pay throughout the company by grade and, where directors’ pay has risen more rapidly than average pay, for there to be an explanation of why this is the case. The TUC also calls for individuals earning more than the median pay of board members to be named, along with details of their pay.

Do the trade unions in your country have any demands or recommendations regarding the level of remuneration, its composition (for example, breakdown between variable and fixed pay) and/or disclosure requirements?

Bulgaria

The trade unions have made recommendations mainly on the level of remuneration in general – for example, the pay of top managers compared to the average wage level in companies and sectors – but they represent only general views, not particular demands. They also have recommendations with regard to middle-level managers and supervisors, some of whom are trade union members, mainly in industry (manufacturing and mines, electricity and heating, telecommunications and so on).

The trade unions are not opposed to variable pay in general, but they are concerned about the balance between fixed and variable pay (for instance, 70:30 or more than 70 per cent for fixed pay for workers and other non-managerial staff). Where the wage level is much higher than the national average (in most MNCs and in some sectors, such as electricity supply, banking, IT and telecommunications) the trade unions are usually not opposed to the introduction of different ratios between fixed and variable pay: for example, 65:35 or 50:50. As far as the wage composition of managers is concerned, the trade unions usually insist either on negotiating the conditions applied or at least on obtaining information about them (concerning middle managers and supervisors), but such demands are not always successful. With regard to the conditions pertaining to the remuneration of top managers and the members of governing bodies, some sectoral trade unions and sometimes the confedera-

tion leadership have asked for the disclosure of information, but this usually happens only in cases of privatisation, restructuring or insolvency.

France

Generally speaking, the French unions take the view that the measures proposed by the government to control management remuneration do not go far enough. They have also called for the taxation of all bonuses. As far as corporate governance is concerned, they explicitly demand that employee representatives be systematically present on company boards' remuneration committees so that they can control top management remuneration. This is very seldom the case at present.

In a document issued by its economic department on April 2009 and developed together with its board-level representatives, the CGT called for total transparency on management remuneration, with precise criteria linked to the long-term performance of the company, including environmental and employment objectives. There should also be a threshold for maximum remuneration. Stock options should be forbidden. Like the CFDT, the CGT proposes that the works council should be informed and consulted on management remuneration before the final decision of the board's remuneration committee

Are there any new legislative requirements in your country, or any new requirements in the national corporate governance code?

Bulgaria

There are no legislative requirements (only in the Commercial Code), with the exception of the National Code of Corporate Governance, which regulates which stocks can be bought or sold on the stock market. A number of other codes have been accepted by companies, while some business associations – such as BBBLF – have laid down their own rules for their members.

Cyprus

The legislative requirements concerning the Corporate Governance directive of the Central Bank of Cyprus.

France

The debate on top management remuneration began in France before the crisis. Public awareness has risen because numerous top managers who were responsible for mismanagement and collective redundancies were invited to

resign after being awarded financial severance packages by their board. During the presidential election campaign in 2007, both the socialist candidate and the right-wing candidate, Nicolas Sarkozy, promised to impose a limit on management remuneration by law. The employers' organisations were strongly opposed to that. After the financial crisis, caused by the bankruptcy of the US bank Lehman Brothers, French president Sarkozy, in a speech of 25 September 2008 in Toulon, strongly condemned the functioning of financial capitalism and made a public commitment to protect and save the French banking system. He once again denounced the practice of severance packages and called for better control of them. To meet this demand, the employers' confederation MEDEF, in cooperation with the association of large companies AFEP, presented a corporate governance code (see above) on 6 October 2008. The code calls for the limitation of severance packages to two years' total (fixed and variable) remuneration and for their prohibition in the event of voluntary departure or management failure. The distribution of stock options without conditions related to management performance should also be banned. It is recommended that stock option plans for management be conditional on the existence of a financial participation plan for all employees. (This rule was added to a law on the revitalisation of financial participation approved on 28 October 2008.)

The government gave the 700 listed companies three months to adhere formally to the provisions of this code, stating that it would draft a bill if they did not comply. In the end, 90 per cent of the companies did so. In exchange, the government renounced the taxation of extraordinary management remuneration. In November 2007, parliament subjected severance packages of over one billion euros to a special contribution to the social insurance system, but it waived, at the government's request, a minimum tax on stock options and bonus shares.

Despite the demands for more transparency, new scandals arising from the allocation of severance packages and stock options in the banking system were revealed, in particular at Société Générale, a bank the state had rescued from bankruptcy in 2008. Its CEO, Daniel Bouton, had already been caught selling his stock options in the middle of the 2008 crisis. After the rescue, in March 2009 the bank's board once again decided to distribute stock options to him and some other top managers. A few days later, thanks to government subsidies worth 1.7 billion euros, the bank's share price went up again. (Ironically, Bouton was the author of a report asking for more transparency in corporate governance, the 'Bouton report' of 2002.) In order to counter the public uproar, the managers announced that they would exercise their stock options only after the public funds were paid back. But this was not sufficient to halt the public debate. President Sarkozy commented bitterly: 'Clearly, some people have difficulty understanding what I was saying. In the presence of a redundancy plan and public subsidies, bonuses, severance packages, stock options and other forms of exceptional management remuneration are out of the question.' Finally, the Finance Minister put direct pressure on executives to get them to abandon their stock options 'voluntarily'.

In order to put an end to this debate, on 30 March 2009 the French government issued a decree on remuneration rules in companies that receive public funds. It concerns all public enterprises, as well as companies from the banking and automobile sector. In these banks and automobile companies, board members and chief executives are no longer allowed to receive stock options or free shares. Any other form of variable pay must be approved by the board and meet pre-established quantitative and qualitative performance criteria. They may not be related to share prices. No variable pay may be received if the company has decided on collective redundancies. In public enterprises, variable pay elements likewise must not be related to share prices. Rewards must be based on precise and pre-established criteria concerning company performance and long-term progress. Severance packages must not exceed two years' remuneration. Furthermore, they can be paid only if the recipient is forced to leave, but on condition that he or she has met the relevant performance criteria. It will not be paid if the company is experiencing serious economic difficulties.

Despite continuing public pressure, including from inside the political parties that back the government, the latter refrained from limiting management remuneration more generally by legal measures, but insisted merely that all companies should comply with the voluntary MEDEF-AFEP code. In November 2010, MEDEF and AFEP presented the first annual report on their enforcement record. It is positive as far as the transparency and standardisation of information is concerned, but progress is only modest in terms of the remuneration rules themselves: 94 per cent of listed companies have agreed to comply with the rule that severance packages should not exceed two years' remuneration, but only 24 per cent have adopted the rule that it is to be paid only in the case of the forced departure of the executive in question. Before the publication of the code, 94 per cent of companies distributed stock options – 74 per cent still do so. Indeed, the habit of distributing free shares is growing, from 66 per cent to 69 per cent of companies. All in all, there is no sign of moderation with regard to management remuneration since the crisis – in fact, quite the contrary.

Finally, President Sarkozy decided to change his attitude to the taxation of bonuses. In a joint article with then British PM Gordon Brown, published by the *Wall Street Journal* on 10 December 2009, he proposed an exceptional one-off tax on bonuses in the banking system for 2009 because these bonuses had been made possible only by government support for the banking system.

Disclosure of company information

Is there a debate in your country on more thoroughgoing disclosure, in particular in relation to environmental, social and governance issues (ESG)?

Austria

From the beginning, the ‘Corporate Social Responsibility Austria’ (CSR Austria) initiative, launched in late 2002, was strongly influenced by the Austrian Industry Federation and the Chamber of Commerce. The two institutions, together with the Federal Ministry for Economic Affairs and Labour, created CSR Austria and developed general principles for corporate social responsibility in Austria.

In 2005, CSR Austria, in cooperation with the Austrian Business Council for Sustainable Development, set up a platform, respect, within the framework of which a series of projects are supported, including Trigos. Trigos gives out awards for corporate responsibility in three categories: Society, Workplace and Market. Within the scope of CSR, a number of different competitions are organised, with incentives for good practice.

Due to the strong influence of the employer institutions in working out CSR standards, many critics see corporate social responsibility as merely a neoliberal marketing vehicle. Since one of the key elements of CSR is voluntariness, it is up to the companies themselves how much CSR they want to introduce.

Although there are binding rules for the reporting of environmental and working conditions, company compliance is limited.

In §243 of the Austrian Commercial Code there is an obligation to report on non-financial indicators, such as environmental and working conditions. As an investigation by the Chamber of Labour of more than 100 enterprises from the top 500 shows, the practice of social reporting is not satisfactory. Only every second enterprise reports on collective educational and training measures and their costs. Only 17 per cent of the examined enterprises report on accidents at work or industrial safety measures. Reporting on environmental targets is virtually non-existent.

It must be said that the provisions in §243 of the Commercial Code are very broad and may be complied with in numerous ways. Therefore, the Chamber of Labour is calling for clear legal provisions on environmental and social information policy. The Global Reporting Initiative (GRI) could serve as a model.

Belgium

Corporate social responsibility is a relatively recent concept in Belgium. Although many initiatives have been taken, there is still a long way to go. In Belgium, such initiatives have been taken at both the institutional level and the company level. In 1997, a legal framework for sustainable development was set up. In 2006, the government established a Reference Framework for CSR, followed in 2007 by the CSR Action Plan (Louche, Van Liedekerke, Everaert, LeRoy, Rossy and d'Huart, 2009). In 2010 a UN Global Compact office was opened in Belgium.

At the company level, three important things can be mentioned regarding CSR: what companies think and do about CSR; whether they report their CSR practices; and whether their CSR performance is good. With regard to the first point, investigations reveal an awareness of the importance of CSR. However, in the majority of companies, CSR is not a strategic issue. In addition, dialogue with stakeholders does not seem to be a priority for Belgian companies (communication is usually oral).

A second topic under discussion is the way in which companies report CSR. Belgian law on the contents of annual reports does not require specific information on CSR issues. However, an investigation of Everaert (in Louche et al., 2009) showed that 60 per cent of companies (listed on Euronext) disclosed information on CSR-related issues in the annual report. This means that 60 per cent provide information on CSR on a voluntary basis. Regarding the contents, a wide variety of topics is discussed; the majority of companies disclose information on environmental issues and product responsibility.

A final characteristic of CSR concerns performance. A study by Louche et al. (2009) concluded that Belgian companies have improved in this respect. However, they are progressing more slowly than their sectoral peers from other countries. It is important to note regarding the Belgian context, that the three Belgian regions of Flanders, Wallonia and Brussels have been pursuing different paths with regard to CSR. Flanders has been the most active region, launching initiatives and incentives to stimulate CSR, while Wallonia and especially Brussels have been somewhat slower in taking action. Another Belgian characteristic is the SME landscape. Multinationals can be major drivers for CSR, but they have a limited presence in Belgium in comparison to many other European countries.

Regarding whether the crisis has affected the CSR debate, two things might be mentioned. First, new recommendations have been added to the corporate governance code for listed companies:

- Concerning the translation of values and strategies into key policies, boards should pay attention to corporate social responsibility and diversity, including gender diversity.
- Boards' composition should ensure that decisions are made in the company's interest. This should be determined on the basis of the necessary diversity, including gender diversity, and complementary skills, experience and knowledge.

On CSR more generally, no distinct debate is going on, except in the academic world. Louche et al. stated: *'One may argue that CSR is no longer a choice, as responsible business practice is becoming an important driver of national and regional competitiveness'* (Louche et al., 2009).

According to academic opinion, CSR should be brought back to the basics: companies must benefit not only shareholders and consumers but also the broader community. In general, CSR is aimed at meeting the needs of the present without compromising the ability of future generations to meet their own needs. Due to the interrelatedness of social, economic and environmental life, companies can no longer afford to focus only on shareholder value. This means that the focus is shifting towards how the enterprise can serve society. Therefore, other initiatives should be launched, for example, concerning the need for executives to have a wider range of qualifications (Louche and Dodd, 2009).

Bulgaria

The debate is mainly at the company level, although sometimes also at the sectoral level within the framework of collective bargaining, mainly concerning economic and financial information and information on possible restructuring or change of ownership. There are also debates inside employers' or business associations, as well as at the workshops in which business representatives, NGOs, trade unions and sometimes the government participate, mainly with regard to corruption.

A survey by the Economic Policy Institute in 2007, including the 40 largest listed companies in Bulgaria, provides some interesting data.³³ For example, 77 per cent of the surveyed companies have Bulgarian language websites, while 75 per cent have English language websites; 52 per cent of the companies disclose the names of their managers, and 33.3 per cent provide their CVs; 52 per cent of the companies disclose the supervisory board members' names in Bulgarian, while 45 per cent disclose them in English; 40 per cent of the surveyed companies provided their annual reports for 2006 online in Bulgarian, and 25 per cent provided them also in English; 22 per cent of the surveyed companies disclose information on their shareholders' rights policy in Bulgarian, while 15 per cent do so in English.

33. See www.epi-bg.org

The findings of the Survey of Reporting on CSR, conducted in 2007 within the framework of the UNDP project mentioned above,³⁴ show the following: 75 per cent of the companies surveyed disclose information on CSR in Bulgarian or in English with regard to at least one component of all three categories surveyed; and 72 per cent of companies disclose information on at least one of the five components of the corporate governance section in the Bulgarian/English annual report or website. Of these, 97 per cent report on the corporate governance structure; 69 per cent disclose audit-related information and 55 per cent disclose information on the company's shareholders' rights policy. With regard to environmental policy, 27 per cent of the companies surveyed disclose information on at least one of the five different components of the environmental policy section in the Bulgarian/English annual report or website. Of these, 73 per cent report on compliance with industry-specific, national or international regulations. Also, 42 per cent of the companies surveyed present information on at least one of the five components of the social policy section in the Bulgarian/English annual report or website. Of these, 59 per cent disclose information on employee development and employee benefits policies, while 41 per cent disclose information on community patronage or sponsorship programmes.

Another survey, including companies listed on the Bulgarian Stock Exchange in spring 2009 (40 companies),³⁵ shows that only a few (10 per cent) of the companies are likely to share their information on corporate governance with the public; in 25 of the companies the information presented by the board is minimal; and six companies said that they have not prepared rules for stockholders' meetings.

At the same time, it should be mentioned that some companies refused to give information to trade union structures at the sectoral, regional or national levels (sometimes also company trade unions) or to researchers. The ISTUR team encountered difficulties as a result of such refusals during the collection of information on MNC subsidiaries in Bulgaria (Daskalova 2009). Some HR managers refused even to share information on particular labour and social issues.

The incorporation of a number of provisions on information disclosure in the National Code of Corporate Governance is foreseen, such as transparency, legal compliance, the equal treatment of all stakeholders in the disclosure of information, and timely, comprehensive, correct and objective information. Public information should contain all relevant data on the company, including structure, rules, shareholders' meetings, governing bodies, accounting reports, data in relation to audits (financial or social) and so on.

At the moment, only the already mentioned documents exist, namely the National Strategy for CSR, the National Code of Corporate Governance and the rules of some business associations, as well as a number of agreements at company level and provisions in sectoral/company collective agreements.

34. See www.acceleratingCSR.eu

35. The survey was carried out by the Bulgarian Association of Investor Relations Managers, Sofia. Available at: www.DarikFinance.bg

Greece

There has been a major change with the creation of a new Ministry for the Environment, Energy and Climate Change. The intention is to strengthen audits and introduce more accountability. If there are any ESG issues these work mainly top-down or are supported by small sections dealing with green policy and by individuals.

The trade unions do not seem to have found a role in this debate, so far. Their agenda is still very traditional and action is needed in this respect.

Ireland

There is no debate in Ireland on what information should be disclosed by companies, apart from that required under the various EU Directives. One recent development on this issue was that, under a new amendment to the Companies Act in 2009, the disclosure of loans to directors of banks and all related documentation, either in hard copy or electronic, must be made public.

There are no proposals in draft legislation with regard to statutory reporting on environmental matters or employees' rights in annual reports.

Malta

Pressure with regard to this issue from the trade unions has been notable by its absence. Since collective bargaining is conducted at enterprise level, they seem content with the regular meetings held with management which, they claim, generally enable them to keep well informed about the financial situation and economic viability of the firm and any envisaged developments

The Netherlands

There have been no recent developments with regard to ESG issues. Earlier developments are described in a previous SEEurope contribution on this issue (the research project by Sigurt Vitols).

Sweden

In line with the request of the boards of state-owned companies to renegotiate remuneration in respect of their fixed component, the government demanded that state-owned companies shall provide an annual report on sustainability, underlining companies' environmental and social responsibility.

However, there are no signs of new legislation.

Switzerland

There is a debate going on between NGOs and trade unions, but so far this has not led to a proposal for new legislation.

Exception: the obligation to disclose the remuneration of management and members of the governing body has been slightly widened.

United Kingdom

The UK imposes very few disclosure obligations on companies in relation to environmental and social issues, although there is a requirement to report on governance under the Combined Code. A new requirement to produce an 'Operating and Financial Review' (OFR) which, in the words of the 2005 company law white paper, would have been 'a new form of narrative report in which companies will need to describe future strategies, resources, risks and uncertainties, including policies in relation to employees and the environment where these are relevant', was abandoned by the then government in 2006.

The requirement to have an OFR was replaced by the requirement – on quoted companies only – for an expanded Business Review. This should provide information on environmental matters (including the impact of the company's business on the environment), the company's employees, and social and community issues, but only 'to the extent necessary for an understanding of the development, performance or position of the company's business' (Companies Act 2006).

Although there is some discussion among investors about improved ESG disclosure by companies based in emerging markets, this does not seem to be a concern in relation to UK-based companies.

Has this discussion led to proposals for and consideration of new legislation?

Bulgaria

Not yet, but the new government decided to disclose all information pertaining to meetings of the government and all other information which could be of interest to citizens (with the exception of so-called 'classified' information related to national security).

France

France has some of the most far-reaching legislation on disclosure with regard to ESG issues in Europe. Listed companies must publish annual social and environmental reports on such matters as HR policy, cooperation with con-

sumer associations, environmental policy and compliance (including by their subcontractors and foreign subsidiaries) with fundamental human rights, as defined by the ILO. A decree defines a list of indicators that these reports have to include: 32 indicators deal with internal social matters (employment, training, health and safety, non-discrimination and so on), eight indicators with 'territorial impact' and 28 indicators with the environment.

There are no new elements in the debate and no new legislation. The unions have asked that consultation of employee representatives should be mandatory for the definition of the criteria and for the monitoring of the reporting.

Greece

There may be some developments in the coming months, on the initiative of the new Ministry of the Environment

Conclusions

Bulgaria

The establishment of a framework of good corporate governance in Bulgaria is still in its initial stages. However, the voluntary implementation of some rules is already under way. Provisions related to disclosure of information and management remuneration have already been inserted in the rules, codes of corporate governance and so on, wherever they exist and are implemented. There are still many challenges with regard to the regulation of management remuneration and, especially, to the disclosure of company information. The issue of worker participation at the board level is not under discussion at the moment, as the requirements for workplace information and consultation are not yet being implemented, even in companies with 50 or more employees. However, the trade unions are endeavouring to be involved in the process of information and consultation as much as possible, but they have yet to initiate a discussion on board-level representation.

Sweden

One debate concerns the simplification of regulations. It is the aim of the Swedish government to reduce companies' administrative costs by 25 per cent by the end of 2010. Another aim is to make it easier to incorporate as a limited company. However, there will probably not be any changes in the legislation until after the general election in September 2010.

Furthermore, there is an ongoing debate on male dominance in boards of directors and how to make boards more accessible to women, and on whether equalisation with regard to men and women should be voluntary or mandatory. There are no proposals for legislation on this issue, however.

A final remark. In March 2009, the Swedish metalworkers' and industrial workers' trade union IF Metall, engineering employers (Teknikarbetsgivar-na), metal employers (Metallgruppen) and industry and chemical employers (Industri- och kemigruppen) reached an agreement on temporary layoffs and training. IF Metall will demand compensation when there is an economic upturn. There are tough wage negotiations to look forward to in spring 2010, when about 600 collective agreements are due to be renegotiated.

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36. This paper is the main source of the material in the section 'Corporate Governance'.

Appendices

Appendix 1, Bulgaria

Before the commencement of negotiations on EU accession, CSR concepts and practices (including good corporate governance) were topics of discussion mainly in the NGO sector. A number of specific debates were initiated by the trade unions and employers' associations, but at that time the issue seemed less important. There were also some initial activities by the International Business Leaders' Forum.

On 6 November 1998, a new NGO, the Bulgarian Business Leaders' Forum (BBLF), was inaugurated, with the honorary support of HRH the Prince of Wales and President of the Republic of Bulgaria Petar Stoyanov (1997–2001). The BBLF was established as an NGO of business representatives, also as the Bulgarian member of the International Business Leaders' Forum (IBLF). It announced as its main objective the promotion of CSR values. Since its establishment, the BBLF has initiated and realised many projects and activities, such as annual business awards for CSR, business master classes and conferences, as well as research and practical projects, the latest being one on CSR in the tourism industry in Bulgaria, 2009–2010.

In June 2007, the BBLF, in partnership with the Confederation of Independent Trade Unions in Bulgaria (CITUB), organised a public discussion on social auditing in companies, the main introductory address being given by a French expert on social auditing.

Later, an MSc degree in social auditing was established at the University of Sofia, with the support of French academics. However, so far there have been few candidates, while expectations with regard to its practical implementation seem too low, as social auditing is still in its infancy in Bulgaria.

The BBLF has also implemented ethical standards for business, which its members and candidate-members should adhere to. Most of these ethical standards are related to good corporate governance: building businesses on moral principles; introducing transparency with regard to company operations; cultivating trust between management and shareholders; observing all laws and regulations applying to the business; striving to prevent corruption in all its forms.³⁷

In October 2004, the first session of the National Roundtable on the Introduction of National Labour Standards in Bulgarian Enterprises took place, with the participation of representatives of the social partners and government institutions. The main objectives of this roundtable – which is still in existence – are as follows: improving dialogue and exchange of information; raising awareness with regard to social standards among political and societal

³⁷. See www.bblf.bg.

institutions; supporting social auditing in enterprises; creation of cohesion at national level; and the publication of bulletins and magazines. The first national conference on CSR took place in July 2006.

The National Chamber of Craftsmen, which was involved in the project 'Socially responsible business' in 2004–2005, supported by the PHARE programme, in partnership with UEAPME and the Bulgarian Chamber of Commerce and Industry, published a handbook on CSR for craftsmen and small and micro-companies, including the main principles, best practices and also comments on workers' information and consultation rights in small and micro-enterprises (which are not provided for by existing legislation).

In 2006, an international conference 'The European Social Model and Challenges to Bulgaria', organised by the Economic and Social Council and the European Economic and Social Committee (EESC), took place. One of the main papers, presented by the president of the BIA (Bulgarian Industrial Association), Dr Bojidar Danev, was devoted to CSR. Many companies joined the Global Compact and more than 2,200 Bulgarian companies came to operate in accordance with international standards (ISOs) (Danev 2006). The good news was that the business representatives recognised good corporate governance as one of the main principles of CSR.

In 2007–2008, UNDP (United Nations Development Program) implemented a regional project on CSR which is focused mainly on CSR standards in the new EU member states (Bulgaria, Hungary, Lithuania, Poland, Slovakia), but also in some candidate countries, such as Croatia, Macedonia and Turkey. A number of business networks from Spain, Germany and the UK also participated in the project, presenting their best practices on CSR. In the course of project implementation, surveys were conducted and conferences were held and the main findings were published. According to the survey data (collected by the Alpha research agency in about 60 companies), in Bulgaria only a few companies – mainly large MNC subsidiaries and large Bulgarian companies – reported on their CSR arrangements in regular and structured reports. About 120 companies signed the Global Compact. CSR is usually not practiced by small and medium-sized companies (with some exceptions). Many employers consider CSR as involving primarily charitable activities.³⁸

In 2008, the Institute for Social and Trade Union Research (ISTUR) at CI-TUB conducted a survey among MNC subsidiaries in Bulgaria (Daskalova et al. 2009), the third of its kind (the preceding surveys were carried out in 1998 and 2003). The survey included 24 subsidiaries from many sectors of the Bulgarian economy. In-depth interviews were conducted with HR managers and trade union representatives at company level. Most of the subsidiaries usually implement the CSR policies and rules and/or Codes of Corporate Governance of the parent companies (Kumerio-Norddeutsche Affinerie, Instrument-Zeratzit, Vidima and Ideal Standard, SKF, Solvey-Sodi, Actavis, Mirolio and so

38. See www.acceleratingCSR.eu

on). In most subsidiaries there are rules or codes of conduct, or they have signed up to international agreements on socially responsible conduct.

With regard to corporate governance, some of the principles laid down in the rules of the subsidiaries of InBef/Kamenitza are interesting, such as the principle of meritocracy. In the rules of some subsidiaries, such as Mondi-Packaging, InBef/Kamenitza, Karlsberg and Heineken, scope is provided for democracy, transparency, workers' opinions and informal management practices and less importance is attached to the management hierarchy.

Modern systems of communication and exchange of information have also been implemented, as at Kumerio, Vidima, Solvey and Mondi.

In some companies, the trade unions participate in the implementation of rules on CSR, including participation in the preparation of the rules and/or codes of conduct (in breweries), in informing workers and raising awareness of the rules (Holsim, Kumerio, SKF, Kodak, Solvey and Ideal-Standard). In some cases, trade unions initiate activities.

Some other companies (mainly large Bulgarian-owned ones) also have codes or rules on CSR or codes of corporate governance. In companies where there are trade unions the codes/rules on CSR are prepared in partnership or consultation with the trade unions. However, as already mentioned, most managerial teams understand CSR mainly in terms of charitable activities.³⁹

In 2008, a task force comprising representatives of the social partners, NGOs and the academic community, and coordinated by the Ministry of Labour and Social Policy (MLSP), was set up to develop a National Strategy on CSR. In 2009, the Strategy and the National Implementation Plan were adopted. The Strategy includes some principles related to corporate governance, but it is not its main focus.⁴⁰

The impact of the financial and economic crisis in Bulgaria and the role of the trade unions

After the first effects of the crisis manifested themselves, an intensive discussion was initiated between the social partners on employment, working time and social insurance. The social partners presented proposals for a draft anti-crisis plan, although this was not implemented as a whole by the government. The trade unions focused mainly on labour market policies, incomes policies (wages in the public sector) and the improvement of education and vocational training.

CITUB's proposals included: action to stabilise the national finances, the implementation of full deposit guarantees, the monitoring of economic development by the government together with the social partners, tripartite meetings

³⁹. See www.acceleratingCSR.eu

⁴⁰. See www.mlsp.government.bg

on sectoral issues and the imposition of restrictions on the shadow economy by extending the scope of sectoral/branch collective agreements. CITUB also proposed increasing the number of companies at which reduced working time could be implemented.

Only a few of the social partners' proposals – on bank deposit protection and the labour market – were implemented by the previous government, which held office from 2005 to July 2009. At the national level, an agreement on reduced working time was negotiated between the government, employers and trade unions in 2009.

However, in November 2008, the trade unions walked out of the National Council for Tripartite Cooperation and since then most consultations have been within the framework of the working groups of the NCTC and informal contacts.

Data on the impact of the crisis⁴¹ show that a large number of companies have already experienced difficulties, due mainly to the fall in demand for goods and some services. Some companies have even closed temporarily. Most employers try to stave off bankruptcy by means of redundancies, working time reductions and other measures, such as the implementation of wage and benefit freezes. This has made industrial relations more difficult, making collective bargaining more protracted and reducing trade union membership in some sectors. Currently, the employers are insisting on the prolongation of the periods during which part-time work is permitted which were agreed in the first half of 2009.

The new government – in power since August 2009 – renewed the social dialogue at the national level and also agreed to increase wages in the public sector, although not earlier than mid-2010 and only if there are sufficient resources.

Currently, collective bargaining and social partnership are still focused mainly on the issues of part-time work (at company level) and working time. This concerns, in particular, such sectors as wood and paper, metalworking, clothing, construction and chemicals. There have also been many redundancies in metallurgy and also the temporary closure of plants in chemicals and paper manufacturing. The redundancies will continue, especially in railways and the metal industry. In rare instances, some training measures were organised for newly redundant workers. In some companies, amendments to collective agreements, related to the social protection of redundant workers, have been negotiated.

However, the trade unions have declared that they will insist on higher wages in the course of new negotiations on collective agreements in sectors and com-

41. Data collected from government reports, information provided by employers' associations and trade unions, as well as information from media publications.

panies which have not been seriously affected by the crisis, such as pharmaceuticals, food, tobacco and electricity supply.

Appendix 2, Cyprus

A cross-border merger is in progress between Marfin Egnatia and MPB, of Greece and Cyprus, respectively. The board of directors of Marfin Popular Bank approved the common draft terms of the cross-border merger through its absorption of Marfin Egnatia Bank S.A. Questions pertaining to the merger include whether the worker participation clause will apply or be bypassed and how they will combine their voluntary practices in that regard.

Appendix 3, Hungary

The effects of the crisis on Hungary: an overview

In October 2008, the credit crunch hit Hungary hard due to the country's high level of indebtedness, one significant feature of which is the considerable debts amassed by the population in foreign currencies, mainly Swiss francs. (Part of the reason for the popularity of Swiss-franc denominated loans was the monetary policy of the Hungarian National Bank (Magyar Nemzeti Bank, MNB), which maintained the base rates of the Hungarian forint at a relatively high level for a while, so that foreign currency-based mortgages and other consumer loans were cheaper.) The credit crunch led, first, to an unprecedented devaluation of the Hungarian forint, which threatened state bankruptcy, similar to what happened in Iceland. In order to avoid further devaluation of the national currency, on 22 October the Monetary Council of the MNB raised the base rate to 11.5 per cent from 8.5 per cent. In November, Hungary reached agreement relatively quickly with the International Monetary Fund (IMF), the European Union and the World Bank on a substantial credit line of approximately €20 billion. The loan agreement envisioned restrictions on budget expenditure, as a consequence of which the then Hungarian government had to introduce a series of austerity measures.

The crisis has also exposed the structural weaknesses of Hungary's economy. This was partly due to the sudden collapse of consumer demand, both domestically and in Western Europe (the main export market for Hungarian companies). In the past two decades, Hungarian companies have achieved a high level of integration through foreign direct investment (FDI), making Hungary highly vulnerable to the turning of the tide. Parallel to the devaluation of the forint, manufacturing industry experienced rapid contraction. As early as December 2008, a 23.3 per cent drop in industrial production was recorded compared to the previous year.

According to the latest available data (November 2009) the Central Statistical Office estimates a 7.9 per cent fall in GDP during the first three quarters of 2009. As far as the employment impact of the global recession is concerned,

the unemployment rate has grown by 2.7 per cent, year on year, and as of late 2009 stands at 10.4 per cent, the highest figure for 13 years.

Despite the crisis, the financial sector has fared relatively well. Although the government offered the commercial banks a support package, in practice only a few banks actually made use of it. The government's major crisis management and economic revitalisation package was launched in autumn 2008 with the objective of addressing the problems of the financial market and the labour market together. The Ministry of National Development and the Economy (Nemzeti Fejlesztési és Gazdasági Minisztérium, NFGM) announced a 'crisis management and economic stimulus package', which was to be funded mainly from the New Hungary Development Plan – the current framework for utilisation of the European Social Fund – and partly through reallocating monies from ongoing programmes, and it will be complemented by accelerating the commencement of other planned projects. As for the employment policy package announced by the Ministry of Social Affairs and Labour (Szociális és Munkaügyi Minisztérium, SZMM), the primary goal of central assistance was the preservation of jobs by helping companies to stay in business. The main forms of state subsidies include:

- partial subsidising of wages and wage levies;
- subsidising the introduction of shortened working hours;
- contributing to the costs of training and re-training;
- provision of state-run services in the labour market;
- contributing to travel and mobility costs.

Nonetheless, it is worth noting that the Hungarian government, unlike its counterparts in other countries, is not in a position to launch generous state programmes to bail out endangered companies, due to the indebtedness of the Hungarian state budget, a lack of foreign currency reserves and the limited proportion of publicly owned enterprises, the latter an obvious consequence of the far-reaching privatisation programme of the 1990s.

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