

National models and experiences of workers' participation

The German case

Points of intervention on behalf of the workers

- On workplace level
- On local level (shop, factory, agency, headquarter)
- On company level
- On group level in Germany
- On sector level in Germany
- On group level in Europe
- On group level world wide

The players of intervention on behalf of the workers

- The worker herself/himself
- The works-council (on local, company, group level)
- The representatives in the supervisory board (on company or on group level)
- The Trade union (on local level - only in some sectors -, company and on sector level)

Works Council

Only in the **private sector**

- Composed only of workers (except senior management)
- Elected by all workers (except senior management)
- Nomination by workers; unionists usually present a union list for election
- Proportional representation of all lists
- Works Councils on three national levels:
 - Local (local works council),
 - company (company works council)
 - national group (group works council),
- Works Council on european level: in a european group (european works council)

In the **public sector** exists a similar system with **staff councils** on three regional or national levels

Works Council

Gender equality

- The sex which is in a minority in the workforce, must be represented in proportion to its presence in the workforce on all works councils with more than one member

Works Council

Number and structure

Employess	Works council members	Employees	Number of works council member freed from work
5 - 20	1	200 - 500	1
21 - 50	3	501 - 900	2
51 - 100	5	901 – 1.500	3
101 - 200	7
201 - 400	9		
...	...		

Tasks of the Works Council

- Application of the law, of collective agreements
- Social justice
- Equal chances for all workers
- Respect of gender equality
- Compatibility of work and family
- Respect of privacy of the workers
- Safety regulations
- Education of the workers
- Reconciliation of interests (Interessenausgleich) when the establishment or parts of it shall be reduced, closed, transferred, merged with another establishment or division, reorganized, when new procedures shall be introduced
- Social compensation plan
- Information, in most cases concerning social implications and social decisions
- Consultation, in most cases concerning restructuring the company, social implications and social decisions
- Codetermination

In case of dissent

- Arbitration committee, only in cases of co-determination
- labor court, only when rights of works council are violated

Works Council

Right to Information

- Planning about technical changes, procedures, work places
- Personnel planning
- Grading and degrading
- Transfers and appointments
- Personnel planning
- Closing or reduction of the establishment
- Transfer of the establishment or parts of it to another place
- Merger with another establishment or division
- Reorganization of the establishment
- New procedures

In case of insufficient information:
labor court

Works Council

Right to consultation (some examples)

- Consultation about the social impact of enlargement of the establishment, of new buildings, of new technical equipment, of new work procedures, of new workplaces
- Consultation about closing of the establishment, transfer of the establishment, outsourcing, merger with other establishments or division of the establishment, reorganization of the establishment, new procedures
- Dismissal without information of the works council is null and void

Legal remedies of the works council

In some cases:

- veto against decisions without prior consultation
- Arbitration committee (in this case only for negotiation)
- Written Works council agreement

Works Council

Right to Codetermination

- Violation of established safety or ergonomic standards by new workplaces, workflows, work environment
- Appointment of workers, grading, regrading, transfer in establishments with more than 20 workers in advance
- Regulations about selection of candidates (in establishments over 500 workers also on initiative of the works-council)
- Public order regulations in the establishment
- Starting- and finishing times and breaks
- Temporary shortening or lengthening of working time
- Safety regulations
- Technical devices (including computer programmes) to control the workers
- Dealing with complaints of workers

Legal remedy:

In case of consent: written works council agreement

In case of dissent: arbitration committee. Its decision is binding unless it has violated the law by its decision.

Problem: There is no co-determination about economic decisions.

Works Council

Codetermination in case of dismissal

- The works council can object the dismissal for social reasons, if a regulation concerning the selection has been ignored by the company, if the worker could be employed at another work place in the same company, if the worker could be employed in the same company after a retraining or training on a different job
- In case of dismissal against the veto of the works council the worker can bring an action against the company. Until the final decision of the court he has the right to remain employed.
- The labor court decides whether the objection of the works council was justified

Problem: The works council can object the dismissal only in very limited cases. In case of lack of work or even closing down of the establishment, in case of insufficient performance, in case of personal conflicts between the employee and the employer he has no right to object.

Works Council arbitration committee

- In most cases of co-determination the works council – in case of non-consent with the employer - can appeal to an ad-hoc arbitration committee
- The arbitration committee is composed of representatives of both employer and works council with a neutral chair.
- The neutral chair is chosen by consent or by the labor court
- The decision of the arbitration committee is binding for both sides, except in cases of violation of the law by the arbitration committee. Its decision is written down as a works council agreement.

Works Council Economic Committee

- elected by the works council on company level in all companies with more than 100 workers.
- Composed of works council members and other workers, also members of the senior management
- Has to be informed in advance on all economic plans of the company, their social impact, the economic development
- Meetings: once a month
- Federal Court of Labour Law in Germany ruled that due information means information so early that decisions can be influenced and changed without serious economic consequences

In case of dissent about what is necessary and timely information:

Arbitration committee

Its decision is binding unless it has violated the law by its decision.

In case of violation of the obligation to inform the Economic Committee

Sanction up to 10.000 € (very rarely applied)

Works Council

Appointment of experts

- In all questions concerning his legal tasks the works-council has the right to appoint experts which have to be paid by the company
- The works-council makes his own choice about the expert
- He must try to obtain the consent of the employer

In case of dissent: the works council appeals to the labor court

Works Council

Relationship to Trade union

- Members of the works council can be members of a Trade union.
- More than 70 % are members of the Trade union.
- Representatives of the Trade union can be invited, already when 25 percent of the members of the work council demand it, which is usually the case, although the company will try to exclude the trade unions (promise better information in case of absence of a trade union official)
- Works council and trade union can operate at the same time, using the advantages of each tool
- When the Trade union calls for strike, the works council is not allowed to support the strike officially
- Works council members are allowed to support the strike
- Works council members often go to union organized training courses
- Under certain circumstances the labour union can initiate the election of a works council

Works Council

Committee of young workers

- elected by all young workers up to 25 years, including those in education
- Participates at the works councils' meeting
- Responsible for specific questions of young workers like education, employment after education

Works Council

Representation of disabled workers

- Elected in workplaces with at least 5 disabled workers, by all disabled workers
- Eligible: all workers of the workplace
- Objectives: integration of disabled workers, specific themes concerning disabled workers
- Participation at the meetings of the works council

Representation of senior management

- On plant level or on company level
- If there are more than 10 senior managers on this level
- Can cooperate with the works council
- Has a right to consultation about labor conditions, personnel decisions (employment, removal, dismissal)
- A dismissal without its' consultation is null and void
- Has to be informed about the economic situation like the economic committee

Means of intervention – Worker herself/himself

- Consultation about his work, his responsibility, safety regulations
- Complaint in case of unjust treatment
- Objection to work for another employer in case of transfer of the establishment
- Refusal to work in case of intolerable danger or other intolerable situation
- In general no right of refusal to work in case of violations of the law by the employer

Supervisory board

- Workers in larger limited liability companies (500 workers or more) also have representation on a supervisory board.
- In shareholder companies the supervisory board can appoint and dismiss the members of the board of directors (legal representatives).
- The board of directors reports to the supervisory board
- What concerns workers participation the main types of supervisory boards are
- The one-third-participation (between 500 and 2000 workers)
- The equal-number-codetermination (more than 2000 workers)

Supervisory Board

One-third-participation

- More than 500 workers
- One third of the members of the supervisory board are elected by the workers
- Two thirds are elected by the shareholders
- Usually the representatives of the workers in this supervisory board are members of the works council. In some cases they are Trade union officials.
- The influence of the workers in this supervisory board is very limited. It can be used to support the work of the works council.

Supervisory Board

“Equal”-member-“codetermination”

- Companies with more than 2.000 workers
- Half of the members of this supervisory board are workers' representatives
- The others are elected by the shareholders
- The size of this board ranges, depending on the number of workers, between 12 and 20.
- 2 or 3 are elected on suggestion of the Trade union. Usually they are union officials.
- One workers representative is election on suggestion of the senior management
- The president of this supervisory board is always a representative of the shareholders. In case of deadlock he has two votes
- Minority rights in the supervisory boards can be used to obtain information and benefits for the workers in exchange for consent to certain decision
- The influence of the workers representatives in this supervisory board is stronger than in one-third-codetermination. It is however limited due to the senior manager and the second vote of the president
- The influence of the workers depend very much on the strength of the Trade union in this company and in this sector

Advantages of “codetermination” in a supervisory board

- Influence on the appointment of members of the board of directors.
- In limited liability companies, it need a 2/3 majority in the first round, and a majority in the second round and only then the president of the supervisory board can make use of his second vote.
- Influence on economic decisions, by arguing with the board of directors.
- Many important decisions of the board of directors need the prior consent of the majority of the supervisory board

Future of the German “codetermination”

- Some German Companies acknowledge the advantages of “codetermination”. They know how to use codetermination for their own purposes
- Some think it prevents quick decisions
- Some argue that it is a competitive disadvantage
- There is no majority among the German companies who wishes to copy the Italian model
- In spite of the economic and financial crisis, there is no majority yet for amendments of the current law

General problems of workers participation in Germany I

- Employers very often try to avoid information, consultation and codetermination
- The law offers a variety of loopholes to avoid the creation of works councils and supervisory boards
- Many companies use illegal practices to prevent the creation of works councils
- Companies try to keep out trade unions from workers participation
- Confidentiality is used to prevent the information and mobilization of the workers
- Only about 20 % of the workers are union members
- A large amount of workers have no representation at all. In 2009 it was estimated that only 10 of all eligible private workplaces had a works council.
- The existing works councils covered only 46 % of all workers.

General problems of workers participation in Germany II

- The real influence of codetermination is very limited.
- The works council has mainly influence on social questions and even there only rather limited. Dismissals cannot be prevented.
- “Blackmailing” as described in the case of FIAT is frequent in Germany as well
- Participation under “good weather” conditions is easier than under conditions of the economic crisis.
- Now with new kinds of contracts, posted workers, black market workers workers participation is facing new problems
- The influence of workers in the supervisory boards is also rather limited. Can only take place indirectly
- Even very big companies like the Schwarz-Group (Lidl) or Aldi avoided supervisory boards and European works councils by choosing a certain legal form of corporation. Also UPS, Kühne + Nagel, H & M, Esprit,
- Some companies try to use the European Company (SE) to reduce the influence of workers and in particular the influence of Trade unions in the supervisory boards

Workers participation in Germany

some conclusions - Works Councils

Works Councils:

- success in spite of many deficiencies, as far as social questions are concerned
- But insufficient application of the law concerning information and consultation in the reality of industrial relation
- Amendments necessary, i.e.
 - in case of dismissal (i.e. control of economic necessity)
 - In case of mergers and divisions
 - Concerning posted workers, black market workers, part time workers, subcontractors
 - In case of transfer of establishments
 - More flexibility to create a workers representation in case of several companies in the same location (shop in shop system)
- Many works councils are too weak to defend their rights

Workers participation in Germany

some conclusions - Supervisory Boards

Supervisory boards

- Useful for works councils and Trade unions to understand management strategy
- Women are far from being represented in accordance to their number in the companies in spite of union efforts
- Limited influence for the benefit of the workers by crosswise deals
- The control of the board of directors is only possible with many restrictions
- Many supervisory board members do not use their rights properly
- There is a certain risk of corruption (intimate meeting with the board of directors, luxurious atmosphere of the meeting, annual allowance in the so called DAX companies often more than 100.000 EURO)
- Participation works better under positive economic conditions. It has much more limited influence under the conditions of the economic crisis.
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Workers participation in Germany
some conclusions -
effectiveness

- Workers participation is more effective with strong trade unions, and good coordination of the activities of trade unions, works councils and workers representatives in the supervisory boards
- Conditions have to be established make workers participation more effective (training of workers representatives, supply of analyzes and work material, i.e. list of necessary information)

Workers participation in Germany
some conclusions
in general

- Even though the law in Germany does not provide workers with economic codetermination, it can be considered to be an important historical step for economic democracy
- The struggle for economic democracy can go much further than what has been achieved in Germany
- The “German model” can help to understand which kind of solutions should be avoided
- The financial and economic crisis can be a chance to introduce economic democracy