

#DEMOCRACY
AT WORK

DEMOCRACY
AT WORK
MATTERS

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“ Democracy at work is at the core of trade union action. Democracy at work is a fundamental value and a guiding principle of the European Union. The right to information and consultation is anchored in the Charter of fundamental rights of the EU as well as in EU law and in international human right instruments. It mirrors decades of hard battles to place effective collective rights of workers at the forefront of an ambitious European and national political agenda. Democracy at work matters. For workers, for companies, for society.

Democracy at work provides for sustainable and balanced corporate governance. It allows companies to perform significantly better and be more innovative. It stimulates an enabling environment for better working conditions, better paid and more productive workers, and for a higher labour force participation. Democracy at work fosters more equality in the workplace, as well as in society.

In time of crisis, in particular in such an unprecedented worldwide pandemic, democracy at work is of paramount importance to maintain workplaces safe and secure and to ensure the workers' health. Democracy at work is also a key condition for any restructuring process to be carried out in a sustainable and socially acceptable manner to safeguard employment and guarantee fair working conditions in coping with the crisis.

These are the reasons why we all should care about democracy at work. This is the reason why the trade unions are engaging in an active and determined strategy to empower workers and their representatives to exercise their democratic rights at the workplace and to strengthen information, consultation and participation rights.

Isabelle Schömann, Confederal Secretary

1. Introduction

Freedom, democracy and social justice are core values of the European Union (EU). Democracy is fundamental to our society, in its political, economic and social dimension. More Democracy at Work belongs to a robust and fairer Social Europe. Workers represent an essential constituent of private and public companies and public services. They offer their time, energy and skills on a daily basis. However, their voice and influence are more and more limited and their rights are shrinking. As voters can influence the organisation of their communities, workers should have a greater say regarding the organisation and the choices in their workplace that impact them most.

What does *Democracy at Work* mean?

Workers' representatives have the right to be informed and consulted, to have meaningful and timely discussions with management at all relevant levels, and to be actively involved in the decision-making process of their companies or organisations before any important decisions are made!

Two crises in about a decade

In just over a decade Europe has witnessed two unprecedented recessions. Currently, as a consequence of the COVID-19 pandemic, dramatic restructuring plans and bankruptcies are mushrooming in all sectors, with new cases reported daily.

The financial and economic crisis after 2008 was the result of unregulated financial markets, financialization of the economy, leading to excessive executive salaries, large financial gains for shareholders, short-term strategies, reduction of costs at expense of workers and working conditions, quality, sustainability and innovation. In the following years, while profits grew, wages stagnated.

After the COVID-19 health crisis hit the world and thousands lost their lives, European workers are now facing the massive social and economic consequences brought

by the pandemic. The crisis has above all uncovered the structural flaws and weaknesses in the economy and society. This includes lack of workers' involvement, attacks to workers' and trade union rights, as well as to wage setting and collective bargaining systems, unsustainable corporate governance models based on short-term decisions and shareholders' interest.

Poor workers' involvement in the workplace and the violation of existing legal obligations in this area are some of the most significant flaws in the management of the current crisis. Restructuring and delocalisation processes are taking place on a daily basis. This is also further evidence of the need to strengthen the legal framework at EU level with regard to workers' information, consultation and participation rights.

It's time to speak about democracy at work!

It is not acceptable that workers and trade union representatives are barely if not at all involved in strategic decision-making. Lessons learnt from both crises clearly show the importance of and the urgent need for initiatives to strengthen democracy at work and collective bargaining.

In normal times but in particular during crises, worker involvement and social dialogue are a necessity and have proven to be key for a sustainable and long-term recovery. During the 2008 financial crisis, businesses with stronger worker involvement cut far less jobs and performed better also in terms of economic performances and investment than

Lessons learnt from both crises clearly show the importance of and the urgent need for initiatives to strengthen democracy at work and collective bargaining.

business without worker involvement.¹ During the corona pandemic, companies with strong worker involvement and collective bargaining performed better and their workers faced fewer negative consequences from the crisis.²

Stronger involvement of workers within companies and public services directly improve working conditions, economic performances, labour rights and sustainability. It also contributes to a more balanced, long-term and stakeholder oriented and effective corporate governance and to higher quality for public services.³ It is time to put democracy at work on the political agenda to achieve its full potential and contribute to a more social, inclusive and fair Europe.

What the ETUC demands

> For more info skip to page 20 (Chapter 4)

The ETUC's demands concentrate on mainly two dimensions. On the one hand and in the short-term, the respect and enforcement of existing rights has to be ensured during the Covid-19 crisis and its recovery. On the other hand, it is important to fight for a better future and to learn from the current flaws of European legislation. This is why the ETUC also calls for a better legislative framework on democracy at work.

The respect and enforcement of existing rights

At the European level, the ETUC is working to ensure the respect of existing workers' information, consultation and board-level representation rights, in particular in the context of restructuring processes, as well as to strengthen the legal framework to improve democracy at work.

¹ "Mit Mitbestimmung Durch Die Finanzkrise," Boeckler Impuls 07/2020, July 2020, <https://www.boeckler.de/de/boeckler-impuls-mit-mitbestimmung-durch-die-finanzkrise-23261.htm>

² Eric Seils and Helge Emmeler, "Die Folgen von Corona - Eine Auswertung Regionaler Daten," Policy Brief WSI Nr. 43, no. 6/2020 (2020), https://www.wsi.de/de/faust-detail.htm?sync_id=8949

³ Robert Scholz and Sigurt Vitols, "Working Paper - Co-Determination: A Driving Force for Corporate Social Responsibility in German Companies?," in WZB Discussion Paper, 2018, <https://www.econstor.eu/bitstream/10419/190804/1/1043362150.pdf>

What does *Democracy at work* mean?

It means democratic involvement and participation of workers and oversight in their workplace. It is a founding European principle, anchored in fundamental rights to join a trade union, to represent and defend workers' interests – the right to information, consultation and participation. Growing globalisation of exchange, exacerbated flexibilisation of the labour markets and also the latest recessions have increasingly jeopardised these rights.

The ETUC is fighting for workers' representatives to be informed and consulted, to have meaningful and timely discussions with management at all relevant levels and to be actively involved in the decision-making process of their companies or organisations before any important decisions are made, respecting EU rules and national provisions.



You should be
well informed
and consulted
before any decision
that impacts you is taken

Since the outbreak of the Covid-19 crisis, the ETUC has been [monitoring emergency measures](#) taken by the Member States in relation to workers' information, consultation and participation rights in particular in restructuring processes. The European Trade Union Federations have issued concrete [joint recommendations](#) to support EWC/SE-WCs in managing workers representation during the COVID-19 crisis.

In addition, ETUC and the European Trade Union Federations have [called on the European and national institutions](#) to deliver concrete and rapid actions to guarantee the effective enforcement of workers' rights.

The ETUC will carry out further actions to support ETUC affiliates and to put pressure on the institutions to ensure workers' Information, Consultation and Participation rights are fully complied with and enforced in the Covid-19 crisis.

The call for a better legislative framework on democracy at work

The crisis has also shown very clearly that the current legal framework does not safeguard effectively workers' information, consultation and participation rights, making it easy for management to disregard them. The recovery from the Covid-19 crisis should pave the way for a fairer and more sustainable society, based on the social progress and on the improvement of living and working conditions. In this context, improvements to the legal framework on workers' Information, Consultation and Participation are of paramount importance and should be introduced in the medium term.

⁴ ETUC, "For a Modern European Works Council (EWC) Directive in the Digital Era," March 2017, https://www.etuc.org/sites/default/files/document/files/en-position-for_a_modern_ewc_directive_in_digital_era2.pdf



In this regard the ETUC is looking to achieve amongst others the following objectives:

- a) [a review of the European Works Councils Directive](#)⁴, to reinforce these key actors, to ensure effective and timely information and consultation of workers' representatives in multinational companies and to ensure access to justice, adequate remedies and dissuasive sanctions in case workers' rights are not respected.
- b) [a new framework on workers' information, consultation and participation rights](#) for European company forms and for companies making use of EU company law instruments enabling company mobility. Such a framework should include minimum standards for workers' involvement. It would constitute an important step to strengthen worker involvement, since European company forms and companies which make use of company mobility instruments need to be regulated in a more effective way to ensure adequate workers' information, consultation and participation.

The ETUC also advocates for effective worker involvement in the framework of a new directive on due diligence in supply chains and for fairer corporate governance rules to guarantee a sustainable economic model based on the involvement of all stakeholders, on sustainability and on decision-making processes based on long-term considerations and not on short term shareholders' interests.

2. More Democracy at Work – now more than ever

The COVID-19 crisis has accelerated corporate restructuring in almost all sectors of the economy with far-reaching impacts on the labour market. This is why it is more important than ever to shape the economic and social future with workers and trade union involvement, through social dialogue, collective bargaining and workers' information, consultation and participation. However, lately the situation in the EU has evolved into the opposite direction.

The “shareholder primacy” theory has been promoted for too long to the expense of the real economy and the workers. “While shareholders contribute capital, employees contribute their time, skills and life – they are the core constituency of companies”.⁵

⁵ ETUC, “European Appeal. Companies and Employees – Blazing a New European Trail,” 2019, http://european-appeal.org/app_en.pdf

Their voice should be strengthened and should count more than the ones of shareholders in the decisions.

In view of the much demanded and necessary sustainable and socially fair recovery after the pandemic, it is now time – more than ever – to strengthen democracy at work at European and national level. Workers should have the possibility of actively participating in the definition of management's strategies and in shaping their working conditions and work environment. This should include statutory rights enshrined in European or national legislation, strong collective bargaining and structured and recognised social dialogue.

The “shareholder primacy” theory has been promoted for too long to the expense of the real economy and the workers.

How come that businesses, in crisis time, can rely on public support schemes while circumventing workers' rights to health, safety and decent working conditions as well as trade union rights?

How come that restructuring processes without proper involvement of workers can still proceed and take place?

How can letterbox companies be tolerated and supported, when the aim is to intentionally evade taxes, labour laws and regulations?

How can it be that, despite scandals such as the Rana Plaza factory collapse in Bangladesh, many companies continue to turn a blind eye to suppliers that ignore the most basic social, environmental and human rights?

Why is democracy at work important?

It makes the difference for all: for workers, for business, for society in general. Evidence shows that democracy at work increases democratic involvement of citizens at large, ensures health and safety protection of workers, but also triggers more equality, more sustainability and higher productivity at work. Businesses with workers representation are also resilient during crises and perform better and also more competitive. Workers' involvement is key in crisis situations. Studies indicate that the existence of works councils and collective agreements protect employees from the social and economic consequences of the corona pandemic. For instance, employees in companies with a collective agreement or works councils were more confident of overcoming the crisis safely and had to accept financial losses less frequently.

Companies and countries with more #democracyatwork perform better economically

3. Why More Democracy at Work?

DEMOCRACY AT WORK IS IMPORTANT...

At ILO level, a series of instruments ensures workers' rights to information, consultation and participation.⁶

Workers' rights to information and consultation are basic democratic rights, enshrined in the EU Treaty and in the Charter of Fundamental Rights of the EU (Art. 27 and 28).⁷

...BECAUSE IT IS A FUNDAMENTAL RIGHT

They are anchored in the European Social Charter of the Council of Europe (Art. 21) and in the European Convention on Human Rights (Art. 11 ECHR).

Workers' rights to information, consultation and participation are grounded in a several EU secondary laws.⁸

⁶ Co-operation at the Level of the Undertaking Recommendation of 1952, the Communications within the Undertaking Recommendation of 1967, Workers' Representatives Convention and Recommendation of 1971, the Termination of Employment Convention and Recommendation of 1982, as well as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Further ILO instruments deal with workers' information and consultation rights in health and safety matters. These ILO instruments define important rights for workers' representatives, as well as certain obligations for employers with regard to information and consultation of workers.

⁷ Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices". Article 27, Charter of Fundamental Rights of the European Union.

⁸ Stan De Spiegelaere et al., "Democracy at Work," in Benchmarking Working Europe 2019 (ETUI, 2019), 67–89.





Civic democracy: employees in jobs with greater autonomy and involvement are politically more active and have more trust in democracy.

...BECAUSE SOCIETY AS A WHOLE PROFITS FROM IT ⁹

Employment advantage: On average, countries with more democracy at work also have more people in work.

More equal societies: Organised employee voice reduces management and shareholder greed and ensures higher and more equal wages.

⁹ Ibid.

Stronger democracy at work is linked to higher-quality jobs and higher degree of life-satisfaction.

...BECAUSE WORKERS PROFIT FROM IT ¹⁰

Where employees have better collective interest representation, wages tend to be higher and working conditions better.

Safer workplaces: Democracy at work goes hand in hand with stronger compliance with health and safety protection measures.

Companies with a works council are generally more engaged in the training of their employees.¹¹

¹⁰ Ibid.

¹¹ I.M.U., "Why Codetermination? A Collection of Good Arguments for Strong Workers' Voice" (Hans-Boeckler Stiftung, October 2019), https://www.boeckler.de/pdf/mbf_praes_arguments_co_determination.pdf



The triple win. Data suggests that democracy at work goes hand in hand with higher productivity, higher labour force participation rate and more innovation.

Democracy at work strengthens the economic competitiveness of European companies.¹³

...BECAUSE COMPANIES PROFIT FROM IT¹²

Companies are generally more sustainable when workers are effectively involved in decision-making and/or are represented in the company's board. Amongst others, they score better in environment, human rights, corporate governance, business behaviour and human resources.

It helps to shape sustainable and socially acceptable restructuring processes and to maintain employment and fair working conditions.

During the COVID-19 crisis, workers in companies with workers participation expressed significantly less concerns and suffered fewer financial losses.¹⁵

...BECAUSE IT IS A SAFEGUARD AGAINST ABUSES IN TIMES OF CRISIS¹⁴

During the 2008 financial crisis, businesses with workers participation were more resilient and lost far fewer jobs than business without workers participation. They also performed better in terms of profitability and investment.¹⁶

¹² "De Spiegelaere et al., "Democracy at Work."

¹³ "Why Workers' Participation in Europe?" [worker-participation.eu](https://www.worker-participation.eu/), accessed August 25, 2020, <https://www.worker-participation.eu/About-WP/Why-Worker-Participation>

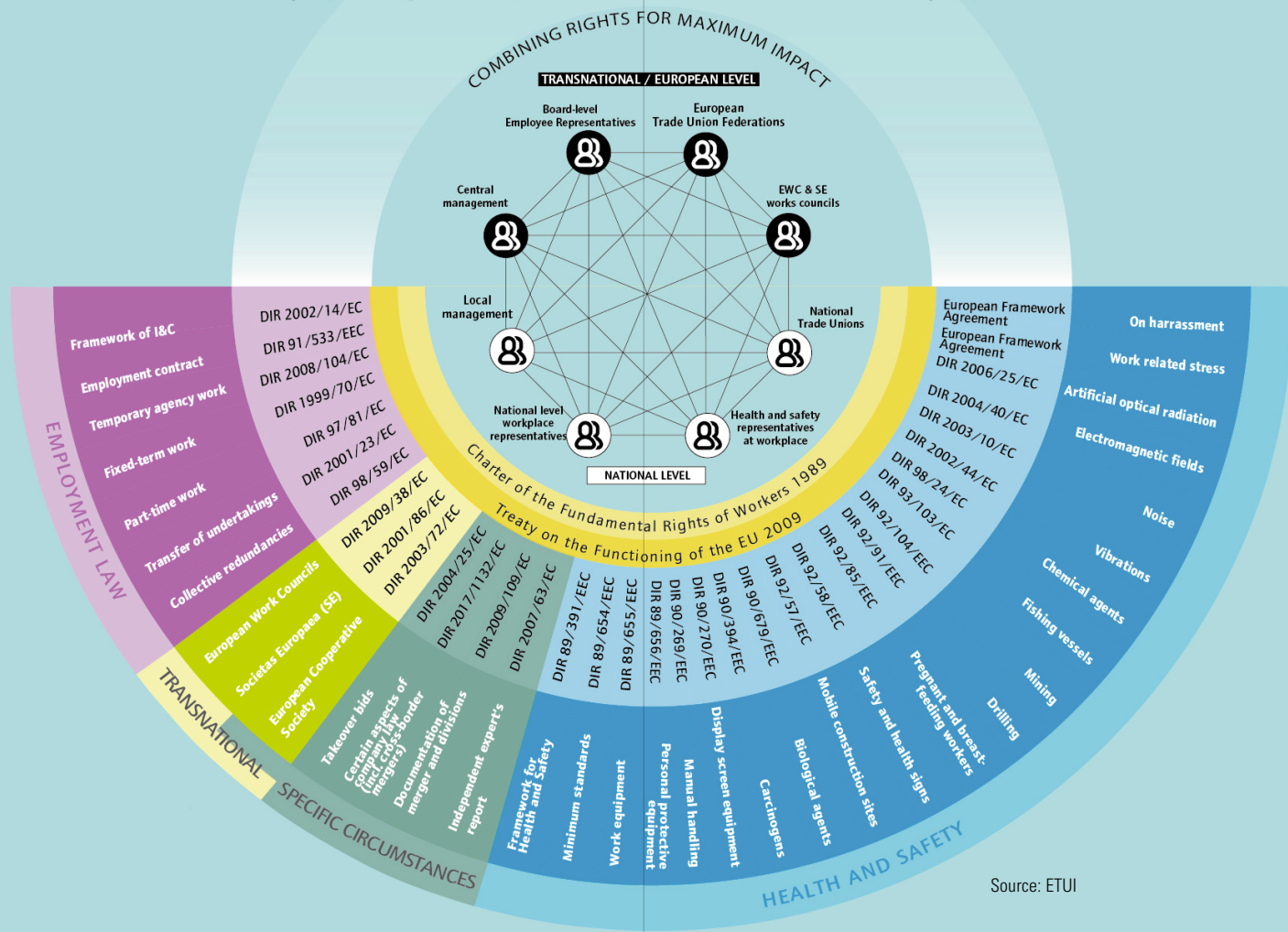
¹⁴ De Spiegelaere et al., "Democracy at Work."

¹⁵ "Die Folgen von Corona - Wirtschafts- Und Sozialwissenschaftliches Institut (WSI) in Der Hans-Böckler-Stiftung," accessed August 25, 2020, https://www.wsi.de/de/faust-detail.htm?sync_id=8949

¹⁶ "Mit Mitbestimmung Durch Die Finanzkrise."

The palette of workers' participation rights

There are **37** pieces of EU legislation guaranteeing employees' rights to information and consultation at company level.



Source: ETUI

4. Concrete objectives

A significant number of restructuring processes are currently ongoing in the EU in different sectors following the Covid-19 crisis. It is absolutely necessary:

- to ensure that those processes are in compliance with workers' rights and are managed in a socially responsible manner.
- to guarantee that workers' right to information and consultation is fully enforced before any management decision that has consequences on employment or working conditions is taken.
- that unions and workers' representatives have access to expertise to discuss possible alternatives to plans of management in order to ensure that the restructuring processes are carried out in a socially responsible manner, to avoid adverse consequences, including redundancies.
- to ensure the full involvement of workers' board-level representatives in discussions and decisions on restructurings.

However, too often companies are not complying with workers' rights to information, consultation and participation, as defined in human rights instruments and in European legislation.

Following the start of the Covid-19 crisis, the ETUC has highlighted the importance of full respect of workers' information, consultation and participation rights in particular in restructuring processes. In particular, the ETUC has published the [Briefing note Covid-19 and Workers' Information, Consultation and Participation](#). Together with the ETUC, the European Trade Union Federations have issued concrete [joint recommendations](#) to support EWC/SE-WCs in playing their part in the management of the COVID-19 crisis as well as joint recommendations on EWC/SE negotiations during the COVID-19 crisis.

Moreover, the ETUC and the European Trade Union Federations have [taken actions](#) towards the European institutions demanding concrete initiatives to ensure the respect

and enforcement of workers' information, consultation and board-level representation rights, in particular in restructuring processes.

Additional urgent actions will be put in place to support ETUC affiliates and to put pressure on the institutions to ensure workers' rights are fully complied with and enforced in the Covid-19 crisis. This is a matter of great urgency and a priority for the European Trade Union movement in the short term.

The crisis has also shown very clearly that the current legal framework does not effectively safeguard workers' information, consultation and participation rights, which are too often disregarded by management. The recovery from the Covid-19 crisis should pave the way for a fairer and more sustainable society, based on the social progress and on the improvement of living and working conditions. In this context, improvements to the legal framework on workers' Information, Consultation and Participation are of paramount importance and should be introduced in the medium term.

The existing European legal framework on workers' information, consultation and board-level representation (for example the EWC Directive, the SE Directive and the Directive on cross-border conversions, merger and divisions) leaves gaps and shortcomings which need to be dealt with and solved in order to ensure the respect of workers' rights, to fight letterbox companies, to ensure effective and dissuasive sanctions in terms of violations.

Consequently, the European Trade Union Movement seeks to improve European legislation amongst others through:

The crisis has also shown very clearly that the current legal framework does not effectively safeguard workers' ICP rights, which are too often disregarded by management.

a. The revision of the European Works Council Directive (Directive 2009/38/EC)

The [ETUC is pushing for the revision of the EWC Directive](#) and has put forward 10 demands for the revision of the Directive.

Inter alia, the ETUC calls for:

- effective and dissuasive sanctions and ensuring access to justice;
- more efficient coordination between local, national and European levels (including by ensuring the necessary resources and rights for workers' representatives);
- improvement and clarification of the rules for negotiations with the Special Negotiating Bodies;
- prevention of abuses of confidentiality and reinforcement of the subsidiary requirements;
- clarification and reinforcement of the role of "representatives of competent, recognised community-level trade union organisations" and inclusion of the concept of "transnational character of a matter" in the main body of the directive;
- introduction of a real level playing field by applying all provisions laid out in the directive to all agreements [including the so-called voluntary "Article 13" agreements], either automatically or by renegotiation.

b. A New European Framework for Information, Consultation and Board-Level Representation Rights for European company forms and companies making use of company mobility instruments

The [ETUC is also pushing for the determination of a new framework](#) for information, consultation and board-level representation rights for European company forms and for companies making use of EU company law instruments enabling company mobility, establishing minimum standards for worker involvement.



This is particularly important since the Company Law Package has failed to adequately define a high European standard for information, consultation and workers' board-level representation in cases where companies restructure across borders. Several loopholes and inconsistencies remain or have been newly created in the new legal package.

The aim of the horizontal framework would be to permanently secure a high standard of rights in existing and future EU legislation, particularly in cross-border situations where the national laws cannot be applied in a coordinated and equitable way. Key principles should thus be defined as binding standards, and ambitious subsidiary requirements should be designed. These requirements would apply as fallback provisions in the absence of an agreement or if the parties wish so.

Overall, the horizontal framework would help to avoid regime shopping and use of letterbox companies across Europe and protect domestic legislations. Moreover, it would lead to a more efficient coordination between local, national and European levels of workers' information, consultation and board-level representation.

Such a framework should *inter alia*:

- ensure the creation and functioning of a European Works Council (SE Works Council) for European company forms and companies making use of EU company law instruments enabling company mobility;
- ensure that an adequate and in-depth information and consultation process takes place before the decision on restructuring has been taken. Amongst others, workers' representatives need to be given the necessary information on the changes in the company structure and organisation, on the reasons for the restructuring and on any impacts on employment, working conditions;
- provide the necessary resources and time for the full involvement and link between the different levels (national and transnational) and, where relevant, instruments (e.g. transfer of undertakings, collective redundancies, insolvency...) for workers' information and consultation;
- ensure that companies open negotiations with the workforce in order to reach an agreement on workers' board-level representation in the resulting companies after the restructuring. The new framework should therefore introduce a right for workers to put in place a system for workers' representation in the board. In

¹⁶ In the 2016 ETUC position, the escalator approach foresees a lower proportion of workers in boards for small enterprises and increases to higher proportions depending on the size of the company (both for the monistic and the dualistic systems):

- small companies (50-250 employees within the company and its direct or indirect subsidiaries): 2 or 3 workers' representatives;
- medium companies (250-1,000 employees within the company and its direct or indirect subsidiaries): one third participation is proposed;
- big companies (more than 1000 employees within the company and its direct or indirect subsidiaries): parity (half of the seats).

case an agreement is not reached within the time-limit defined in the horizontal framework for the negotiations with the company management, subsidiary provisions would apply, including the escalator approach ¹⁶.

- introduce effective and dissuasive sanctions for non-compliance, including the fact that decisions and restructuring process taken without full respect of workers' information and consultation rights are null and void. The framework should also include instruments and mechanisms to ensure access to justice for the transnational body for information and consultation in case of violation of workers' rights.

The ETUC also [advocates for effective worker involvement in the framework of a new directive on due diligence](#) in supply chains and for fairer corporate governance rules to guarantee a sustainable economic model based on the involvement of all stakeholders, on sustainability and on decision-making processes based on long-term considerations and not on short term shareholders' interests.

The ETUC is also pushing – together with EPSU – to ensure the respect of information and consultation rights of public sector workers. In line with the [Emergency Motion](#) in support of the Social Partners Agreement on Information and Consultation Rights for Workers in Central Government, a directive reflecting the Social Partners' agreement that ensures that trade union representatives in public administration have information and consultation rights should be proposed by the Commission and adopted.

For further information on our actions,
demands and support to affiliates,
please visit our website:
www.etuc.org/en/issue/more-democracy-work.

#DEMOCRACY AT WORK

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