



**DEMOCRACY
AT WORK
MATTERS**

NOW MORE THAN EVER!



CONFEDERATION
**SYNDICAT
EUROPÉEN
TRADE UNION**



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1. Foreword

“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, 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

2. 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?

Trade unions and 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!

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 the last 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 business without worker involvement¹. During the

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>

corona pandemic, companies with strong worker involvement and collective bargaining performed better and their workers faced fewer negative consequences from the crisis².

Stronger involvement of workers within companies and public services directly improve working conditions, economic performances, labour rights and sustaina-

bility. It also contributes to a more balanced, long-term and stakeholder oriented and effective corporate governance and to higher quality for public services³. 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.

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ETUC demands

The ETUC's demands concentrate on mainly two dimensions.

- a) The **respect and enforcement of existing rights** has to be ensured at all moments – in particular during a crisis.
- b) There's enough evidence on the table 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**.

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

3. More Democracy at Work – now more than ever

As this booklet goes to press, the catastrophic effects of Russia's war of aggression in Ukraine are only roughly visible. However, we expect that it will accelerate already implemented transformations leading instead to dramatic restructuring and bankruptcies in many sectors. In just over a decade Europe has witnessed **three unprecedented recessions**. We need to learn from the lessons of the past and implement more Democracy at Work!

The financial and economic crisis after 2008 was the result of unregulated financial markets, excessive executive salaries, large financial gains for shareholders, short-term strategies, and the reduction of costs at expense of workers. Europe made it out of the crisis, but the problems haven't been fixed: while profits grew, wages stagnated.

The COVID-19 health crisis has above all uncovered the structural flaws and weaknesses in the economy and society: 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.

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".⁴**

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

⁴ ETUC, "European Appeal. Companies and Employees – Blazing a New European Trail," 2019, http://european-appeal.org/app_en.pdf

workers' information, consultation and participation. In view of the much demanded and necessary sustainable and socially fair recovery, it is now time – more than ever – to strengthen Democracy at Work at European and national level.

Workers need to have the possibility to be actively involved in management's strategies and in shaping their working environment. This should include statutory rights enshrined in European or national legislation, strong collective bargaining and structured and recognised social dialogue.

While shareholders contribute capital, employees contribute their time, skills and life – they are the core constituency of companies”

WORKERS' PARTICIPATION AT THE HEART

OF JUST AND SUSTAINABLE TRANSITIONS

FOR MORE
DEMOCRACY



AT WORK





4. Why More Democracy at Work?

At ILO level, a series of instruments ensures workers' rights to information, consultation and participation.⁵

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).⁶

...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.⁷

⁵ 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.

⁶ 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.

⁷ 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 ⁸

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.

⁸ Ibid.

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

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

...BECAUSE WORKERS PROFIT FROM IT ⁹

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.¹⁰

⁹ Ibid.

¹⁰ 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.¹²

...BECAUSE COMPANIES PROFIT FROM IT ¹¹

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.

¹¹ "De Spiegelaere et al., "Democracy at Work."

¹² "Why Workers' Participation in Europe?" [worker-participation.eu](https://www.worker-participation.eu/About-WP/Why-Worker-Participation), accessed August 25, 2020, <https://www.worker-participation.eu/About-WP/Why-Worker-Participation>

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.¹⁴

...BECAUSE IT IS A SAFEGUARD AGAINST ABUSES IN TIMES OF CRISIS ¹³

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.¹⁵

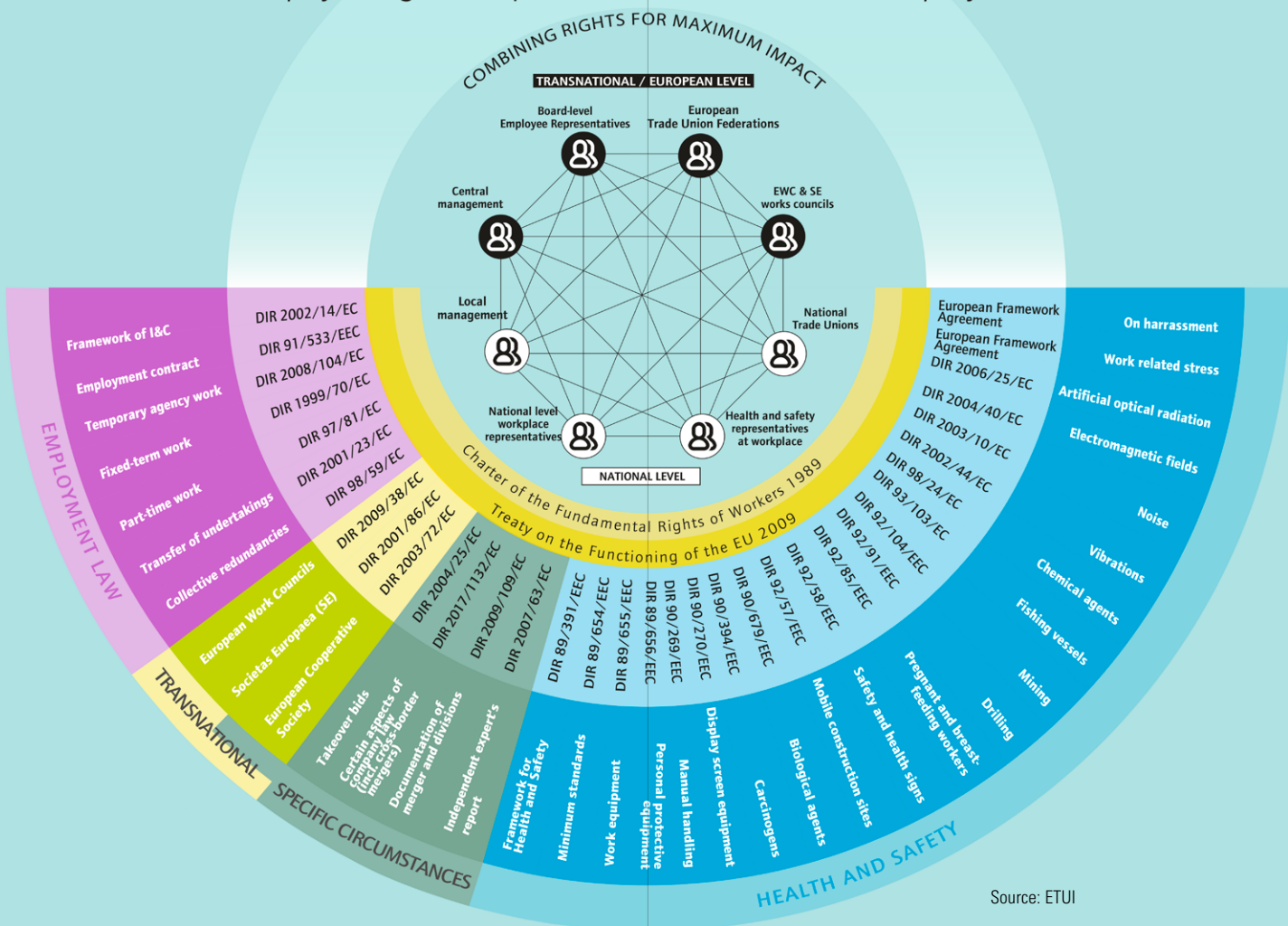
¹³ De Spiegelaere et al., "Democracy at Work."

¹⁴ "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

¹⁵ "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.



5. Concrete objectives

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.

The ETUC supports ETUC affiliates and puts pressure on the institutions to ensure workers' Information, Consultation and Participation rights are fully complied with and enforced – especially in the current crisis and all those who will follow.

The call for a better legislative framework on democracy at work

The crises have shown very clearly that the current legal framework does not effectively safeguard workers' information, consultation and participation rights, making it easy for management to disregard them. The next recovery 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.



a. The revision of the European Works Council Directive

While the 2009 Recast Directive (2009/38/EC) has brought positive changes, significant loopholes remain that can easily be used by large multinational companies to circumvent the workers' involvement. Ample evidence support this evaluation, as publications by the [European Commission](#)¹⁶, the [European Parliament](#)¹⁷ and the [European trade Union Institute](#)¹⁸ show. All too often, workers' involvement remains a mere formality and as a consequence has limited impact. In practice, EWCs continue to be presented with a "fait accompli", especially in the event of transnational company restructuring.

Assessments run by the European Commission itself concluded to the [deficiencies in how companies meet their obligation to inform and consult worker representatives before a decision is made](#)¹⁹, and to the [inappropriate response provided by existing EU instruments](#)²⁰. In practice, information provided to EWCs is often inadequate and consultation remain ineffective as it takes place too late, sometimes even when company decisions are already taken. What is more, interpretation of key directive's provisions continues to prove difficult, enforcing rights is still challenging and dissuasive, proportionate sanctions are lacking in a majority of countries.

¹⁶ See European Commission (2018): Report on the implementation by Member States of Directive 2009/38/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 (Recast).

¹⁷ See European Added Value Assessment (2018): Legislative-initiative procedure: Revision of European Works Councils Directive Request for legislative proposal 2019/2183(INL).

¹⁸ See www.worker-participation.eu.

¹⁹ See European Commission (2016): Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council Final report.

²⁰ See European Commission (2018): Stocktaking report on the application of the EU Quality Framework for anticipation of change and restructuring



The ETUC Key demands:

- Enforcing the rights of the Directive;
- Ensuring access to justice for EWCs;
- Giving trade union experts the right to participate in all EWC & Select Committee meetings;
- Define transnationality to improve the information and consultation process;
- Improve SNB negotiation to help establish EWCs;
- Improve coordination between local, national and European levels;
- Define controlling undertaking to cover a wide scope of companies;
- Define confidentiality to improve the information and consultation process;
- Strengthen the subsidiary requirements to improve the practical functioning of the EWC.
- Turn outdated voluntary agreements into EWC agreements under the scope of the Directive;



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

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 is 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 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.²¹
- 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.

c. Human Rights Due Diligence

In 2022 the European Commission finally published a [proposal on Corporate Sustainability Due Diligence \(CSDD\)](#) to hold businesses accountable for human rights violations. **In its current form, the CSDD Directive will fail to protect workers from companies violating their fundamental rights.**

²¹ 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).

Why? The draft Directive is toothless because it

- fails to give workers and their representatives a say on their company's 'due diligence' strategy;
- undermines the effective exercise of the rights and prerogatives of trade unions to organise, to bargain collectively and of trade unions and workers' representatives to be informed and consulted as enshrined in [ILO Conventions](#), the [Council of Europe European Social Charter](#) and [EU legislation](#)
- fails to provide victims including workers and their representatives with effective access to justice and remedies. It does not provide for deterrent sanctions to hold businesses accountable for violations they commit.

To make the difference, trade unions and workers' representatives must be actively involved in the whole process of due diligence. They must have a say in identifying and preventing risks of human rights violations. They should be involved in ensuring that violations are stopped. They should also take part in the design, monitoring and implementation of due diligence strategies.

Workers have the best knowledge about business practices on the ground. A thorough involvement of trade unions and workers is the best way to prevent and end human rights violations in business and their supply chains.



For further information on our actions,
demands and support to affiliates,
please visit our website:

www.democracyatwork.eu

www.worker-participation.eu

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