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Article

Workplace Representation in Europe: Works Councils and Their Economic Effects on Firms

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WORKPLACE REPRESENTATION IN EUROPE: WORKS COUNCILS AND THEIR ECONOMIC EFFECTS ON FIRMS

Workplace representation in Europe at a national level

Employee workplace representation in Europe takes place through local union bodies and/or through bodies separately elected by the whole workforce – the employee representatives or works councils¹. Table 1 gives an overview of workplace representation systems in European countries and the thresholds that apply.

Works councils in Europe - evolution and thresholds

Works councils in Germany and Austria have the longest history in Europe; in Germany the first works council legislation dates back to 1919/1920 (Hans-Böckler-Stiftung 2015)² and in Austria to 1919 (Arbeiterkammer Österreich 2015). Most other Western-Continental European countries introduced legislation to establish works councils after the Second World War, with legislation taking effect in Spain in 1947 and in the Netherlands in 1950, for example (Streeck 1995). One exception is Sweden where workplace representation only takes place through unions and there is no separately elected structure resembling works councils. In several Eastern European countries like Estonia, Latvia, Lithuania and the Slovak Republic, but also in Ireland, where the right to establish both bodies of employee representation is now effective, there was no legislation to elect works councils until the beginning of the 2000s; and workplace representation was granted only through unions. New legislation was introduced with the so called “European Directive on Information and Consultation” by the European Commission in 2002 (European Commission

2002)³. According to this EU directive, countries shall offer all workers the opportunity to obtain information via workplace representatives, and not only via union bodies. The directive stipulates minimum requirements regarding the principles, definitions and arrangements for informing and consulting employees at firm level. The provisions of the directive apply to firms employing at least 50 or 20 employees, according to the choice made by the Member State. As stated by the European Commission itself in 2008: “The EU directive was published to establish a general framework for informing and consulting employees in the European Community and wants to fill a number of gaps in national laws and practices (European Commission 2008).” Apart from in formal legislation, however, works councils only rarely exist in practice (in Croatia, Czech Republic, Greece and Portugal) because they usually are not mandatory or because legislation concerning works councils is fairly new. In Germany, for example, only ten percent of all eligible workplaces in West Germany had a works council in 2011 (nine percent in East Germany), but these bodies covered 44 percent of all employees in the West and 36 percent in the East (European Worker Participation Competence Centre 2014), as works councils are more common in larger companies. Other countries (Finland, Lithuania and Romania) only allow employee representatives if there are no union representatives, so works councils are also relatively rare.

The threshold number of employees required to set up a works council differs from country to country. In Austria, Germany and Latvia the threshold is five employees, while other countries do not have a threshold at all (Czech Republic, Estonia, Portugal) or have a relatively high threshold of 100/101 employees (Norway, Belgium). In Italy, Luxembourg and Spain the threshold is between 10 and 20 employees, hence the majority of countries have set the threshold at 20/21 or 50/51 employees (see Table 1), which is also recommended by the EU directive. The size of works councils rises in line with the number of employees that a firm has; and the thresholds that apply also differ from country to country. Another distinction can be seen in the design of legislation on works councils and whether the establishment of a works council

¹ In view of the fact that works councils are more or less a European institution, this article looks at the EU 28 countries (without Malta and Cyprus) plus Norway and Switzerland. In Australia, Canada, Japan, Mexico, the United States and the Russian Federation, for example, there are no provisions in law for works councils (Baker & McKenzie, 2014). Brazil and South Korea are exceptions outside Europe, as works councils are obligatory in both countries.

² During the Nazi regime in Germany works councils were abolished and re-allowed in 1946 by the Allies (Hans-Böckler-Stiftung 2015).

³ In the area of employment and social policy three EU directives concerning the information and consultation of workers at national/company level were established: 1. Directive 98/59/EC on collective redundancies in 1998; 2. Directive 2001/23/EC on transfers of undertakings in 2001; 3. Directive 2002/14/EC on establishing a general framework relating to information and consultation of workers in the EC in 2002.

Table 1

Workplace representation in Europe, 2014

	Workplace representation through employees representatives		Workplace representation through union bodies	
	Works council or employee representative	Threshold	Union delegation or union representative	Threshold ^{a)}
Austria	x	From 5 employees.	There is no direct trade union representation in the workplace. But in most cases the unions play a crucial part in the works councils' effective operation.	
Belgium	x	From 101 employees.	x	Depends on union agreement.
Bulgaria	x	No threshold / From 20 or 50 employees. ^{b)}	x	Depends on union agreement.
Croatia	x	From 20 employees.	x	Depends on union agreement.
Czech Republic	x	No threshold.	x	Depends on union agreement.
Denmark	x ^{c)}	From 35 employees.	x	In most agreements the right to elect a trade union representative starts once there are more than five employees in the workplace.
Estonia	x	No threshold.	x	Depends on union agreement.
Finland	x (If there are no union representatives.)	From 20 employees.	x	Each workplace has a trade union representative.
France	x (Two bodies: Employee delegates / Works council)	From 11 employees / From 50 employees (obligatory).	x	From 50 employees.
Germany	x	From 5 employees.	There is no direct trade union representation in the workplace. But the unions have a major influence on the works councils' operation.	
Greece	x	From 50 employees (From 20 employees if there is no union body).	x	Depends on union agreement.
Hungary	x	From 51 employees.	x	Depends on union agreement.
Ireland	x ^{d)}	From 50 employees.	x	Depends on union agreement.
Italy	x	From 16 employees.	The elected employee representatives are essentially union bodies.	
Latvia	x	From 5 employees.	x	Depends on union agreement.
Lithuania	x (If there are no union representatives.)	No threshold.	x	Depends on union agreement.
Luxembourg	x	From 15 employees.	Unions have important rights in this structure and the majority of employee representatives are union members.	
Netherlands	x	From 50 employees.	In many organisations collective agreements give trade unions at work specific rights.	
Poland	x	From 50 employees.	x	Depends on union agreement.
Portugal	x	No threshold.	x	Depends on union agreement.
Romania	x (If there are no union representatives.)	From 21 employees.	x	Depends on union agreement.
Slovak Republic	x	From 50 employees.	x	Depends on union agreement.
Slovenia	x	From 21 employees.	x	Depends on union agreement.
Spain	x	From 11 employees.	x	From 250 employees.
Sweden	No works council.		x	Depends on union agreement.
United Kingdom	x ^{e)}	From 50 employees.	x	Depends on union agreement.
Norway	x	From 100 employees (obligatory).	x	The number of union representatives is linked directly to the number of union members in the company who belong to each union confederation.
Switzerland	x	From 50 employees.	At least some of the employee representatives are members of a trade union and/or advised by trade unions.	

Notes:
^{a)} Often there is no threshold by law for union representatives, the number then depends on the rules of the union. However, there are often legal limits on the number of union representatives who can benefit from specific legal rights and job protections.
^{b)} There are no specific rules on the numbers or thresholds for employee representatives elected to represent employees' social and economic interests. However, the legislation is more precise where employee representatives are elected for the purposes of information and consultation. These representatives should be elected in companies employing 50 or more employees, or in workplaces employing 20 or more.
^{c)} The Danish equivalent of the works council is the cooperation committee.
^{d)} The legislation (passed in 2006 as a result of the EU directive on information and consultation) does not require all companies covered by it to establish employee bodies for information and consultation. The process only begins if 10% of employees, with a lower limit of 15 and an upper limit of 100, ask for information and consultation rights or the employer takes the initiative. Negotiations then start between the employer and employee representatives, who automatically include union representatives if the employer recognises unions and they represent at least 10% of the workforce.
^{e)} The Information and Consultation of Employees Regulations 2004 give employees in businesses with 50 or more employees the right to require the employer to set up an employee information and consultation forum, which has the right to be informed and consulted on a regular basis about issues in the business for which they work. Consultative bodies established under these Regulations are typically called information and consultation bodies, or employee consultation forums, and have some similarities to continental European style National Works Councils, but are considerably less onerous from an employer's perspective.

Source: DICE Database (2015a).

is mandatory or not. Like in most other countries, legislation in Germany states that works councils “can be elected” after a specific threshold number of employees has been reached. In France and Norway, by contrast, the election of employee representatives is obligatory.⁴

Differing influence of works councils and unions

As both unions and works councils are involved in employee representation in many countries, detecting the dominant representation body for each country is fairly complex. The European Commission has published a categorisation of national workplace representation in the different European countries based on a European Company Survey (and supplemented by national reports). Following this scheme, countries can be divided into four categories to describe which form of employee

⁴ For more details on workplace representation in France, Germany, Italy, Poland, Spain and Sweden see DICE Database (2015b).

representation institution is more widespread in a country (European Commission 2013):

1. Single channel of representation, with works councils being the sole representational structure for employees;
2. Single channel of representation, with trade unions being the sole employee representation body;
3. Dual channel of representation featuring both types of employee representation, but with works councils playing a stronger role and
4. Dual channel of representation with trade union shop stewards playing a prominent role.

As far as the single channel of representation is concerned, Austria, Germany, Luxembourg and the Netherlands fall into category one, as works councils are the sole form of institutional employee representation, and Sweden falls into category two, as only union

Table 2

Main employee representation at workplace, 2014

Austria	Works council
Belgium	Union and works council – but union dominates
Bulgaria	Union – but law also provides for the election of other representatives
Croatia	Union and works council – but where no works council union can take over its rights and duties
Czech Republic	Union – but works council can be set up as well
Denmark	Union – but employee groups from outside the union can be represented in the structure
Estonia	Union – but since 2007 employee representatives can be elected as well
Finland	Union
France	Union and works council/employee delegates – but union normally dominates if present
Germany	Works council
Greece	Union – works councils exist in theory but not often in practice
Hungary	Union and works council
Ireland	Union – but other structures are possible and since 2006 these can be triggered by employees
Italy	Union – although largely elected by all employees
Latvia	Union – although possible to elect other representatives
Lithuania	Union – or works council if there is no union
Luxembourg	Employee delegates
Netherlands	Works council
Poland	Union and works council – but most works councils are in unionised workplaces
Portugal	Union – works councils exist in theory but less frequently in practice
Romania	Union – other employee representation possible but rare
Slovak Republic	Union and works council
Slovenia	Union and works council
Spain	Works council – although dominated by unions which are also present directly
Sweden	Union
United Kingdom	Union – but other structures are possible and since 2005 these can be triggered by employees
Norway	Union – “works councils” exist in some companies but their role is to improve competitiveness

Source: DICE Database (2015a).

representatives exist there. When it comes to categories three and four of the dual channel of representation things get more complicated. The European Commission (European Commission 2013, p. 42) sees works councils as the prominent body of representation in Belgium, Estonia, France, Hungary, Poland and the Slovak Republic. The European Worker Participation Competence Centre of the European Trade Union Institute, on the other hand, sees the unions as the main body in workplace representation for these countries (European Worker Participation Competence Centre 2014). The discrepancies are partly due to differences in workplace representation between firms within one country. Forms of workplace representation can vary when looking at different firms in one country, making it impossible to obtain a clear picture. Moreover, the European Commission's categorisation is based on a survey and interviews with representatives of social partners and public administration and seems to focus more on the legal framework of workplace representation. The classification by the European Worker Participation Competence Centre seems to detect the body with the greatest influence (see Table 2). Hence, all in all, it can be said that unions play a major role in workplace representation in the majority of the European countries, either through separately elected union delegates, or thanks to their influence in works councils exerted by employee representatives who are union members.

Workplace representation at a transnational level

The European Commission fosters workplace representation through elected employee representatives not only at a national, but also at a transnational level (European Commission 2015a). In 1994 the European Commission passed a directive on the establishment of a European works council or similar structures with the aim of informing and consulting employees in companies that operate at an EU level (European Commission 1994). At this level the directive applies to EU-scale firms or groups with at least 1,000 employees and at least 150 employees in each of two Member States. The directive seeks to ensure direct communication and an information flow to and from the top management for workers in big multinational companies in all European countries. A database on European works councils agreements maintained by the European Trade Union Institute contains the details and texts of such agreements and established European works councils. To date the database features 1,076 effective European works

council agreements (European Trade Union Institute 2015), each effective for a different company or one company's independent entity. Moreover the EU promotes so called "Transnational company agreements". Transnational company agreements first evolved in the early 2000s, when they were voluntarily introduced by firms across Europe. They cover working and employment conditions and/or relations between employers and workers or their representatives. The EU sees these agreements as new forms of social dialogue in multinational companies, which provide for voluntary, innovative and socially-agreed solutions in companies across Europe (European Commission 2012). The database on transnational company agreements maintained by the International Labour Organisation (ILO) and the European Commission currently identifies 282 transnational company agreements and texts (European Commission 2015b).

The economic effects of works councils on firms

Economic theory and empirical research distinguish between the effects of unions and the effects of works councils on variables like firm productivity, firm output, firm growth and wages. For the United States research focuses on the effects of unions due to the absence of (non-unionised) works councils. DiNardo and Lee (2004) and Lee and Mas (2012), for example, investigate the effects of unions on productivity and wages for firms in the United States, but all in all studies could only find small, and not significant effects on the mentioned variables.

As far as the impact of works councils is concerned, economic theory suggests that works councils have positive economic effects on firms (Fairris and Askenazy 2010). Freeman and Lazear (1995), for example, see a possible improvement for firms through works councils due to improved information exchange, consultation and participation rights. They derive the following results from their theoretical model: Councils with rights to information reduce economic inefficiencies by moderating worker demands during tough times; councils with consultation rights can produce new solutions to the problems facing the firm; co-determination rights that increase job security should encourage workers to take a longer-run perspective on firm decisions and thus invest more in firm-specific skills and give workplace concessions that enhance enterprise investment in capital. Hence Freeman and Lazear argue that limits should be set to the bargaining power of works councils, as

exemplified by the German institutional framework on works councils.

Empirical research on the impact of works councils on firm performance exists only for a handful of countries, namely for France, Germany and South Korea.⁵ The dependent variable is firm productivity in these studies. Fairris and Askenazy (2010) analyse the effects of works councils on French firms' productivity, but cannot find a positive or a true negative effect. But the authors find that worker voice and information sharing as human resource practices, regardless of the works council status, have a positive and statistically significant impact on firms' productivity. As far as research using German data is concerned, Addison, Schnabel and Wagner (2004) and Addison (2010) divide research on the impact of works councils on firm performance into three stages, defined by differences in the type of data sets investigated, the explanatory variables used and the econometric methods. The first phase dating from the mid-1980s until the mid-1990s highlighted mixed effects, with a slightly negative effect prevailing; and some authors have rejected any positive correlation between works councils and firm performance. In the second phase from the mid-1990s to the beginning of the 2000s the results were also mixed, although works councils appeared in a more positive light. The third phase of research, which started at the beginning of the 2000s, is based on much more comprehensive (panel) data supplied by the German Institute for Labour Market Research (Institut für Arbeitsmarkt- und Berufsforschung/IAB) of the German Federal Labour Office (Bundesagentur für Arbeit). Its results suggest that works councils positively impact firm performance (Addison, Schnabel and Wagner 2004; Addison 2010). But overall, the picture still remains mixed and the positive/negative effects cited seem small in terms of their overall influence on firm productivity.

Other researchers examine the effects of legal provisions to establish works councils – including regulations that come into force once firms reach a certain firm size – on firm growth as measured by a firm's number of employees. These size-dependent regulations can consist of legislation concerning the implementation of works councils, and may also involve higher taxes or social regulations like lay-off conditions. In France and Spain, for instance, firms with 50 or more employees face significantly more regulations than firms with less than

50 employees. Gourio and Roys (2014) and Garicano, LeLarge and Van Reenen (2013) analyse the effects of these thresholds for firms in France, and come to the conclusion that the sum of all regulations that take effect after a firm has reached the 50 employee threshold prevents firms from growing beyond that threshold, as firms try to avoid the additional costs.⁶ It is important to note that the establishment of works councils is only one regulation among many others that are imposed on firms, and that the effect of works councils alone on firm growth is not reported in these studies.

Conclusion

Workplace representation in Europe is mixed and ranges from representation by either union bodies or works councils to both bodies co-existing at the same time; although unions generally tend to dominate workplace representation. Differences between countries also exist in terms of thresholds; this means that the number of employees that is required for the formation of a works council varies across countries. The EU has established several directives to foster workplace representation and to ensure that workplace representation takes place at both a national and a transnational level. Economic theory suggests that works councils have a positive effect on firms, whereas neither a positive nor a negative effect on firm productivity can be found in empirical research. However, the research conducted to date is limited to a few countries and mostly draws on data on German works councils and firms.

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⁵ For the study using data on South Korea, please see Kleiner and Lee (1997). The study concludes that works councils positively impact productivity.

⁶ For how firm size regulations hinder firm growth in Spain see The Economist (2015).

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