

Expanded abstract

The participation of workers in the administrative bodies of companies in Spain

Objectives

The aim of this study is to analyse worker participation in Spanish companies, and more specifically in decision-making.

Methodology

To carry out this study, we first analysed Spanish and European Union legislation on employee participation in companies in general terms. This allowed us to differentiate between various possible forms of employee participation (in ownership, profits and decision-making).

Once we had selected the type of participation we were interested in (participation in decision-making in their company), we analysed this possibility in the legislation applicable to public companies, capital companies and social economy companies. In the latter, we also took into consideration the figure of worker-members, which is specific to cooperatives and worker-owned companies (*sociedades laborales*). Finally, we analysed the concept of the “participated company”, which was first mentioned in Law 44/2015, but has not yet been developed or promoted in law.

The study is mainly legal and is limited in scope to Spanish and European Union law, but it does take into account existing experiences of participation resulting from collective bargaining, as well as studies carried out on the subject.

Results

Despite the advantages attributed to worker participation in company decision-making, mainly for contributing to democracy at work, social justice, better labour relations, improved productivity and innovation, and more sustainable and inclusive business growth, and despite successive recommendations from European institutions, the truth is that worker participation in decision-making in their companies has been practically non-existent in Spain.

The experience of savings banks (*cajas de ahorros*) stands out, where workers were represented in all corporate bodies, but savings banks disappeared almost entirely after the 2008-2014 crisis.

Outside of the above case, legal recognition of worker participation in the governing bodies of other companies has been non-existent (in the case of limited companies, including worker-owned companies) or very limited (in the case of public companies and cooperatives). In the case of public companies, this has been possible thanks to agreements between the public

administration and the main trade unions, and in the case of cooperatives, although such participation is still enshrined in national law, it has been declining over time and has disappeared from the legislation of the autonomous communities. In other words, where participation has existed, the trend has been downward.

Even though the regulation of European companies (incorporated as public limited companies or cooperatives) or resulting from intra-community cross-border transformation, merger or division processes recognises, the right of employees to participate in the supervisory bodies of companies is recognised, as required by Directives 2001/86, 2003/72 and 2019/2121, this recognition is limited to those employees who already had that right, and therefore cannot be extended to employees of all European companies.

Limitations

The study has only been able to demonstrate the shortcomings of Spanish legislation regarding worker participation in company decisions, which, according to the Spanish Constitution (Art. 129.2), should be promoted by public authorities.

Specific legal reforms and public policies promoting such participation would need to be proposed.

Above all, however, there would need to be a willingness on the part of employers and trade unions to agree on plans for worker participation, and political will to recognise, guarantee and promote workers' participation rights.

Conclusions

The study has revealed the existence of worker participation in the boards of directors of public companies, based on historical agreements of dubious validity.

It has also shown that worker-owned companies, despite widely acknowledging workers' rights to membership, do not recognise any right of participation for workers who are not members.

Similarly, in cooperatives, working members and non-member workers have been losing participation rights since the 1974 Cooperation Act to the present day, and this loss is even more pronounced in the laws of the autonomous communities.

Original value

Worker participation has been widely discussed in Spanish legal doctrine in relation to access to capital and company profits, but less so in relation to participation in decision-making.

The participation of worker-members in worker cooperatives and labour companies has also been studied extensively, but the participation rights of worker-members and non-member workers have hardly been studied at all.

The main originality of our study has been to focus, on the one hand, on the participation rights of workers in company decision-making and, on the other, to conduct this analysis in relation to all workers regardless of the nature of their company (public, capitalist or social economy).