Expanded abstract

Comparative Legal Study on Workers' Participation in the enterprise in Germany, France, Italy, United Kingdom and Spain

To define workers' participation in the enterprise is not an easy task for a social science researcher, given the amplitude of this concept and the different meanings that it may adopt. This paper uses two concepts for a comparative analysis of different workers' participation systems in European countries: on the one hand, participation in decision-making through representatives, which is associated with industrial democracy, and it can be internal (presence in corporate bodies) or external (bodies outside the corporate structure); and, on the other, economic or financial participation**,** which includes profit-sharing and ownership of shares or stakes, that can be direct or indirect. This conceptualization allows us to compare the different systems, and more precisely it introduces us to the presentation of the legal framework that exist at the European level, before analysing each of the five countries selected (Germany, France, Italy, the United Kingdom and Spain).

In respect to the European level, much emphasis is placed on the understanding of the origin and genesis of the present European legislative framework on workers' participation rights in the enterprise: 1.- Directive 2001/86 which regulates internal participation -presence of workers' representatives at board level- within the European Company; 2.- Directive 2002/14 on information and consultation that regulates a minimum framework for national companies with more than 50 employees; and 3.- Directive 2009/38 on the establishment of European Works Councils or an alternative procedure in community-scale companies and group of companies. As it is argued, there is not any legal regulation on economic or financial workers' participation at European level.

Once the European legal framework is explained, the paper provides a detailed comparative analysis of the systems in each of the five countries. The German system is characterized by strong rights of co-determination for works councils and the presence of workers' representatives on supervisory boards. The paper highlights the extensive rights of information, consultation, and co-determination that German works councils possess. France has a comprehensive legal framework for workers' participation, including mandatory financial participation for companies with more than 50 employees. The study discusses the various forms of workers' representation, including works councils, and the recent reforms aimed at strengthening company-level negotiations. The Italian system is described as complex, with multiple forms of workers' representation coexisting. The paper notes the lack of specific legislation on internal participation and the limited development of financial participation. The UK has a strong tradition of financial participation, with various schemes such as Save-As-You-Earn (SAYE) and Share Incentive Plans (SIP). The

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study also discusses the role of trade union representatives and the limited presence of works councils. Finally, Spain's system is characterized by a dual channel of representation (unitary and trade union) and the absence of legal provisions for internal or financial participation.

Objective

As it has been expressed previously, the objective of this paper is to proceed with a legal and comparative analysis of the different workers' participation system that exist in five selected European countries (Germany, France, Italy, the UK and Spain), within the framework of European legislation on the matter (Directives 2001/86, 2002/14 and 2009/38). In this respect, the paper aims to identify the main challenges and to propose changes at European level, given the fact that there is a recent proposal (2024) for the amendment of Directive 2009/38. At the same time, the paper aims to present suggestions for improvement with respect to future draft legislation at internal level, within the Spanish system of workplace representation and workers' participation at the enterprise.

Methodology

The research is based on a critical and structured review of legislative, academic, jurisprudence and regulatory literature related to workers' participation in the enterprise. This review includes analyses of legal sources from the 20th. century to recent 21th. century studies, both at global level and in specific contexts. It also examines institutional report and specialized literature to illustrate existing tensions, advancements and contradictions.

Results

In respect to the design of the different workers' participation systems in European countries, the paper shows how clearly these respond to the origin and actual state of each national system of industrial relations. In this respect, it is very difficult to establish which system, external, internal and/or financial or economic participation should be considered the ideal model as there are too many variables to consider and that come together on the design of a system and on its success in a particular company or workplace. Probably the German system of workers' participation could be a source of inspiration, and the proof is that UE Institutions have been trying to copy this system since the decade of the 60's of the past century. In any case, the paper stresses that consensus and responsibility in business, joint participation in decision-making, secure economic and financial participation, and that there must be more democracy at workplace level, should be treated as a constant political challenge for the benefit of both workers and companies.

Conclusions

At the European level, the paper concludes with the need for comprehensive reforms of the existing Directives on workers' participation (Directives 2001/86, 2002/14, and 2009/38).

Although there is a formal proposal to amend Directive 2009/38 (COM 2024/14 final), a comprehensive reform of all three Directives together is unlikely due to various reasons, which include the existence of different systems of workers' participation and specific technical-legal difficulties. The Directives have different scopes of application (national companies, community-scale companies, and European Companies), and their minimum necessary rights content varies as they operate on different regulatory levels (national or transnational). Additionally, internal participation requires unanimity through an extraordinary legislative procedure, while information and consultation with workers do not. In any case, a thorough and effective reform of the existing Directives would require rethinking the content of article 153 TFEU, which serves as the legal basis for all community action in social matters. The limitations and gaps in this European legal framework, along with the lack of political will to modify it, mean that it has not been possible, and likely will not be in the future, to establish a common European labour standard for collective workers' rights. Without this, attempting to harmonize workers' collective participation rights (internal, external, and/or financial) is futile. The paper also addresses the challenges of implementing financial participation at the European level, citing significant obstacles such as differences in tax systems, social security systems, and legal frameworks. It emphasizes that any future European legislation on financial participation should protect workers' income security, avoid transferring business risks to workers, and ensure high levels of protection for workers' investments.

In respect to the current Spanish dual-channel representation of workers in companies -both unitary and trade union- the paper stresses its main dysfunctions: it prioritizes unitary representation over trade union representation, does not incentivize trade union representation, lacks mechanisms for accountability to the represented, and has low union membership rates (12%), despite high collective bargaining coverage (around 80%). There is also a significant issue of representativeness in SMEs (more than 70% of the industrial fabric) with fewer than 10 workers, and significant gender gaps in both unitary and trade union representation. In this respect, it is clear that the adequacy of the Organic Law on Trade Union Freedom (LOLS, 1985) to modern forms of employment and types of companies needs to be reconsidered. This requires ensuring the organizational autonomy of trade unions and reinforcing their ability to decide and choose their unit and/or areas of representation. Additionally, the creation of other figures (sectoral, contract, territorial representatives, etc.) should be allowed. Finally, regarding the possibility of establishing a financial participation system at the state level, it is important to recall the challenges that could arise, similar to those at the European level. Any proposed legislation should be non-binding, primarily procedural in nature, and the legal regime and content of potential obligations should be conventional-reached through agreements at the company or workplace level. The legislation should include a subsidiary application regime in case of disagreement or after the established deadlines. The proposal should respect the following principles: voluntary participation by both companies and workers, extension of participation benefits to all workers, clarity and transparency, predefined formulas, regularity, distinction between salary and income derived from financial participation plans, avoidance of unreasonable risks for workers, and compatibility of financial participation with worker mobility.