

Expanded abstract

The European works council as a tool for democratic control over transnational corporate restructuring

Objectives

The European Union has developed several institutions of employee representation designed to involve workers in corporate decision-making. Among these, alongside European works councils, are other institutions with more limited practical reach, such as worker participation in the European Company (SE) and the European Cooperative Society (SCE).

Council Directive 94/45/EC of 22 September 1994 on the establishment of a European works council or a procedure for informing and consulting employees in Community-scale undertakings and groups of undertakings represents the starting point for European company-level industrial relations.

Over the past three decades, European works councils have become the institutional arena in which sectoral and even cross-sectoral processes of industrial relations within the European Union intersect. The academic literature has referred to them both as the seed of democratic worker participation in corporate decision-making and as a mere instrument of corporate communication, devoid of significant practical impact on labor relations. This divergence between optimistic positions regarding their potential to expand industrial democracy in the EU and distinctly pessimistic ones has accompanied the practice of information and consultation since its emergence in a handful of transnational companies in the mid-1980s.

The article examines the capacity of European works councils to impose democratic control over corporate decision-making, particularly when it entails risks of relocation and job loss. The capacity to subject corporate activity to democratic control diminishes when companies operate on a transnational scale. The adoption of coercive comparison strategies between production sites located in different countries constitutes one of the main strategic resources of transnational corporations for extracting concessions from collective actors more closely tied to specific territories, such as workforces and public authorities.

The topic is especially relevant at a time when EU legislation in this field is undergoing its second revision, following that carried out through Directive 2009/38/EC of 6 May, which replaced the original Directive of September 1994. In this regard, the Directorate-General for Employment of the European Commission has drafted Directive Proposal COM(2024)14 of 24 January 2024, which has been addressed by the Council of the European Union through its General Approach 2024/0006/COD of 10 July 2024. The proposal is currently under ordinary legislative procedure before the European Parliament.

Methodology

The methodology of the article is qualitative. It is based on the technique of content analysis of legislative and legal documentation, position statements by various interest groups, and an in-depth review of the relevant literature. The theoretical approach follows the actor-based institutional analysis framework. Its goal is to capture the relationships, interests, and power dynamics among the relevant collective actors as a means to understand the processes of change within an organization -in this case, transnational companies- and within an industrial relations institution, such as the European works council.

Conclusions

The number of active European works councils has remained consistently around one thousand for approximately a decade, confirming the mature status of this institution within company-level industrial relations. Estimates regarding the coverage rate of Directive 2009/38/EC of 6 May indicate that roughly one third of Community-scale enterprises have established a procedure for the information and consultation of their employees at the European level. The estimated number of employees entitled to these rights stands at approximately 11.3 million.

The practical outcomes of European works councils, however, have been less satisfactory particularly when measured against the high expectations that initially accompanied these institutions. Disappointment has been even greater when European works councils are evaluated not on the basis of what European legislation has allowed them to become, but rather on what many trade unionists and scholars in the early 1990s believed they could become. The inability of many of these institutions to fulfil even the basic mandate of information and consultation can be traced to the limited regulatory ambition of the two Directives adopted thus far. This is implicitly acknowledged in the Proposal for a Directive COM(2024)14 of 14 January 2024, which calls for the relaunch of employee representation structures negotiated under Article 13 of Directive 94/45/EC of 22 September.

The development of European works councils has struggled to overcome their initial features of depoliticization and deterritorialization. Both the original Directive on European works councils and its successor, Directive 2009/38/EC of 6 May, are inspired by the same logic of a capital-labor alliance for corporate change that permeates other sectoral and cross-sectoral processes of European industrial relations. Except in very specific cases, European works councils have rarely been able to propose -and even less to pursue- alternative paths of corporate transformation to those designed by the management.

Many European works councils remain instruments of corporate communication. In others, the rights to information and consultation established by European legislation are fulfilled to varying degrees. Yet only a few, and rather fragile, cases have evolved into genuine mechanisms for the democratization of corporate decision-making.

The difficulty in transforming European works councils into tools for the democratic control of corporate restructuring does not stem exclusively from regulatory shortcomings. It also arises, decisively, from the internalization by employee representatives of coercive compari-

son and social dumping logics. As argued in labor sociology, industrial relations institutions do not become precisely what the law prescribes, but rather what collective actors shape them to be on the basis of that legislation. The functioning of European works councils results from the micro-political interplay of diverse collective actors operating within the institutional framework established by European legislation and the territorial configuration of transnational companies.

The literature has documented the fragility of European works councils in the face of corporate restructuring processes with implications for production and employment. Organized labor in Europe has never abandoned their tactical value as instruments for building alliances among employee representatives from different national operations. Hence, its persistent advocacy for alternatives that mitigate the intensity of internal conflicts within the workforce. Yet this has not prevented it from seeking other avenues with a lower risk of fragmentation arising from territorial tensions, namely international framework agreements with transnational companies.