

Notion of Works Councils and Determinations of Their Position in the Enterprises

Abstract

Works councils are widely regarded as the most prominent, widespread and powerful form of employee participation in Europe. They are given extensive rights of information, consultation and even co-determination. In contrast to trade unions, however, works councils may not call a strike, and the law states that the employer and the councils should “work together in a spirit of mutual trust”. In this article two major topics are discussed: typologies of works councils and differences in their names, their composition, tasks and rights. The main aim of the paper is to present main determinates influencing the position of works councils in the companies.

1. Introduction

Works councils are the oldest and widespread form of employee participation within enterprises in Western Europe. Recently there has appeared a renewed interest in works councils in industrial relations research for a variety of reasons. First, the European Works Councils Directive (1994) has induced a vast amount of research on the implementation and functioning of the institutions. Second, the new EU Directive on Information and Consultation (2001) can cause the introduction of mandatory works councils, especially in countries without this form of employee participation (United Kingdom, Ireland and new EU countries). Third, the current deregulation tendencies of German industrial relations raised the question of the role the works councils play. Fourth, the ongoing decline of trade union density in Anglo-Saxon countries and the growing gap for workers in non-unionised sites has induced academics to

question whether works councils could provide a voice outside the traditional collective bargaining settings. Finally, there is an increasing debate among labour economists on the potential costs and benefits of such worker institutions for companies (Fredge 2002, p. 221–222).

Although works councils are present in almost all “old” EU countries, they can vary tremendously in their names, their composition, tasks and rights. The main aim of the article is to show these differences which come mostly from historical, cultural and structural factors as well as from various systems of industrial relations existing in the states. The paper also attempts to qualify main determinates influencing the position of works councils in the companies. The structure of the article is as follows. Section 2 shows the basic definition and twelve characteristic features of works councils. The main types of works councils regarding their legal status, composition and election procedures are presented in Section 3. Section 4 provides a very wide range of rights to information, consultation, co-determination and negotiation, which are granted to works councils. Last section provides final remarks and conclusions.

2. Definitions of works councils

The basic form of worker representation at workplace level is a works council having different names in particular countries. Term *works councils* is used in Germany and Austria (Betriebsrat), in Belgium (Conseil d’Enterprise), the Netherlands (Ondernemingsraden), Sweden (Foretagsnamnd) and Greece (Symvailia ergazamenon). In France and Portugal the institutions are called enterprise committees (comités d’entreprise, comissoes de trabalhadores), in Luxemburg – mixed enterprise committees (comité mixte d’entreprise), in Spain – employee committees (comité de empresa), in Denmark – cooperation committees (Samarbejdsudvalg). Besides councils of delegates (Reppresentanze sindacali aziendali –RSAs), a new form of worker participation in Italy– RSU’s (Reppresentanze sindacali unitary) came into existence in 1993.

In the literature on employee representation there is an extensive range of definitions explaining the main aim of activity and role of works councils in enterprises. The opinion of W. Kolvenbach (*Industrial democracy. Legal Developments in Europe 1977-1979* in: Rudolf, 1986, p. 119) who claimed that these institutions had been established for creating good relations between management and workforce was very popular in the 1980s. According to S. Rudolf, it means that works councils should be a place of cooperation and collective solving of problems in the plants (Rudolf 1986, p.119). In practice

however, it is difficult to find the examples of good cooperation between employers and employees. Therefore, F. Furtenberg's (*Experiences with Works Councils*, in: Rudolf, 1986, p. 120) definition describing works councils as the institutions that try to represent businesses of all of the three following groups: workers, trade unions and management, seems to be more suitable.

German literature on works councils is often considered as a part of a broader research focus on "co-determination" (*Mitbestimmung*). This is a rather confusing approach, because on one hand codetermination is used to refer to legal worker participation at both workplace (via works councils) and company (through worker delegates on the supervisory boards) levels. On the other hand, it is used to refer to the specific co-determination rights of works councils that are comprised in the Works Constitution Act (Fredge 2002, p. 222). Anglo-Saxon literature uses the term "works councils" in too broad context. In such a context voluntary labour-management committees that are only advisory institutions are also meant to be works councils (Markey, Monet 1997, p. 1):

The description provided by J. Rogers and W. Streeck unifies the term of works councils allowing for simultaneously some elements that are common for different definitions. According to these authors *works councils are institutionalised bodies for representative communication between a single employer ("management") and the employees ("workforce") of a single plant or enterprise ("workplace")* – (Rogers, Streeck 1995, p. 6) This is a relatively inclusive definition but such a general approach is helpful to cover the great variety of forms and functions of these institutions being established in different historical times and different industrial relations systems.

J. Rogers and W. Streeck also propose eight main characteristic features of works councils, which supplement their definition. Having these features in mind but modifying them and adding other substantial elements, twelve conditions that are essential to works councils are presented below:

1. Works councils represent all workers at a given workplace, irrespective of their status as trade union members (Rogers, Streeck 1995, p. 6). Therefore, existing in companies in United Kingdom and Ireland joint shop stewards' committees and joint consultation committees that consist of union representatives (shop stewards) and management representatives are not works councils in the light of the definition.
2. Members of works councils are elected by all employees (not only trade unionists) and are legally independent of trade unions. In practice however, the unions can play a crucial role in setting-up and effective operation of works councils.

3. Works councils are workplaces institutions which have, in different range granted, the right to information, consultation and co-determination on personal, social and economic issues. A negotiation on pay belongs to trade unions' functions however. Therefore, existing in Italy and Spain employee participation institutions that may negotiate wages and call strikes are not treated as works councils *sensu stricto*.
4. The employers cover all the costs of works councils operation. They are required to provide adequate time and facilities for the institution to function effectively. Meetings of works councils are counted as work time and paid accordingly. In most countries all works council members have the right to take part in training courses to improve their qualifications. In France and the Netherlands, they can also benefit from the advice of external financial experts.
5. Members of works councils enjoy protection against dismissal during their activity in the institution. They can only be dismissed for extraordinary reasons – such as gross misconduct – and only if the works council or the labour court agrees.
6. Works councils represent the workforce of a specific plant or enterprise, not of an industrial sector or a territorial area. Their counterpart is a single employer, not an employers' association (Rogers, Streeck 1995, p. 7). Therefore, mixed production committees common for all industrial sector that operated in the United Kingdom in the 1950s were not works councils in the sense of the definition used here.
7. Works councils are not “company unions” in the enterprises. They are institutions with a representational monopoly of all employees, not voluntary associations. One established, workers cannot refuse to “join” them or to “be represented” by them. There is no exit from a works council other than changing one's place of employment (Rogers, Streeck 1995, p. 7–8).
8. A minimum workforce-size threshold is a key factor for establishing works councils. These bodies can be set up by legislation or by collective agreement between employers' associations and trade unions federations. Therefore, joint consultation committees in the United Kingdom establishing on initiative of management or management's approval do not rank among works councils. Finnish voluntary joint committees that have mainly advisory character are not works councils in the sense of the definition too¹.

¹ In Finland employee representation is provided by trade union representatives (*luottamusmiehet*). They have the information and consultation right, which in other countries are possessed by works council members. Two acts (*Act on co-determination in companies from 1978 and Act on cooperation within Undertakings from 1991*)

9. Works councils are mandatory institutions but “mandatory” does not mean automatic. Even in Germany where works councils have the most powerful position in Europe and can be set up in all establishments that normally have five and more employees, a minimal initiative from workers or unions is required to set up the council. Three workers with voting rights, or a trade union represented in the establishment, are needed to call for a work meeting to elect an electoral body which is then responsible for holding the election of works council members (Addison 1999, p. 75).
10. Works council is not the same as worker representation on a supervisory board of company. However, works councils often co-exist with such representation and their relations are very close (Rogers, Streeck 1995, p. 9). In Austria, Luxemburg and partly in France and Germany, the works council appoints a worker representation on a supervisory board or propose employees as board members. As a result, sometimes the same people serve simultaneously on both bodies, and work council members use the information they get as board members to increase their effectiveness as works councillors.
11. Being representative institutions, works councils are not the same as direct forms of employee participation like “quality circles” and “group work” (Rogers, Streeck 1995, p. 8) which refer to direct participation of individual employees in decision-making process. As opposed to works councils, direct forms of participation are established to improve work organisation, increase creativity and responsibility of workers and, at the same time, to increase their productivity.
12. Works councils also differ from health and safety committees setting up to ensure that working conditions are in accordance with the relevant regulations. The committees must be informed and consulted on all matters relating to health and safety in the workplace.

3. Types of works councils

One of the most important elements influencing the position of works councils in the companies is the legal basis of their operation. On this basis, works councils can be divided into two main groups:

- statutory works councils;

promote the exchange of information between employers and employees in order to improve the negotiation culture and to increase workplace democracy (Lija 2003, p. 2).

– works councils based on central collective agreements.

Statutory works councils are the most common in the EU15 and they exist in Austria, Belgium, France, Germany, Greece, Luxemburg, the Netherlands, Portugal and Spain. Apart from statutory councils of delegates in Italy, there are also trade union committees (RSUs) based on the agreement between the three main trade union confederations. The rights and duties of cooperation committees in Denmark are set out in a national agreement, recently revised in 1986. Works councils under agreement between trade unions and employers' associations existed in the 1950s and 1960s in Sweden. They almost disappeared in 1977 with the implementation of the *Act on Co-determination at Work* (MBL) which gave trade unions a wide range of rights at the workplace. There is no system of compulsory works councils in Finland. The same form of worker participation at the workplace is joint committee, which is similar to works council. It is important to remember that this institution is not compulsory. According to *The Act on Cooperation within Undertakings*, both sides (employers and employees) can choose another form of worker representation that promotes the exchange of information in company (for example shop stewards).

It must be said that legislation is a more valuable legal basis of works councils operation. It gives these institutions prestige and compulsory character in all enterprises being under the legislation (Rudolf 1986, p. 122). However, this legal basis does not guarantee works councils high position automatically. Although German and French works councils operate on the same strong legal base, their counterparts in France are significantly weaker. This example means that the issue of works council is much more complicated and that various factors influence the position of the councils in the companies. Nonetheless, legislation at least formally provides works councils with the institutional independence from both trade unions and employer.

Both legislation and central collective agreements define a minimum workforce-size threshold for the establishment of works councils. There are considerable differences in the thresholds among the countries. They range from five employees in Austria and Germany to 100 in Belgium and 150 in Luxembourg. A minimum threshold of 30–50 employees seems to be the most common and is applied in such countries as: France, Spain, Denmark, Greece and the Netherlands (Carley, Saradel, Welz 2005, p. 12). In Italy trade union committees must be set up in establishments with at least 15 employees, whereas the councils of delegates – at least 40 workers. Statutory works councils in Portugal can be established in any organisation at the request of employees, although in practice they are mostly in bigger organisations (*Worker Representation in Europe*, 1998).

The above data concern the extent of this form of worker participation in particular countries. In general, the scope is not too extensive besides Germany and Austria. It is important to remember that works councils are compulsory but not automatic. Therefore, in practice (also in these two countries) the range of the institutions is even smaller. According to the Institute for Employment Research survey data, only 11% of all establishments in the private sector with at least five employees had works councils, which covered 48% of all employees in this country. Such low percentage is due to the high number of small establishments, which rarely have works councils. However, 95% out of all companies with 500 and more workers had works councils (Dribbusch 2003, p. 3).

The second classification of works councils can be made taking into account the composition of these institutions. In this case, there is a distinction between two groups:

- Works councils, which are made up solely of employee representatives, and meet on a bilateral basis with management.
- Works councils, which are joint bodies, made up of representatives of both management and employees.

The first kind more commonly exists in seven countries: Germany, Austria, Portugal, Spain, the Netherlands, Greece and Italy. In general, the works councils consist of two groups of staff: manual and non-manual workers. In Germany, there is a separate representation for young people and the disabled, who are able to take part in work council discussions that concern their problems. The joint committees are applied in Denmark, Belgium, France and Luxembourg and the position of these employee-employer bodies is significantly weaker. Moreover, a director of the company or his representative chairs the works councils in France and Belgium, which additionally weakens these institutions.

The consecutive factor which affects the works councils position is the way employee representatives are elected. The details of election vary considerably from country to country, notably in terms of the role of trade unions. In general, there are three basic election procedures²:

- Works council members are elected by all the staff and the staff have a right to propose candidates for the councillors.

² The classification and description of election procedures in particular countries was made on the basis of following works: *Worker Representation in Europe*, 1998; *Thematic feature – works councils and other workplace employee representation and participation structures*, 2003; Rudolf 1996; Burgess, 1996.

- Works council members are elected by all the staff on the basis of lists prepared by trade unions.
- Works council members are solely elected by trade unions.

The first election procedure is applied in Austria, Germany, Portugal, Luxembourg, the Netherlands, Spain and Greece. In all these countries except for Luxembourg works councils are employee-side only bodies and trade union density is on average level. It can point that these works councils are rather independent of management and trade union as well as they have relatively high position. In Germany, there are two separated channels of representation: the first channel operates through works council at a workplace, and the second one – through trade unions and collective bargaining. This clear division in the competences of the two bodies enables works councils to operate effectively and increases the position of the institution. It is important to remember that election procedure is only one of different factors, which influence the works council strength. For example, trade unions in Portugal are not allowed to prepare the lists of candidates. In practice however, unions play a key role in their creation. Moreover, Portuguese works councils have very poor rights and normally exist only where there is a strong union presence.

In France, Belgium and Italy works council members are elected by all the workforce on the basis of the lists prepared by trade unions. In French enterprises with less than 300 employees the trade union delegate is automatically the representative of the trade union on the works council although without voting voice. Only “representative unions”³ in Belgium can nominate candidates, which means that all works councils members are also union members in practice. The elections conducted according to detailed regulations, seem to be a key test of the support for each union confederation. Although RSAs and RSUs in Italy are elected by the whole staff, they remain primarily union committees. Unions not only put forward the lists of candidates but also appoint one third of the members in RSUs. High position of the trade unions in works councils is partly caused by the fact that there are not union representatives in Italian enterprises.

The last election procedure is applied in Denmark where trade union representatives in the workplace elected by trade unions are also automatically members of the cooperation committees. In this country trade unions provide the main basis of workplace representation. The senior representative of the management chairs the cooperation committee with deputy chair coming from the employee representatives.

³ In some countries particular trade union confederations are by law given specific advantages in their ability to sign collective agreements or put forward candidates for works council election. They are referred to as the “most representative unions”.

4. Information, consultation and other rights

The most important factor influencing the position of works council in the workplace is the range of rights granted to these institutions. This issue can be examined in two directions as:

- subject of employee participation;
- level of employee participation.

Taking into consideration the subject of participation, two main groups are distinguished: social matters and economic ones. The first group includes the following issues: methods of payment, disciplinary rules, changing working hours, holiday arrangements, the setting of bonus and targets, and the arrangements of the operation of works institutions like canteens or sports grounds. Economic matters refer to finance of the company, closures and transfer of production, relocation, mergers, takeovers and the implementation of new technologies (Wratny 1993, p. 11). Moreover, the issue of election of worker representation on a supervisory board of company is also included in the second group.

Participation level refers to the influence that works council possesses in the workplace. On this basis, the literature distinguishes three levels:

- Information;
- Consultation;
- Co-determination.

The right to information is the essential condition of effective employee participation in the workplace. Works councils operation depends on the scope of information the councillors receive regularly from the management. The directive 2002/14/EC, Art. 2 (f) defines information as the *transmission by the employer to the employees' representatives of data to enable them to acquaint themselves with the subject matter and to examine it*. The fullest range of information is granted to works councils in Germany and the Netherlands. In the case of Germany, management should provide the works councils with full information in advance – this is at early planning stage. The idea is to give the councillors an adequate opportunity to participate in decision-making process by supplementing its with the same information that management already possesses. In the Netherlands the employer is also obliged to provide, in due time, all the information which is necessary for the council to perform its tasks (Blanpain, Windey 1994, p. 33–34).

The councils are usually informed about social (organisation of work, job security, working conditions), technical and economic issues in form of annual

or quarterly reports. In Luxembourg at least once a year the employer must provide a report on the present and planned employment. In addition, works council should be informed, at least twice a year, of economic and financial development in the company, including sales, orders, payments and investments. Basic information on the general position of the business must be provided to works councils in Belgium every four years, when the institutions are newly elected. This information, together with the financial results, is updated annually, and every three months the management must present the current position and indicate how they diverge from the plans set. Annual and quarterly reports are also obligatory in France and should contain information on social, personal and economic issues (*Worker Representation in Europe*, 1998, p. 16 and 38).

Portuguese works councils receive general information on social, technical and economic matters which are necessary to fulfill their role that is purely advisory and consultative. Contrary to them, works councils in Spain have clearly defined information rights. They are given quarterly-based information on the progress of the company, including employment issues and development within the sector as well as the information about disciplinary measures, absence from work, health and safety and workplace-related environmental studies (White 2003, p. 3). The broad access to information is also provided in Greece where works councils receive the information concerning on one hand the economic situation of the enterprises and the financial development; and on the other – modification in the personnel structure, the annual investments for hygiene services and security in the enterprise.

The main task of the cooperation committees in Denmark is to promote cooperation for the benefit of both the enterprise as such and the individual employee. Although the main forms of employee participation in the workplace are trade union representatives, in practice the cooperation committees have information and consultation rights, too. The basic role of Italian RSUs is negotiation with employer at the company level. The law from 1970 provides councils of delegates with the right to information which is specified in collective agreements.

Consultation can generally be regarded as a right to be informed of planned measures in advance and to have an opportunity to express an opinion prior to implementation (Carley, Saradel, Welz 2005, p. 18). The right to consultation covers considerably smaller range of social and economic issues than the right to information. Only in Germany and the Netherlands consultation rights generally refer to the same kind of matters as information rights. Consultation rights on financial and economic matters are less common than on

social issues. However, they exist in following countries: Germany, the Netherlands, Austria, France, and Luxembourg.

In Germany the employer is obliged to consult with works council the changes in the plant which could lead to disadvantages for the workforce including the introduction of new techniques and procedures and, in particular, new technology. The employer in Austria must discuss the economic and financial position of the business with the works council at least once every three months. Consultation rights on economic issues in Dutch works councils concentrate on those with more direct effect on the workforce such as plans to: sell off all or part of the company, take over other companies, change the activity of the company, relocate the company, undertake large-scale recruitment or make major investments. The specific issues on which the works councils in France and Belgium should be consulted include: important structural changes such as research and development policy, large-scale redundancies, introduction of new technology, working conditions and working time, training plans, health and safety. Also in Luxembourg the employer is obliged to consult the works council about any financial or economic decisions likely to have a significant effect on “the structure of the business or the level of employment”.

In Spain and Portugal consultation refers mainly to personal and social issues. Portuguese works councils also have a right to express an opinion on the financial plans of the business and on training and retraining. The tasks of works councils in Spain are to monitor the application of certain labor regulations and to control facilities at the workplace. The Article 14 of the law in Greece specifies that where there is no company trade union, the works council must be consulted by the employer in cases of collective redundancies (Stamati 2003, p. 2). Although the most important form of employee participation in companies in Denmark are trade union representatives, cooperation committees have also relatively wide consultation rights. Collective agreement signed by trade union confederation and employers' organization states that the information should be provided to cooperation committees sufficiently earlier to allow employees put forward their viewpoint, ideas and suggestions before any decision is made. According to law in Italy, the employer must consult with RSAs on health and safety, the use of public funds for industrial restructuring, large-scale redundancies and business transfers.

In several countries (Austria, Belgium, Denmark, Germany, Luxembourg, and the Netherlands) the rights of works councils exceed information and consultation and extend into codetermination. It means that the agreement of the works councils is necessary for certain decisions or measures to be taken. Codetermination rights refer to issues that are important for employees and their working conditions, which relate to the activities of the company, such as:

considerable investments, changes in methods of production, product development, and plans for expansion, reductions or restructuring. Decisions of this kind are submitted to the works council for its opinion before any decision is made (Carley, Saradel, Welz 2005, p. 16).

The most extensive codetermination rights have works councils in Germany. The rights include such areas as: working time, the introduction and use of technical devices to monitor employee performance; remuneration agreements, including the fixing of job and bonus rates and other forms of performance-related pay; health and safety measures. Codetermination in economic issues is, in general, limited only to the development of a so-called social plan which refers to closure, major changes in organization or equipment, and introduction of a new working method or production techniques. In all such matters, the employer cannot take action without the agreement of works council. In addition, the works councils have a somewhat set of “consent rights” in establishments employing 21 and more employees with voting rights. These cover employment, grading and transfer of workers within the firm. If the works council withholds its consent, the employer can apply to the labor court for a decision (Addison 1999, p. 77).

Austrian and Dutch works councils have similar but a bit weaker codetermination rights. In some areas such as: works rules, the date when wages and salaries are paid, the introduction of detailed computer based personnel records, the employer needs the agreement of the works council in Austria. Moreover, in some areas the works councils in this country have a complete right of veto – the employer cannot go to the conciliation body. These include the introduction of: disciplinary procedure, monitoring system, and pay system. The approval rights in the Netherlands relate to a range of topics including: retirement, profit-sharing or savings, working time and the annual leave, salary and wage scales, job classification schemes, health and safety, recruitment, dismissal and promotion and social assistance for employees. If the works council fails to give its approval, the employer can appeal to joint-management commissions set up in each industry (*Worker Representation in Europe*, 1998, p. 9–10 and 80).

The right to codetermination in France, Belgium and Luxembourg is much more limited. It mainly refers to the recruitment policy, promotion, transfer and dismissal, works rules, health and safety matters. Moreover, works councils in Luxembourg have the right to monitor and keep a check on company welfare facilities (Feyereisen 2003, p. 3). In Belgium, works councils carry out monitoring, particularly on the application of social and industrial relations legislation, the redeployment of workers with disabilities, and vocational skill criteria (Delbar 2003, p. 3). Although codetermination rights in the area of social

matters also exist in Greece, they are only practiced in the enterprises that have no trade union sections. Codetermination right regarding personnel policy in Denmark means that there is an obligation bargain in good faith.

Analyzing the rights of works councils in particular countries some rule can be noticed. The more subject of employee participation refers to important economic matters the lower level of participation is. And on the contrary: the more subject of employee participation refers to social matters the stronger influence the employees possess (the higher level of employee participation).

Conclusions

The conducted analysis leads to the following conclusions:

- 1) Works councils are based on law or collective agreements institutions which represent all employees at workplace and, in different scale, have granted the right to information, consultation and codetermination. The main aim of the works councils is to facilitate communication between employees (workforce) and employers (management) in particular plants or a companies.
- 2) Works councils are met in almost all "old" EU Members States. In Germany, the Netherlands, Austria and Luxembourg they are the most important form of employee participation. Works councils in France, Belgium, Greece, Portugal and Spain operate simultaneously with trade union structures in the workplace. In Denmark, where trade union representatives play a leading role in companies, works councils are only the advisory institutions. There are not statutory works councils in other "old" EU countries (United Kingdom, Ireland, and Finland). Employee representation in the workplace is provided by trade union representatives. The institutions which are similar to works councils are joint consultation committees consisting of shop stewards and management representatives.
- 3) The position of works councils in particular countries is very different and depends on several factors: the legal basis of their operation, composition, the size of enterprises, election procedures, the range of rights granted to these institutions. Relations between works councils and trade unions as well as system of industrial relations in different countries also influence the strength of this employee participation form.

- 4) The strongest positions among all 'old' EU Member States have works councils in Germany and the Netherlands. A lot of different factors caused this situation: the widest range of rights, strong legal basis of their operation, only employee-composition of works councils, the election of candidates for the councillors by workers and strong neo-corporatist industrial relations in these two countries. German system of industrial relations is deeply associated with the concept of *Mitbestimmung* that induces strengthening employee participation in this country. Moreover, German works councils were the earliest in Europe and they are still the pattern for this type of institutions in other states.
- 5) Works councils in other EU Member States have considerably weaker position in the enterprises. Although some councils are also based on legislation, they have lower range of rights granted to these institutions.
- In Belgium, France, Luxembourg, and Denmark works councils' position is weakened by the fact that councils consist of representatives of both employees and management. Moreover, a company manager or his representative chairs these institutions in France and Belgium. A consecutive factor which significantly weakens the position of works councils is a strong dependence of these institutions on trade unions, especially through election procedures (France, Belgium, Portugal, Luxembourg, Italy). In Denmark, where trade union density is very high, trade unions structures in the enterprises are the most important pushing as a result works councils into the background.

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