



A new draft law in Germany aims to strengthen co-determination in the workplace

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On the 70th anniversary of the Coal, Iron and Steel Co-determination Act, the German government is today ready to adopt a new law aimed at boosting the presence of works councils - the workplace labour representation bodies in Germany - and at strengthening their rights of co-determination.

On the 31st March of 2021, after months of discussion within the government coalition, the so-called *Betriebsrätemodernisierungsgesetz* (Works Councils Modernization Act) was approved by the federal government, albeit with changes with respect to the original proposal, issued by the Minister of Labour Hubertus Heil (SPD) at the end of December 2020.

The draft law was necessary in order to contrast the progressive erosion of the presence of works councils in German firms. The [Nuremberg Institute of Employment Research](#) recently highlighted a decrease in the rate of workers covered by representation bodies both in West Germany and in the former DDR. The decrease amounted respectively to ten (from 51% to 41%) and seven (dal 43% al 36%) percentage points between 1993 and 2019, with figures thus gradually converging in the two areas.

This trend is particularly due to the scant presence of works councils in SMEs; on the contrary, structural dynamics like the tertiarization of the economy and the consequent decline of the industrial sector would exert a limited impact on the crisis of co-determination. Moreover, [according to a study of the Hans Böckler Foundation](#), the hostile attitude of some managers and entrepreneurs is particularly worrisome, since they would manage to prevent one in six attempts of establishment of a works council in firms without any representation body.

The steady decline in workplace labour representation coverage and the subsequent hindering of co-determination rights granted by the Works Constitution Act (*Betriebsverfassungsgesetz*) threaten the resilience of the German model in a particularly delicate period, due to the challenges currently impacting on the world of work. It is thus no wonder that, ever since the 2000s, the main German metalworkers' union, IG Metall, tried to react to the growing demands for derogations from sectoral collective agreements and to the deterioration of workplace labour representation, by establishing rules to coordinate collective bargaining decentralization and by intervening more on workplace-level dynamics in order to strengthen the role of works councils. The largest union in the world has therefore attempted, often in partnership with experts and researchers, to improve the skills of works councils' members so that they would be able to challenge the one-sidedness of certain managerial strategic choices and to participate in the re-organization and the

modernization of firms. Initiatives in field have been the campaign *Besser statt Billiger* (started in 2004 with the aim of supporting workers' representatives in proposing sustainable alternatives to outsourcing, relocations, and downsizing) and the recent projects *Arbeit 2020*, *Arbeit und Innovation e transfA+Ir* (launched between 2015 and 2020 in order to promote the active participation of works councils in workplace innovation projects). These union attempts at enhancing worker voice in the current challenges for the world of work have been moreover interpreted as evidences of the transition to a less defensive and more proactive and 'confrontational' style of co-determination (Armaroli, I. (2019). Progettare l'innovazione: la nuova frontiera dell'azione sindacale? *Economia & Lavoro*, 53(1), 115-129; Haipeter, T. (2013). Union Renewal and Business Strategies. Strategic Codetermination of Works Councils and the Campaign "Better Not Cheaper" of the German Metalworkers' Union. *International Business Research*, 6(3), 40-57).

The draft law discussed in this article is therefore to be considered in the light of both the gradual loss of importance of co-determination and the parallel efforts to strengthen it. Indeed, with the aim to promote the election of works councils and their action in a digital world of work, the draft law modifies some provisions of important German labour regulations, such as the Employment Protection Act (*Kündigungsschutzgesetz*) and the already mentioned Works Constitution Act (*Betriebsverfassungsgesetz*), which, since 1952 (albeit with recent adjustments) provides the legal framework for workplace labour representation in Germany.

Some of the changes introduced by the draft law, are aimed at regulating issues emerged with the digital evolution and exacerbated during the pandemic. We are referring, in particular, to the provisions that define the conditions under which works councils' meetings can be carried out through ICT equipment, as well as voting arrangements and ways to participate in virtual meetings. It needs to be underlined, however, that the law states that on normal conditions, meetings must be carried out face-to-face.

Furthermore, the massive spread of remote work during the COVID-19 pandemic has led to the introduction of one of the most relevant provisions in the draft law. Due to the lack of a specific legal framework on the matter, remote work is included among the topics subject to co-determination, which are listed in Section 87 of the Works Constitution Act. This means that employers cannot regulate the topic unilaterally, but, on the contrary, they have to find a specific agreement with the works council: if employers and works councils do not succeed in finding an agreement, the matter needs to be judged by a Conciliation committee. Either the works agreement or the decision by the Conciliation committee can be, according to the draft law, signed electronically.

Moreover, the draft law provides for a greater workers' involvement in the implementation of the so-called Artificial Intelligence in production processes. If employers want to apply such technology in the firm, they are compelled to inform works councils; conversely, if the works councils wanting to deploy such technology to carry out their activities, they have the right to consult an expert on the matter. The works councils' prerogative to approve the guidelines to be used by management in hiring, transferring, classification and dismissal processes would be confirmed, according to the draft law, even if those guidelines were to be elaborated through Artificial Intelligence systems.

Strongly connected to the implementation of new technologies in the workplace, is the provision related to the introduction, in the Section 79 of the Works Constitution Act, of a specific regulation on the responsibility of both management and works councils for the protection of workers' personal data.

The general goal of the draft law to protect works councils, can also be inferred from the changes proposed to the German Employment Protection Act: particularly relevant, in this sense, is the provision which prohibits, except for a just cause, the dismissal of an employee who


begins the process for the establishment of a works council or who makes public declarations in this regard. To pursue the same goal, the draft law enlarges the range of the firms which can use the simplified procedure for the election of a works council, described in the Works Constitution Act: besides, it is to be noted that the terms of the simplified procedure are even more eased by the draft law.

Finally, the specific interests of the workers involved in professional training are granted a higher degree of protection, seeing that those workers, irrespective of their age, get the right to vote for the youth and trainee representatives in the workplace.

The draft law, that has been approved by the Bundestag on May 21st, has received positive comments by the Union Confederation DGB, which interprets it as a first important step in the direction of a better level of democracy in the workplace. **The vice president of IG Metall, Christiane Brenner, has expressed a similar opinion,** while at the same time underlining her doubts about the real effectiveness of the proposed changes in protecting and favouring the elections of works councils.

Both unions express the need for an expansion of the topics that should be subject to co-determination, especially those regarding environmental sustainability and demographic changes. **Part of the scientific world** has also expressed some criticism regarding the draft law, considering it as not sufficiently audacious.

On the contrary, the employers' association BDA has formulated negative comments about the draft law, claiming that, since the pandemic crisis has shown how industrial relations are perfectly capable of dealing autonomously with new challenges, there is no need for a new law on the matter.

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