

ETUC Strategy for
More Democracy at Work
Material for the campaign

Freedom, democracy and social justice are core values of the European Union. Democracy is important; not only on the political but also on the economic level. More Democracy at Work is part of a broader approach for a more Social Europe which is urgently needed.

Workers represent an integral part of companies and the public sector, offering their time, energy and skills on a daily basis. Their voice and influence are however limited and are in fact shrinking. As voters can influence the organisation of their communities, workers should have a greater say regarding the organisation and the choices of their companies. Public employees should be effectively involved as well in the decision-making process on how public services are organised and delivered.

The economic crisis has shown the severe consequences of an economic model that is not based on democracy and social justice. Excessive executive salaries, large financial gains for shareholders, short-term strategies, reduction of costs at expense of workers and working conditions, quality, sustainability and innovation: these are some of the factors which have contributed to the financial and economic crisis. However, the European Union has not responded with the necessary change of approach and policy. On the contrary, austerity has been accompanied by a complete standstill on the issues of decision-making in companies and the public sector and of democracy at work.

Today, corporations and multinationals have often recovered from the crisis, but workers haven't seen a pay rise in years and their influence is stagnating. In fact, profits have grown at the expense of wages since the 1990s. At the same time, workers' involvement and influence in the workplace is still too limited and often shrinking, due to uncontrolled and unsupervised restructuring and delocalisation processes, unbalanced and insufficient regulations and ineffective sanctions.

The issue of democracy at work isn't high on the political agenda despite its potential to contribute to a more social, inclusive and fair Europe. The need to empower workers in private companies and in public services to express their views, influence decisions and enforce their rights collectively is all too often ignored in current debates.

Workers' participation should however represent a key question in the 21st century. Stronger involvement of workers within their organisations can directly improve working conditions, levels of pay, labour rights, social and economic inclusion and sustainability. It also contributes to a more balanced and effective corporate governance and to higher quality for public services. Data suggests that a stronger workers' voice is

associated with lower executive pay, stronger economic performance for companies and better employment levels.

Democracy at work is implemented through essential rights: freedom of association, the right to collective action and collective bargaining, workers' information, consultation and participation... We need actions at European level to safeguard and strengthen these instruments!

The upcoming European elections will be decisive for a change in approach. We need to put More Democracy at Work at the centre of the debate and ask the candidates to support the efforts and objectives of the European trade union movement on this subject.

We want workers' representatives to be informed and consulted, to have meaningful and timely discussions with management at all relevant levels and to be actively involved in the decision-making process of their companies or organisations before any important decisions are made!

Specifically, the Directive on European Works Councils should be revised and strengthened and a new framework for workers' information, consultation and participation has to be defined. Effective rules on cross-border restructuring should be introduced and workers' representatives should have the right to sit on the board of the companies which move from one Member State to another. Letterbox companies need to be banned and corporate governance rules reformed in order to guarantee an economic model which is not based on shareholders' decisions and profits but on sustainability and the involvement of all stakeholders.

Within the strategic framework for More Democracy at Work, interested trade union organisations and European Works Councils, in coordination with the relevant trade unions, should organise initiatives to achieve these objectives. Initiatives could include meetings/events with MEPs and EP candidates ('Invite a MEP'), information seminars, letters and appeals from workers/trade union organisations/EWCs/workers' representatives in boards... The ETUC is ready to support initiatives and actions organised at national and local level.

Please find attached further information, campaign material, recommendations and data for your campaign for More Democracy at Work.

The ETUC secretariat remains at your disposal for any further information, clarification and support needed.

Annex

Democracy at work consists of a set of rights that gives workers the possibility of actively participating in the shaping of their working environment. This includes statutory rights legally stipulated at European or national level, collective agreements, as well as possibilities that have arisen from practice.

The introduction of the *European Appeal. Companies and Employees – Blazing a New European Trail*¹ describes in a very effective manner the negative situation in the European Union today with regard to workers' involvement and corporate governance and the need to completely change the approach.

“Something has gone wrong in the European Union. Four examples bear witness to this dysfunction. How can it be justified that hundreds of thousands of letter-box companies have been allowed to develop, when the aim of these ghost companies is to evade taxes, labour laws and regulations? How can it be explained that European Court of Justice decisions authorized the restriction of employees' fundamental rights in order to support business schemes whose very objective was to circumvent the protection of employees? How could recurring revelations such as those made by the Panama Papers and the Paradise Papers fail to have consequences, showing the EU's inability to prevent tax circumvention by wealthy individuals and large companies? Finally, how could we accept that, despite scandals such as the Rana Plaza factory collapse in Bangladesh, many companies have continued to turn a blind eye to suppliers that ignore the most basic social, environmental and human rights? The “shareholder primacy” theory has been promoted by the European Commission while the real economy and employees have been forgotten in the process. As a result, profits have grown at the expense of wages since the 1990s. This does not make sense. Employees are a core constituency of companies: while shareholders contribute capital, employees contribute their time, skills and life”².

1. Why More Democracy at Work? A collection of good arguments³

- ‘Citizens at work’: democratic participation is important not only in politics but also in the workplace;

¹ *European Appeal. Companies and Employees – Blazing a New European Trail* (http://european-appeal.org/app_en.pdf).

² Ibidem.

³ Several studies and inputs are available on the subject, which have been used in this section.

Inter alia, *Why Workers' Participation in Europe?*, ETUI website, (<http://www.worker-participation.eu/www.worker-participation.eu/index.php/About-WP/Why-Worker-Participation>); A. Hassel, S. von Verschuer, N. Helmerich, *Workers' voice and good corporate governance*, Hans Bockler Stiftung, 2018; A. Conchon, *Workers' voice in corporate governance: A European perspective*, ETUI, TUC, 2015; the three volumes on *The Sustainable Company* are very interesting sources of information and of elements for discussion as well. S. Vitols, N. Kluge, *The Sustainable Company: a new approach to corporate governance, Vol I*, ETUI, 2011; S. Vitols, J. Heuschmid, *European company law and the Sustainable Company: a stakeholder approach, Vol. II*, ETUI, 2013; S. Vitols, *Long-term investment and the Sustainable Company: a stakeholder perspective, Vol. III*, ETUI, 2015.

- Workers' rights to information and consultation are basic democratic rights, enshrined in the EU Charter of Fundamental Rights (Art. 27, 28)⁴;
- Workers' information, consultation and participation are an essential part of the European Social Model. These rights strengthen the European Democracy as well as the economic competitiveness of European companies⁵;
- 19 out of 31 EEA Member States officially recognize already today workers' board-level representation: the right to elect or appoint a number of members of the company's supervisory board / board of directors;
- Countries with strong workers' involvement have advanced further in implementing European objectives such as high employment rate, expenditure on research and development as well as sustainability. "The 'participation Index' developed by Vitols demonstrates that European countries with high standards of worker involvement (i.e. widespread rights and practices of board representation, workplace representation and collective bargaining) perform significantly better than countries with comparatively low standards on seven major indicators of the EU 'smart, sustainable and inclusive growth' strategy, including their employment rate (broken down by age and gender), expenditure on R&D, and the risk among the population of poverty or exclusion. In the current turbulent times, the fostering of greater information, consultation and representation of workers in corporate governance could therefore be an important means to enable companies to survive and thrive"⁶.
- Stronger workers' involvement and participation is essential to develop a more sustainable corporate governance model. A company should not be managed in the interest (and with the participation of) its stakeholders, in particular workers, and not in the sole interest of its shareholders and managers;
- There is no contradiction between democracy at work and economic success: sustainable companies with strong involvement and participation of their workers have better economic performances in the long-term;
- Companies with worker representation at board-level and collective bargaining agreements generally perform better than those without⁷. Companies with strong board-level representation rights have: 1. higher investment rates, 2. (more frequently) sustainability practices, 3. higher training rates, 4. a higher degree of job security, 5. top management remuneration systems which are more long-term and less stock market oriented⁸;
- Companies with a works council are generally more engaged in the training of their employees⁹;

⁴ "Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices". Article 27, *Charter of Fundamental Rights of the European Union*.

⁵ *Why Workers' Participation in Europe?*, cit.

⁶ A. Conchon, *Workers' voice in corporate governance: A European perspective*, cit.

⁷ *Mitbestimmungsreport*, Nr. 31, 2017, on the 100 largest European companies

(<https://www.boeckler.de/51937.htm?produkt=HBS-006558&chunk=2&jahr=.>); A. Hassel, S. von Verschuer, N. Helmerich, *Workers' voice and good corporate governance*, cit., pp. 13-14; R. Tannish, *Reorienting management remuneration towards sustainability: lessons from Germany*, in S. Vitols, N. Kluge, *The Sustainable Company: a new approach to corporate governance, Vol I*, cit.

⁸ *WHY CODETERMINATION? A collection of good arguments for strong workers' voice*, Hans-Böckler-Stiftung.

⁹ *Ibidem*.

- The type of workforce needed by innovative European companies – skilled, mobile, committed, responsible, and capable of using modern technologies and actively pursuing quality output– cannot be expected to simply obey the employers' instructions. Workers must be closely involved in the decision-making process at all levels of the company¹⁰;

2. Recommendations

- Insist on the importance and need of European rules, establishing information, consultation and participation rights without underestimating the importance of national laws;
- Underline that European rights do not replace but instead complement existing national rights and instruments;
- European minimum standards should not represent a ceiling but an ambitious minimum framework of rights; highlight the importance of having both high European and national standards and instruments;
- Highlight the importance and added value of having European information, consultation and participation rights for workers, at a time when companies are going transnational, European, global;
- avoid defensive and defeatist arguments – try to go on the offensive with our proposals and our positive approach;
- sectoral approach: add sector-specific arguments and examples;
- national approach: add specific arguments and examples related to your country.

3. Suggestions for actions

- Develop your communication strategy;
- Jointly organise public and/or internal meetings/events with member organisations (possibly in cooperation with national and/or European WCs and/or workers' representatives in company boardrooms) on information, consultation and participation rights – invite local/regional/national/European press;
- Organise direct meetings between trade unions, possibly in connection with the EWCs they assist, and MEPs and EP candidates all over Europe ('Invite a MEP') – invite local/regional/national/European press;
- Gather and disseminate positive examples and best practices to show the benefits of Democracy at Work;
- Initiatives supported by the ETUC secretariat and/or by the ETUI to address specific needs in term of information, analysis or in-depth assessment of the framework and situation with regard to workers' information, consultation and participation rights in various sectors and situations;
- Grass-roots pressure: trade union organisations/EWCs/board-level workers' representatives/workers sending letters/emails to candidates and newly elected

¹⁰ Final report of the EU High-level expert group on workers' involvement, Davignon group, 1997.

Commissioners to ask for steps forward at European level on Democracy at Work and to describe their difficulties in getting their rights enforced;

- Online petitions – to target candidates and new Commissioners.

4. Invite a Member of the European Parliament or a candidate for EP elections for a discussion on Democracy at Work – template letter (“invite a MEP”)

Re: Invitation to a debate on Democracy at Work in view of the upcoming European elections

Dear candidate to the European Parliament,

In view of the upcoming European elections, the [Trade Union / European Works Council of ... in cooperation with the Trade Union] would like to invite you to a discussion on the issue of Democracy at work.

The discussion will take place [add date, place].

The objective of this initiative is to discuss the upcoming elections and in particular to raise issues that need to be addressed by the next European Parliament and European Commission, in particular workers’ information, consultation and participation rights.

Workers’ involvement is a key question of the 21st century. Stronger involvement of workers and their organisations can directly improve working conditions, levels of pay, labour rights as well as social and economic inclusion. It also contributes to employment stability, good corporate governance and economic success in the long-run for companies and to higher quality for public services. Data suggests that a stronger workers’ voice is associated with lower executive pay, stronger economic performance for companies and better employment levels. However, for over a decade there has been a complete standstill with regards to workers’ involvement at European level.

It is now a pressing issue to strengthen democracy at work. More democracy at work should be part of a broader approach for a more social and fair Europe.

We would very much appreciate the possibility to debate these issues with you and to discuss what can and must be done by the next European Parliament.

We would be honoured if you could accept our invitation and take part in this debate.

Sincerely,

[add signature]

5. Concrete objectives of the campaign in terms of European legislation – ETUC positions

- a) Revision of the Directive on Information & Consultation (Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community). Inter alia, the ETUC calls for¹¹:
- the Directive to become applicable to all workers including public service workers and civil servants¹²;
 - stronger consultation rights, with a view to reaching an agreement via a meaningful dialogue before any decision can be finalised;
 - information-consultation must cover the whole value chain: upstream suppliers, subcontractors, dependent companies downstream;
 - the Directive needs to give employee representatives the right and the resources to call upon experts;
 - strengthening workers’ board-level representation (where applicable) to receive full information on strategic choices before the decisions are taken as well as to increase the influence of workers on the decision-making process;
 - effective and strong sanctions in case of non-compliance.
- b) Revision of the European Works Council Directive (Directive 2009/38/EC of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employee). In 2017, the ETUC put forward 10 demands for the revision of the Directive.¹³ In 2018 the demand for a European EWC Ombudsperson was added¹⁴. Inter alia, the ETUC calls for:
- effective and dissuasive sanctions and ensuring access to justice;
 - more efficient coordination between local, national and European levels (including through the necessary resources and rights);
 - rules for negotiations with the Special Negotiating Bodies need to be improved and clarified;
 - abuse of confidentiality clauses must be prevented and subsidiary requirements strengthened;
 - the role of “representatives of competent, recognised Community-level trade union organisations” needs to be clarified and strengthened and the concept of “transnational character of a matter” incorporated into the main body of the Directive;

¹¹ ETUC position on the proposed consolidation of the three Directives on information & consultation, collective redundancies and transfer of undertakings. Adopted at the Executive Committee Meeting of 3-4 December 2013

(https://www.etuc.org/sites/default/files/Final_Position_on_consolidation_of_directives_EN_1.pdf).

¹² EPSU points out that a social partners’ agreement on information and consultation rights reached by the EU social dialogue committee for central governments is pending implementation by a proposal for a directive in line with TFEU article 155.2, for more information see here: <https://www.epsu.org/article/information-and-consultation-rights>

¹³ ETUC position paper: For a modern European Works Councils (EWC) Directive in the Digital Era <https://www.etuc.org/documents/etuc-position-paperfor-modern-ewc-directive-digital-era#>

¹⁴ ETUC Resolution adopted at the Executive Committee Meeting of 7- 8 March 2018: Strategy for more democracy at work: <https://www.etuc.org/documents/etuc-resolution-strategy-more-democracy-work-0#>

- a level playing field must be introduced by applying all provisions laid out in the Directive to all agreements [including the so-called voluntary “Article 13” agreements], either automatically or by renegotiation.

- c) A new framework for workers’ information, consultation and participation. Since 2016, the ETUC has been asking for a new EU framework Directive for workers’ information, consultation and board-level representation¹⁵. The Directive should leave as much space as possible to negotiations at transnational company level with regard to enabling the parties to design a workers’ information, consultation and board-level representation procedure that fits their needs and tradition best. Key principles should thus be defined as binding standards, and ambitious subsidiary requirements should be designed. These requirements would apply as fallback provision in the absence of an agreement.
- d) A better company law package for European workers (proposal for a directive amending Directive (EU) 2017/1132 with regards to the use of digital tools and processes in company law; proposal for a directive amending Directive (EU) 2017/1132 with regards to cross-border conversions, mergers and divisions). The ETUC calls for the company law package to effectively regulate cross-border restructuring processes¹⁶. Workers’ information, consultation and participation rights should be safeguarded and strengthened. In case of conversions, mergers or divisions, companies must maintain or establish the possibility for workers to have board-level representation. The directive should introduce effective safeguards against the risk of letterbox companies.
- e) A better framework for insolvency [*to be updated in light of the latest developments*].¹⁷ The legislative procedure on the Directive on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedures is nearly finished. The result of the triilogue will be the final text of the future Directive. It can be consulted here: <https://data.consilium.europa.eu/doc/document/ST-15556-2018-INIT/en/pdf>
This text is a great disappointment to the ETUC. Once again, European legislators have missed an opportunity to improve European-wide workers' participation rights in restructuring and insolvency procedures. The ETUC has asked legislators to guarantee the participation of worker representatives and workers’ information and consultation rights, and to make workers preferential creditors in the restructuring and insolvency

¹⁵ ETUC Position paper adopted at the extraordinary ETUC Executive Committee on 13 April 2016 in The Hague and the ETUC Executive Committee on 9 June 2016 in Brussels: Orientation for a new EU framework on information, consultation and board-level representation rights <https://www.etuc.org/documents/etuc-position-paper-orientation-new-eu-framework-information-consultation-and-board-level#>

¹⁶ ETUC position paper adopted at the Executive Committee meeting on 25-26 June 2018. The new company law package 2018: A missed opportunity for more democracy at work <https://www.etuc.org/en/document/etuc-position-paperthe-new-company-law-package-2018-missed-opportunity-more-democracy-work>

¹⁷ ETUC position adopted at the Executive Committee Meeting of 14-15 December 2016: Protecting Workers in the context of the Commission Proposal for a Directive on Preventive Restructuring, Second Chance, Insolvency and Discharge Procedures <https://www.etuc.org/en/document/etuc-position-protecting-workers-context-commission-proposal-directive-preventive>

procedure.

The European Parliament incorporated some of ETUC's key demands but the final trilogue text leaves a too wide scope for Member States, which could significantly weaken workers' position in a preventive restructuring framework. One of our demands was to put in place a creditors' committee with the participation of workers' representatives, in order to monitor the operation of the business and the restructuring officer, unfortunately this idea was not included in the final text. An article on workers has been included but it only reiterates the status quo. Member States can choose to introduce a right for creditors or workers' representatives to initiate a restructuring procedure but the final text does not contain a general right to do so. It will be even more crucial now that affiliates pay a lot of attention to the Directive at the moment of transposition into national legislation.