

Araştırma Makalesi

Institution-Building on Shop-floor Employees' Representation with Reference to International Norms and Representative Industrial Democracy: A First Attempt to Model Dual-channel Representation in Turkey

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Abstract: This article explores the feasibility of setting up a shop-floor social dialogue mechanism in Turkey based on the synthesis of EU Directive (2002/14/EC), the German works council model and various dimensions of Turkish labour law and practice. Evaluating the outputs of the questionnaire conducted between the years 2015-2016 and addressed to selected samples of representatives of labour unions and employers' organizations as well as to officials of the

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Turkish Ministry of Labour and Social Security, the article proposes two alternatives for a dual-channel representation system: namely, the establishment of works councils to co-exist with unions and the election of employee representatives. Since the majority of Turkey's workplaces are currently unrepresented by unions, it is assumed that either option may serve the objectives of adapting Turkish labour relations to international standards and locating representative industrial democracy at the core of work life.

Keywords: Social dialogue, works councils, employee representatives, dual-channel representation, international norms, Turkey.

Uluslararası Normlara ve Temsili Endüstriyel Demokrasiye Atıfla İşyeri Çalışan Temsilciliğinin Kurumsal İnşası: Türkiye için bir Çift Kanaldan Temsil Modeli Önerisi

Öz: Bu makale, AB Direktifi (2002/14/EC), Alman İş Konseyi Modeli ve Türk İş Hukuku uygulamalarının çeşitli boyutlarıyla sentezine dayalı olarak, Türkiye'de sosyal diyalog merkezli bir işyeri çalışan temsilciliği mekanizması modeli önerisinde bulunmayı amaçlamaktadır. Makalede işçi ve işveren örgütlerinin temsilcilerinin yanı sıra, Çalışma ve Sosyal Güvenlik Bakanlığı'nın bazı yetkililerinden oluşan örneklem grubuna yönelik 2015-2016 yılları arasında yürütülen anketin çıktıları temel alınarak, çift kanallı bir temsil sistemi için işçi sendikaları ile birlikte var olacak çalışma konseylerinin kurulması ve çalışan temsilcilerinin seçilmesi olmak üzere iki alternatif model önerilmektedir. Türkiye'de hâlihazırda işyerlerinin çoğunluğu için sendika temsili söz konusu olmadığından, önerilen her iki seçeneğin de gerek Türkiye'deki çalışma ilişkilerinin uluslararası standartlara uyumu gerekse temsili endüstriyel demokrasiyi çalışma hayatının merkezine yerleştirme hedeflerine hizmet edebileceği düşünülmektedir.

Anahtar Kelimeler: Sosyal diyalog, çalışma konseyleri, çalışan temsilciliği, çift kanaldan temsil, uluslararası normlar, Türkiye.

Introduction

Although not a full European Union (EU) member state, as a candidate country, Turkey has incorporated the requirements of various International Labour Organisation (ILO) conventions and EU directives into its new Labour Act of 2003. Examples are the Collective Redundancies Directive (98/59/EC), the Restructuring and Transfer of Undertakings Directive (2001/23/EC) and the establishment of a Wages Guarantee Fund Directive (80/987/EEC) in the event of an employer's insolvency or inability to pay. These directives were incorporated

into the relevant paragraphs of Turkish labour legislation. However, other relevant EU principles on information exchange and consultation with employees were not implemented in the final text of Act No.4857.

To help establish an information-consultation mechanism, the draft Labour Act of 2003 had envisaged the election of employee representatives in establishments without union shop stewards. However, following complaints from unions, this proposal was deleted from the final text. While ILO Convention 135 on employee representatives was ratified by Turkey in 1993, it remains unincorporated into Turkish labour law and practices. Both union coverage and that of collective bargaining agreements thus remain extremely limited in Turkey. Therefore, for cases of collective dismissal, the restructuring of enterprises and a few other EU-based information-exchange and consultation requirements, it is unclear how consultation with workers will proceed in Turkey's non-unionized workplaces. The current Labour Act only establishes employers' duty to consult in the event of projected collective layoffs with union shop-stewards, if and where they do exist.

The unionized labour movement in Turkey had lost much of its clout at the onset of the 21st century. According to the Turkish Ministry of Labour and Social Security (MoLSS) statistics, by July 2019, union members comprised only about 13 percent of Turkey's workforce.

The coverage of collective bargaining agreements is even lower than that of unions in Turkey. At any given time, there can be only one such agreement at any workplace if the union meets the necessary legal conditions. Thus, collective bargaining, considered by many as the strongest form of social dialogue, remains restricted in Turkey only to a small portion of the workforce.

The objective of this article is to lay down the findings of a field study that explores social partners' attitudes and opinions on the feasibility of setting up a plant level information consultation mechanism along two distinct lines. It examines stakeholders' attitudes towards both the most flexible of the relevant EU Directives (Directive 2002/14/EC) and to an 'elected employee representatives' system. By doing so, the study aims to address the void left by declining union coverage and the absence of an adequate workers' representation system in Turkey.

Background and Literature

A works council is a shop-floor organization for the joint representation of workers, or workers and their employer. Most successful implementations of this institution are found in Germany where general collective labour agreements are forged by national unions and adjusted to local circumstances by works councils.

The European Works Councils Directive, created in 1994 and updated in 2009, covers all EU-based multinational companies with at least 1000 employees

and 150 employees in each of at least two Member States. According to the European Trade Union Institution (ETUI) data, there are 992 EWCs active throughout the EU as of January 2019. More than 17 million employees come together within the scope of these EWCs and have the right to receive information and consultation (ETUI, 2020).

In Austria, members of works councils are elected by all employees, not only by union members. Benefitting from legal protection, they perform the daily work of unions. The works council is effective at the local level whereas the union is dominant at the supra-establishment level. Each benefit from one another's services and information.

Works councils now exist in all Central and East European countries. The fact that these countries formerly had workplace structures under previous communist regimes probably eased their transition to works councils. Hungary is one country where workplace representation is implemented through a combination of local unions and works councils (Hajdu, 2012). The Hungarian case exemplifies how representation in works councils complements the presence of unions. The union's internal rules and legislation on the number of union representatives primarily determine how workplace unions are structured. In companies with labour unions, the union has the sole right to implement collective wage agreements. The size of the workforce determines the number of works council members. Companies are not obliged to inform union representatives on issues affecting employment but the union representatives have the right to request information and express their views. Consent must be sought from the works council by employers moving to dismiss or transfer a council chairperson. However, employers are not obliged to reach agreement on workplace issues. Thus, while Hungary shares features with the German model, its works councils offer fewer protections to employees.

Works councils are less central to Anglo-Saxon workplace culture. In Britain, the works council had no specific meaning other than to describe a variety of committees at the workplace level. These consisted of trade unionists only or joint worker/manager committees formed for a variety of purposes (ETUI, 2016). In the U.S., the idea of a works council has not received legitimacy. American labour law is structured on the principle that the union as representative body designated by a majority of workers is the exclusive bargaining agent of employees (Rogers and Streeck, 1995).

Until 1963, Turkey's labour relations were characterized by 'single-channel representation', occurring via the directly elected representatives of employees. Since 1963, this single channel has been realized by representative labour unions. A dual-channel system of unions and workers' representatives co-existed between

1947 and 1963, but unionism was still in its formative years during that era, and relatively weak.

The literature on works councils is vast. Hardy and Adnett (2006) evaluate the significance of the European Works Councils Directive. They re-examine the historical development of employees' participation laws, including works councils, in Europe and evaluate the economic rationale for regulating workplace social dialogue. The view is widespread that establishing a works council motivates workers (Mohrenweiser et al., 2012). In the cases of a change of owner, a spin-off or the acquisition of a firm, workers sense the need for protection more keenly. Oberfichtner (2016) observes that workers are more likely to introduce a works council also, when a plant's profit situation is better than on average. The processes of exchanging information and consultation are important for employers as well.

European labour legislation has supported the development of works councils. Weiss (1995) states: 'There is no longer any doubt that the promotion of employees' involvement in company decision-making has become an integral part of the European Community's Social Policy Agenda'. Weiss (1995) also advocates establishing works councils in all countries and implies that extended legal provisions in UK law requiring employers to inform and consult employees is a case in point: these were motivated primarily by EU law rather than national policy. In another study, the 2002 Directive is described as holding far-reaching implications for UK law and practice (Hall, 2010).

De Spiegelaere and Jagodzinski (2015) explain the key improvements of the 2009 Recast Directive on European Works Councils on the initial Directive (94/45/EC). Cam (2013) states that a model in line with the relevant Directives on the creation of European Works Councils has an important role in substantiating the principles of social dialogue. Costa's study (2006) suggests ways to establish and promote works councils in general and emphasizes the role of unions in implementing EWCs. Finally, Hann (2010) demonstrates that disagreements between unions regarding their role within EWCs mean that a European system of industrial relations remains underdeveloped.

In the context of Turkey, Eyrenci (2004) describes the major dimensions of the EU Directives on information-exchange and consultation, indicating areas where the Turkish system needs to be accommodated within the EU's strategic requirements. Özcüre (2017) refers to European labour law and its implications for Turkey. Dereli (2004) discusses the past and present forms of employee involvement in Turkey, explaining that the draft bill for Act No. 4857 actually enabled an information-consultation system based on the election of employees' representatives. However, due to union resistance, the election of employees' representatives –at least in non-unionized workplaces– was excluded from the final

text of the Act. Dereli (2015) criticizes the existing void caused by the absence of elected workers' representatives in the final text of the Turkish Labour Act and emphasizes the need for measures to address its consequences.

Methodology

The qualitative survey data presented in this article aims to probe the views of a sample of workers and employers on the possibility of changing the current system into dual-channel representation by incorporating works councils into Turkey's workplaces. The investigation seeks to identify the fundamental attitudes of these stakeholders on the councils' functions and structure, as well as their potential links to labour unions.

Given the qualitative nature of the inquiry, the generalizability of its conclusions is restricted and analytic procedures are of the nonparametric type, with external validity low. The study is also exploratory since no research on this topic had previously been carried out in the Turkish context.

Of the two types of purposive sampling (i.e., *judgment* and *quota* sampling), a judgment sampling strategy was used, entailing the selection of subjects who are in the best position to supply the relevant information (Palinkas et al., 2015). These people's expertise is derived from their direct experience of the phenomenon. In fact, judgment sampling can be used when a limited category of respondents has formed relevant attitudes and gained the information required on the subject (Sekaran, 2003). Because judgment sampling necessarily narrows the field of capable respondents, techniques of statistical inference cannot be used. However, it is assumed that although the samples were quite small, they represented large numbers in their organizations. The questionnaires which were collected between 2015-2016, were addressed to selected samples of representatives of unions and employers' organizations, as well as to certain officials of the Ministry of Labour and Social Security (MoLSS). They included mainly open-ended questions. The questionnaire for each of these three groups was similar but not identical.

The researchers who conducted the interviews encountered various difficulties in reaching the targeted respondents. Our initial assumptions were that labour unions might sense a threat to their monopoly of worker representation, and thus be more reluctant to cooperate than employers. However, owing to the political atmosphere prevailing at the point the data were collected (e.g., the post-15 July 2016 failed coup attempt in Turkey), this earlier assumption was not confirmed: despite persistent requests, the employers appeared less willing than the union representatives to cooperate with interviewers. Nonetheless, the expert opinions of respondents still constituted a reliable source of data.

While the surveys were sent to 71 labour unions, 55 representatives were ultimately interviewed, whereas of the 22 employers' organizations, only eight

participants were found. Five interviews were conducted with representatives of the three existing major labour confederations. Despite recurrent requests, the Employers' Confederation of Turkey (*Türkiye İşveren Sendikaları Konfederasyonu – TİSK*), the sole organization representing employers of Turkey, completed the questionnaire with statements independent from the content of the questions.

Six experts or high-level officials representing the government (the public sphere) completed the relevant survey interview. Thus, the final version of the proposed model for Turkey was based on the analysis of three data sources: the German system of works councils, the outputs of this field survey, and the legislative framework of the Turkish labour relations system.

Sample characteristics

Labour unions represented the largest of the three samples. By using judgment sampling, 55 of the 90 labour unions active in Turkey formed the sample for this group. These labour unions were selected according to criteria including their representativeness of legally-defined 20 branches of industry on which union organizing in Turkey is based; meeting the one percent representativity threshold required for the authorization of collective bargaining; their visibility and their accessibility. While most individual branches of industry were represented by only one respondent, a few (e.g., *Kristal-İş*, a major union in the clay, cement and glass industry), were multiply represented in the interviews. Some of the industry branches are represented by more than one union, which is why the number of respondents exceeded the number of branches. In the survey, all 20 of the industry branches were covered by the union sample.

As for these unions' affiliations, 23 belong to the Confederation of Turkish Labour Unions (*Türkiye İşçi Sendikaları Konfederasyonu, TÜRK-İŞ*), the major labour confederation of Turkey, with a total membership of 925,039 persons; 14 belong to the Confederation of Progressive Labour Unions of Turkey (*Devrimci İşçi Sendikaları Konfederasyonu, DİSK*), the left-wing confederation, with a total membership of 149,187 persons; nine to the *HAK-İŞ* Confederation of Labour Unions (*Hak İşçi Sendikaları Konfederasyonu*), the right-wing confederation, with a total membership of 615,301 persons; and eight unions are non-affiliated, with a total membership of 24,870 persons.

Table 1: Sample Characteristics

	Targeted	Realized	Respondent's Position
Labour Unions	20*	20 (55)**	-President and vice-president (16) -Consultant to the president & secretary-general (13) -Member of the committee, union staff expert on training, financial affairs, collective bargaining & organizing activities (26)
Confederations of unions	3	3 (5)***	
Employers' Organizations	1	1	President
State (public) respondents	No specific target	6	Two high-level officials from the Turkish Ministry of Labour, two faculty members from the departments of labour economics and industrial relations of state universities specialized in EU law, one professor who has served for a long time as a member of the International Labour Organization (ILO)'s Governing Body, and one professor who has been acting as the Turkish government's spokesperson in the ILO Conference Committee.

Notes: * Representativity of the existing legally defined 20 industry branches.

** Numbers in parentheses show the number of respondents.

*** The three major labour confederations of Turkey are represented by five persons

As Table 1 shows, the official positions of the respondents in the union sample include union presidents and vice-presidents (16 persons), consultants to the president and secretary-general of unions (13 persons), members of executive committees, and union staff experts on training, financial affairs, collective bargaining and organizing activities (26 persons). Of the 55 respondents, 12 represent predominantly public sector unions, while 37 represent unions mostly active in the private sector.

Accessing organizations in the union sample posed several problems; a few declined to answer due to practical difficulties, such as the intensity of their workload, ongoing collective bargaining sessions or labour disputes and the unavailability of suitable respondents within the relevant time frame. A few respondents referred to potential conflicts of interest between a works council and

the labour union. Nonetheless, in comparison to employers' organizations, respondents from the unions appeared to be much more in favour of works councils.

The second group was the three major labour confederations of Turkey, represented by five respondents. Of these, three respondents come from TÜRK-İŞ, while DİSK and HAK-İŞ are represented by one respondent each. TÜRK-İŞ has affiliates in all the industry branches; the remaining two confederations are represented in most of them. Four respondents are predominantly active in the private sector and one in the public sector. Of the five respondents, four view the relevant Confederation's organizing efficiency as 'sufficient'.

The next group of respondents represented employers' organizations. TİSK's affiliates are predominantly private sector organizations and cover all the major industrial branches of the economy. The Confederation's president who answered the questions did not answer the questions about works councils, emphasizing that a dual representation system is entirely unnecessary and irrelevant to Turkey since existing labour legislation is sufficient for the protection of workers' rights. The TİSK respondent ignored the major research theme, i.e., the implications of EU directives, as well as the drastic decline in union density and the limited coverage of collective agreements. This representative stressed that the introduction of works councils into the Turkish industrial relations system might curb the decision-making power of management, weaken Turkey's competitive advantage in world trade and further aggravate labour disputes. The TİSK representative seemed to accept the election of 'employees' representatives' only in establishments lacking union representation, construed as meaning they were strongly opposed to the creation of works councils. Thus, despite recurrent requests for further clarification, the TİSK respondent's detailed responses ignored the problems caused by the prevailing low union coverage, as well as the meagre binding effects of collectively-bargained arrangements for social dialogue in Turkey.

The State group of respondents was limited to six individuals: two high-level officials of the Turkish Ministry of Labour, two experts in EU law from state university departments of labour economics and industrial relations, and two academics representing the government of Turkey in the ILO. Overall, this group appeared to favour the establishment of works councils in Turkey.

Analysis of Data

The small sample sizes resulting from the nature of judgement sampling do not lend themselves to statistical inference techniques. Due to the nonprobability nature of judgement sampling, the limited scope of frequency distributions points inexactly to the general themes of the study. Therefore, the generalizability of conclusion is limited; they indicate possible approaches to an acceptable

information-consultation model for Turkey's workplaces. Combining the outputs of the survey with information on relevant legal constraints, we present an initial works council model and an alternative system of elected employees' representatives.

The current system of single-channel (union) representation was described as inadequate by participants representing unions and public officials, in complete contrast to employers' confederation. Labour unions stating that the current system is not satisfactory mentioned reasons such as the ineffective organization of workers, the resistance of employers to unionization, and anti-union attitudes in general. The public officials and labour confederations also referred to representation problems and insufficient responses to emerging labour problems. In stark contrast, participants from the employers' organizations seemed fully satisfied with the current system based on the Act, No. 6356.

Although the study adopted an essentially qualitative approach, basic descriptive statistics were also used to interpret the findings by utilizing sample groups of over 30 respondents (see the Appendix). Using a 5-point Likert scale ranging from 'strongly disagree' 'strongly agree', we found significant differences among the respondents in the order of importance of functions ('communication', 'consultation', 'negotiating', 'performing tasks foreseen by the Labour Act' and 'concluding works agreements') attached to works councils. 35 responses from the total sample of 55 union representatives were received.

The function of 'bridging the communication gap between workers and employers' was considered most important by seven major unions. A total of 12 union representatives declared that the 'consultation' function in the case of mass layoffs should be the top priority of works councils. For the 'negotiation' function, 12 respondents regarded receiving support from the works council in solving conflicts between parties as extremely important, while eleven unions viewed this function as negligible. Regarding other representative functions mentioned in labour legislation (e.g., occupational safety and health standards boards and vacation committees) eight unions viewed these as beneficial to workers and employers alike, while 16 unions share opposite views. Finally, a total of 17 union respondents viewed the 'concluding works agreements' function (in establishments where there is no competent union) as critically important, while fourteen unions found it inessential.

According to the descriptive statistics for confederations of unions and independent (unaffiliated) unions, DİSK (the left-wing confederation) held significant expectations from works councils regarding the functions of 'communication', 'consultation' and 'negotiation', in that order. TÜRK-İŞ, the largest labour confederation, also prioritized the function of 'concluding works agreements' but viewed the 'communication' and 'consultation' functions as less

important. HAK-İŞ (second in size after TÜRK-İŞ) also regarded these functions as valuable certainly more so than ‘performing functions anticipated by labour legislation’.

Through a comparative means analysis, we demonstrated that the size of unions’ memberships did not have a significant effect on the perceived functions of works councils, with an irregular relationship between the variable of size and the attitudes of unions towards the functions. Statistical comparison of unions, confederations, employers’ organizations and public officials regarding attitudes towards the functions of works councils indicated that, for confederations, the ‘communication function’ topped the list, followed by ‘performing functions anticipated by labour legislation’.

Interestingly, unions, confederations, and public officials all agreed that the inadequate representation of workers through unions is a significant problem. These groups supported the adoption of an ‘employee representatives’ system through the votes of workers in establishments’ (56%), while only 36% mentioned the option of ‘establishing works councils’ through legislation. However, due to the greater potential of adapting EU Directive 2002/14 EC to the former option, this study prioritizes establishing works councils above a system of elected workers’ representatives.

The model: A Dual Channel Representation System Including Works Councils

Since unions and public sector respondents generally expressed favourable attitudes towards the establishment of works councils in our survey, and since this is the model desired by the EU, it is also proposed by this article. If the works council cannot be formed, the establishment may then be subject to the second option, i.e. that of employees’ representatives to be elected directly by the employees.

The ‘dual channel representation’ system where works councils and unions co-exist is the preferred model of this article; but a second model has also been conceived, (i.e., one focussed on establishing employees’ representatives where unions do not exist) as an easier option which may also serve similar goals. In designing the first option, major dimensions of the German model are taken as a reference point, based on its legislative similarities with Turkey. The dual-channel representation proposed for Turkey is thus a synthesis of EU Directive (2002/14/EC), the German works council model and various dimensions of Turkish labour law and practice, as well as the ‘general tendencies’ derived from this study’s survey. The 2002 EU Directive is broadly flexible, leaving the structural framework and specific procedures to the Member States to decide. It covers

public and private undertakings of at least 50 employees and establishments of at least 20 employees in Member States.

The German works council system is consistent with the 2002 EU Directive but extends it by laying down detailed regulations concerning its structure and functions. The German system is used as the basis of the model presented here for several reasons. Firstly, Turkey's Labour Act of 1936, notwithstanding later amendments, derived much of its basic structure and essential concepts from German labour law. Other reasons include the efficiency of German works councils, the country's remarkable economic growth and harmonious labour relations achieved since 1945. We therefore adapted the main features of the German Works Constitution Act to the Turkish labour relations environment to develop a general framework of works councils for Turkey.

Proposed Model for Turkey (I.E. The German System of Works Councils, As Adapted to the Turkish Case)

As in the German model, the basic organizational structure of works councils in Turkey shall exclusively comprise employee representatives acting as counterparts to management. The model works councils in this study are 'unitary bodies elected by unionized as well as non-unionized workers, established by law, and at least formally independent of labour unions operating in the context of a dual-channel system' (Biagi and Tiraboschi, 2010:525). For definitions of the employee, employer's representative, and unions, the relevant provisions of the Labour Act No.4857 and the Act on Unions No.6356 shall apply. The proposed Act on Works Councils shall not apply to public servants employed in the organs and establishments of the central government and local administrations. Here, the question arises as to whether the works council's framework shall apply to public servants in certain institutions. The preferred model for works councils chooses to exclude such personnel from the scope of works councils due to their different status and working conditions. In any case, the Public Servants Unions Act No. 4688 indicates the establishment of joint administrative boards as consultation mechanisms. All public servants in such settings may avail themselves of such boards, while the proposed works councils will apply solely to employees.

If the legislature chooses to lay down the structure and functions of a works council system, the following rule may serve as the basis for a voluntary system: if one-quarter of the employees in an establishment request the formation of a works council, a ballot based on secret voting and open counting shall be taken; in the event that over half of the employees of the establishment vote in favour of the request, an establishment-level works council should be formed along the lines envisaged by this Act. If this option is chosen, the works council and union may co-exist at the establishment. Where this quorum cannot be obtained, the establishment may avail itself of one other option, that of 'elected employees'

representatives. The members of works councils shall be elected by a secret ballot of all employees. The term of office of works council members will be four years and re-election shall be permitted.

In principle, then, it is left to the employees of the establishment to establish a works council. There shall be no sanction if they fail to do so, although this shall be interpreted as the voluntary abandonment of all the rights vested in the works council by law (Biagi and Tiraboschi, 2010: 525). A similar voting procedure shall be applied to the works councils of undertakings.

The size of the works council shall depend on the number of employees in the establishment. Preferably, the number of members shall be increased proportionately as the number of employees rises. To ensure quora in decision-making, it is advisable to fix works council membership numbers at an odd figure. To ensure gender equality, men and women shall be represented in the works council. At least one member of the works council must also belong to the authorized union. In establishments recognizing shop stewards, at least one of these should be a member of the works council.

Consequently, the works council shall not be directly linked to the labour union. Unlike the labour union, the works council will represent all the employees of an establishment. The employer and the works council shall work together in a spirit of mutual trust concerning any applicable collective agreement, in cooperation with the union and employers' organization represented at the establishment. Unlike the German system, in Turkey the focus of collective bargaining is basically at the establishment(s)-workplace level. In the proposed Turkish system, therefore, the works council and the union will, to some extent, compete to administer workplace labour relations, potentially leading to the role conflict mentioned by a few respondents from labour unions, who opposed the introduction of dual representation for that reason. However, the validity and relevance of the proposed works council system is not undermined by the proposed legislation, since the functions of unions and employers' organizations (and particularly the representation of their members' rights) would not be affected by the legislation. Furthermore, the model may help the legislature integrate industry-wide collective bargaining within a multi-layered bargaining structure, as long advocated by some unions.

After notifying the employer or his representative, the agents of the authorized union will be granted access to the establishment in so far as this access does not run counter to essential operational requirements, safety rules, or the protection of trade secrets. Unions with at least one member in the establishment will be vested with certain initiating functions. In establishments lacking works councils, unions may initiate formal discussions through which employees may decide whether to set one up. Unions will be vested with the following powers in

relation to works councils: they may control elections to the council and, if necessary, apply to court to have the result of a works council election annulled, exclude a works council member from office, and dissolve the works council by court order if legal rules have not been properly applied or if the council's members have violated their duties of office. Further, an external union representative shall have the right to membership of the relevant works council: upon the request of at least one-fourth of works council members, an external official of a union represented in the works council shall be entitled to participate in the works council meetings.

In the case of an undertaking where different establishments in the same industry belong to the same employer, an undertaking works council shall be formed. Each works council at a particular site shall appoint two of its members to the company's works council. This must include two members representing either the authorized union at the company level or two members of other unions, if available. Works councils at the establishment level are not subordinate to the company works council, which is empowered to deal only with matters which either cannot be regulated at the level of the individual establishment or with matters delegated to it by the council of an individual establishment.

In Turkish labour law, executive staff are defined as 'employers' representatives. In Act No. 6356, the term refers to those who manage the whole undertaking on behalf of the employer as well as their first level assistants, or those who manage the establishment in the name of the employer with the power to recruit or to terminate employees. Members of these groups should not be permitted to participate in the election of works council members, nor can they be elected.

Subcontracting arrangements have a significant impact on the thresholds for establishing a company works council. The provisions in Turkey's labour legislation aiming to safeguard subcontracted employees' interests and rights date of 1936. Although the legal constraints have wavered over time, Article 2 of the Labour Act imposes significant restrictions on subcontracting. One such is that the principal employer and the subcontractor share liability for any claims made by the subcontractor's employees. The current rules require that these employees shall be treated as separate entities for union representation. However, in many cases, the principal and subcontractor's employees work together in similar jobs in the same establishment. A single works council is thus preferred for all staff in each establishment, provided the subcontracted staff have been assigned exclusively to the establishment of the principal employer. This may be in closer alignment with the principle of equal treatment with the 1996 ruling of Turkey's High Court of Cassation.

As defined in the German Works Council Constitution Act of 2001, training shall be undertaken by unions in cooperation with the works council and organized at the employer's expense. The employer shall consult the works council on matters of establishing and equipping workplace training facilities. If no agreement is reached, the matter shall be decided by the conciliation committee.

All employees of the establishment shall convene at least four times a year during working hours. Works meetings shall be called and chaired by the works council, which will report on its activities. As invitees, the employer or their representative shall address the works meeting and report to it at least once a year on matters of personnel policy and social affairs, as well as the economic situation of the establishment.

If the need arises, a conciliation committee shall be set up to settle differences of opinion between the employer and the works council. It shall be composed of assessors appointed in equal numbers by the employer and the works council, and of an independent chair co-opted by both sides. If an agreement on the chair cannot be reached, he or she shall be appointed by the labour court.

During their term of office, members of the works council shall enjoy protection against dismissal, except for just cause conditions specified in Article 25 /II of the Labour Act No.4857. Survey responses on this matter generally pointed to the stronger protections provided to union shop-stewards i.e. reinstatement plus the payment of full earned wage claims.

Works council members shall be released from their duty to work without loss of pay in order to perform their duties properly, according to the circumstances of each case. They should receive wage increases in line with other employees. Members of the works council must refrain from divulging or using trade or business secrets that have come to their knowledge as a result of membership in the works council or which the employer has expressly stated to be confidential. This obligation shall continue after their membership of the works council has ceased but does not apply to dealings between members of the establishment works council, the undertaking works council, the conciliation committee, and the grievance and arbitration committee.

The employer shall provide the works council with the necessary accommodation, facilities and office staff required for meetings, consultations and its daily operations, as well as with all information required to carry out its tasks properly. Works councils shall hold obligations to employers: they are required to co-operate with the employer in good faith. While strikes are prohibited, works council members may participate in industrial action called by a union. As espoused by some union respondents, this restriction on strikes requires the establishment of an arbitration committee comprising equal numbers of members appointed by the employer and the works council, and a neutral chair.

The works council's right of participation may range from consultation to co-decision making wherein the council's consent is required. An important dimension of co-determination is the conclusion of so-called works agreements. The employer and the works council shall cooperate on works agreements not only on matters in which the works council has a right to co-determination but in all matters relating to labour-management relations. Works agreements dealing with remuneration and other working conditions shall be permitted only on condition that the same matter is not already regulated by a collective labour agreement pertaining to the establishment.

Works councils' functions and powers shall be indicated in the relevant legal text in accordance with Turkish labour law. In particular, the employer's obligations to inform and consult employees, employees' right to be heard and request explanations, to make complaints and deal with grievances, as well as the council's role in health and safety matters and vocational training, shall be clarified with reference to relevant legal provisions. The works council shall be consulted before every dismissal. The works council must be informed prior to collective dismissals and restructuring of the establishment or undertaking, as well as in changes resulting from the transposition of other EU-based rules to Turkish law.

Election of employees' representatives, a second alternative for Turkey

Although the establishment of an institutionalized model of works council was this study's primary aim, there are other means of improving Turkey's industrial relations system. In fact, ILO Convention No.135, which Turkey ratified in 1992, both supports the model presented here and other potential approaches to developing a better system of employee representation. While the TİSK representative denounced works councils, he supported the election of workers' representations favorably. Thus, if the parties in an establishment cannot agree to form a works council, either voluntarily or in the event of a failing ballot taken to that effect, the option of employees' representatives shall serve as the second-line alternative.

As ILO Convention No.135 on workers' representatives was ratified by Turkey in 1992, it should have been implemented in actual practice anyhow. Therefore, the process of consultations with employees' representatives is now a matter transcending the jurisdiction of unionized establishments, extending to cover workplaces where no unions are authorized to bargain collectively (Çelik et al., 2007).

In Turkey, transitional Article 113 of the draft bill for Act No. 4857 may provide a basis for the election of employees' representatives and the performance of their duties. The Labour Act may be amended to provide that where no works council has been set up for any reason and in the absence of union shop-stewards, employees' representatives –in designated numbers– shall be elected by employees in establishments with a minimum of 20 workers.

Conclusion

To develop an information-consultation system to improve labour relations in Turkey, we maintain that an institutionalized works council approach is the most effective option. Obviously, freedom of association and collective bargaining are the strongest forms of social dialogue, but considering the meagre and declining state of unionization in Turkey, it is hoped that a works council system will also help to empower unions to organize labour more effectively. Yet it should also be noted that works councils may not contribute directly to real wage increases or to fairer distribution of income. Rather, if implemented appropriately, their contribution to industrial peace and productivity could be significant.

Thus, intending to address the current inadequacy of Turkish labour law and relations damaged by the marked decline of union power in recent years, our findings reveal the need to establish a dual-channel system of representation including both unions and works councils. However, owing partly to the union groups' less-than-favourable attitudes to the councils (which were, nonetheless, more positive than those of the employers' organizations), this article proposes an alternative approach: the option of elected employee representatives in establishments with at least 20 employees would also help address the current void in Turkish industrial relations.

Bringing a system of dual representation to such relations will certainly depend on the political will of the law-makers. The question as to whether it will be mandatory in all workplaces meeting certain criteria, or dependent on the voluntary agreement of key stakeholders may depend on the choice of the legislature.

The following benefits of each option are underlined here. First, both works councils and elected employees' representatives will address the current lacunae in Turkey's EU-based labour legislation. Second, rather than being the elected agents of a certain union, members of the works council or employees' representatives will be persons elected by all the workers of the establishment. A system along these lines is likely to be more democratic and representative than the current single-channel model of representation. Thirdly, works council members or employees' representatives may fulfil functions in other participative schemes of the workplace e.g., industrial safety and health committees, vacation committees or collective agreement-based arrangements; e.g., grievance handling, disciplinary committees and the like. And last but not least, the pluralism of dual-channel representation is likely to boost the overall levels of industrial peace and workplace democracy in Turkey.

Extended Summary

The article's subject matter represents a first attempt of “institution-building” on works councils and /or workers representatives – neither of which exists at present Turkey’s labor relations. Although the paper dwells mainly on Turkey, we believe its theme involves implications transcending its title and scope since, owing to almost universal declining rates of unionization, similar problems are likely to be encountered in other single-channel representation systems.

The main motive of the said article was to fill in the voids which seem to plague the efficient functioning of workers’ representation in some of the important dimensions of the Turkish industrial relations system. The research questionnaire designed has aimed at discovering how the actors of the system feel about the creation of works councils, or the ‘institution of elected workers’ representatives’ in Turkey’s undertakings and establishments. Following the presentation of the vital research questions, the article describes the samples of labor union representatives, employer informants and governmental labor experts.

The actors represented in the main three samples are labor unions, employers’ organizations, and government (or public) officials that are in charge of regulating the relationships between workers and employers and their organizations. Since the existing system of social dialogue in Turkey involves merely ‘single channel representation’ by which the labor union, if and where it exists, is the only body of dialogue for voicing workers’ interests and grievances before the employer, the questionnaire is designed mainly with a view to probe into how the subjects in the labor and employer samples feel about changing the system into ‘dual channel representation’.

The methodology of the research was based on non-probability sampling, and more specifically judgmental sampling which involve the choice of respondents who are supposed to be in the best position to supply the information on the relevant attitudes and perceptions. Due to the nature of judgmental sampling which necessarily narrows the scope of available respondents, the sample sizes are relatively small which therefore makes the use of statistical inference techniques impossible. As the output of the questionnaire interviews based mainly on open-ended questions have revealed, reasonable encouragement to the institution of a works council system, albeit with some reservations, coupled with even stronger support to the adoption of workers’ representatives in private and public establishments employing workers, the article has concluded by proposing a dual-channel representation for Turkey’s workplaces, i.e. a works council model together with labor unions where applicable, or election of workers’ representatives in workplaces where union shop-stewards are absent.

The two models thus developed are the result of the field survey’s outputs as well as the EU input (EU Directive 2002/14/EC), the works council legislation

of Germany as a model EU country in this area, plus the legal determinants and prospects of the Turkish industrial relations system. Like in Germany, the proposed models shall not apply to civil servants. Since non-union establishments represent the majority of Turkey's workplaces, it is assumed that a dual-representation as such may serve the ultimate objective of our study to provide for a full-fledged employee representation system in Turkey.

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Appendix: Descriptive Evidence for Labour Unions

Compiling the answers to the relevant question of the questionnaire, we handled the descriptive statistics and used compared means analysis to understand unions' attitudes towards the essence of the varying tasks of a typical works council. Although the total sample of unions consisted of 55 respondents, we gathered 35 responses to this question.

Communication Task: The results revealed significant differences in the attitudes of unions regarding the task of bridging the communication gap between workers and employers. 7 trade unions considered this one of the most important tasks that a labour union should perform ($\mu=5$). However, 8 of them attached almost no importance to communication between workers and the employers as a task for works councils ($\mu=1$; $\mu=2$).

Consultation Task: The results indicated considerable variation in the attitudes of unions regarding the task of consultation in cases of mass layoff or plant closure in the companies. 12 trade unions declared that a works council should intensively carry out this task in these kinds of situations ($\mu=5$). Conversely, 12 unions such as did not attach much importance to consultation as a task for works councils ($\mu=1$; $\mu=2$).

Negotiation Task: The results revealed significant differences in the attitudes of unions regarding the task of conflict resolution. 12 trade unions stated that they should support the resolution of conflict between parties ($\mu=5$). On the other hand, 10 unions regarded the function of supporting such negotiations as negligible ($\mu=1$; $\mu=2$).

Performing Functions indicated by the Labour Act: Another task which might be assigned to works councils is to perform functions in cases where workers' representatives have been assigned certain duties by the Labour Act. The union group of 7 respondents indicated that this task is critically important for them ($\mu=5$). In contrast, 14 respondents from the unions shared opposite views ($\mu=1$, $\mu=2$).

Concluding Agreement Function: This task includes concluding agreements with workers in establishments when there work council is no union or where the competence to make a collective agreement cannot be obtained (e.g., in fixing the minimum wage rate at the establishment). 16 union representatives indicated that this task is critically important for them ($\mu=5$). Yet 12 respondents from unions ($\mu=1$, $\mu=2$) did not consider it essential.

Descriptive Evidence for Labour Union Confederations

The descriptive statistics for union confederations comparing the attitudes towards the tasks of works councils are provided in Table A1. The DİSK respondents had

significant expectations from works councils regarding the tasks of communication ($\mu = 4$), while it did not consider performing functions anticipated in the Labour Act ($\mu = 2.2$) as important aspects of the councils. DİSK represents 22 unions and over 220,000 workers.

Table A1: Compared mean results of confederations

	Independent	DİSK	TÜRK-İŞ	HAK-İŞ
Communication Task	3,2	4,0	2,9	3,7
Consultation Task:	2,5	3,7	2,9	3,0
Negotiation Task:	3,1	3,3	3,1	3,0
Performing Foreseen Function by the Labour Act	2,7	2,2	3,0	2,7
Concluding Agreement Function	3,7	1,8	3,1	2,7

Source: Own calculations

Independent labour union confederations prioritized works councils in terms of the concluding agreement function ($\mu = 3.7$), while, performing functions anticipated in the Labour Act ($\mu = 2.7$) indicates that attached no importance to these functions. TÜRK-İŞ (representing 34 unions), prominent expectations were observed regarding the tasks of negotiation ($\mu = 3.1$), while average expectations are observed for the tasks of works councils in terms of communication and consultation ($\mu = 2.9$). HAKİŞ expressed significant expectations of works councils regarding the tasks of communication, ($\mu = 3.7$), prominent expectations of the consultation and negotiation ($\mu = 3.0$), while expectations of the function of concluding agreements and performing anticipated by the Labour Act were average (both $\mu = 2.7$).

To understand the influence of membership size on the attitudes of confederations towards the importance of works councils, undertook a compared means analysis (see Table A2). The findings demonstrated that size has no significant impact on attitudes towards the tasks of works councils. Attitudes to the 'concluding agreements' function varied dramatically according to the size of unions (i.e., for less than 500 members, $\mu = 3.7$; and more than 50000, $\mu = 2.3$). The size of the unions exhibits an irregular relationship with their attitudes to the tasks of works councils.

Table A2: Compared mean results of the confederations according to member size

	0-500	500-1000	1000-2000	2000-5000	5000-10000	10000 -50000
Communication Task	3.0	4.0	2.3	3.5	2.6	3.5
Consultation Task	2.3	3.3	2.7	3.0	3.6	3.0
Negotiation Task	3.5	3.7	4.3	2.3	2.0	3.2
Performing Function by the Labour Act	2.5	3.0	3.3	2.8	2.8	2.8
Concluding Agreement Function	3.7	1.0	2.3	3.5	4.0	2.5

Source: Own calculations

Table A3 shows the combined results of the survey, comparing unions, union confederations, employers' organizations and public sector respondents.

Table A3: Labour unions, labour confederations, employer unions and the public respondents compared

		Communication Task	Consultation Task	Negotiation Task	Performing Foreseen Function by the Labour Act
Labour Unions	Mean	3.34	3.00	3.09	2.71
Employer Unions	Mean	3.00	3.00	3.00	3.00
Labour Confederations	Mean	5.00	1.00	2.00	4.00
State Respondents	Mean	3.00	1.00	4.00	2.00
Total	Mean	3.36	2.90	3.08	2.74

Source: Own calculations

Table A4 is a frequency table for responses to the item investigating opinions towards the adequacy of the current system of union representation. Labour confederation and the state respondents identified inadequacy in the current system in terms of union representation, while employers' organizations

held opposite opinions. 30.9% of union respondents stated that the current system is adequate.

Table A4: Responses to the adequacy of the current system of labour union representation

	Yes %	No%
Labour Unions	30.9	69.1
Labour Confederations	0	100
Employer Unions	100	0
State Respondents	0	100

Source: Own calculations

