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Research Report

Workers' Voice: Workers' Voice in European corporate governance - an invitation to open up new perspectives for participatory democracy

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REPORT

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The I.M.U. is an institute of
the Hans-Böckler-Stiftung

WORKERS' VOICE

Workers' Voice in European corporate governance – an invitation
to open up new perspectives for participatory democracy

WORKERS'
VOICE



Key Findings

A reorientation of the European legal framework on corporate governance and workers' participation has to involve three main elements:

- revision and extension of the EU directive on investors' rights along the lines of a stakeholders' directive, taking into account all societal groups in the company, including Workers' Voice;
- implementation of a separate new EU directive on minimum conditions for information, consultation and codetermination;
- protection of existing participation rights at national level.



FOREWORD

What kind of Europe do we want to live in? That is the question that citizens of the European Union are asking themselves these days. On one side, they see a Europe that in recent years has been largely under the sway of business interests and shareholder value. The antidote to this is Social Europe, which strengthens democracy and the common good, fosters decent work and pay, and concerns itself with issues such as fair distribution, sustainability, climate change and consumer protection.

The EU's future prospects are currently being discussed so urgently because of the failures of the past. In recent years the European institutions have paid too little attention to social issues. Many people experience this in their everyday working and private lives: workers' and codetermination rights have been undermined, collective agreement coverage has been rolled back and many jobs have been shunted into the low-wage sector. Precarious employment is a timebomb for the EU, democracy and the welfare state in Europe. It is not surprising that populist forces are gaining ground in Europe. Populism, with its simpleminded solutions to complex problems, flatters national egoism.

United Europe faces a challenge: to seek socially sustainable solutions, arm in arm, to reinforce its social pillar and thus preserve the credibility of the EU project. The European Commission and co-decision-making EU institutions the European Council and the European Parliament will have to focus on the issues that directly concern ordinary people: democracy and participation in society and at work, fair distribution of income and wealth, sustainability, globalisation and digitalisation. Particularly important is to tackle international corporations, ensuring that they are not above the law. Any loopholes used to evade Workers' Voice need to be closed.

With this publication the Hans-Böckler-Stiftung wants to call attention to the need for a common vision and minimum European standards governing the right to information, consultation and codetermination in multinational companies. On the way towards a Social Europe corporate governance and Workers' Voice are of the utmost importance for decent and sustainable company management. Workers' Voices need to be not only heard but listened to at company level, by means of inclusive rights to information, consultation, participation and codetermination. By making these things legally binding the EU could make a major contribution to democracy. In the coming legislative period, the European Parliament, the Council of Ministers and the European Commission should therefore focus on European directives that promote good corporate governance – good company management that takes into account all stakeholder interests. A European directive on minimum standards for information, consultation and codetermination, along the lines called for by the ETUC, would furnish the basis for this. At the same time, the better existing national regulations should be clearly protected.

Strengthening workers' rights at European level not only makes Europe a better place to live for its citizens, it also improves it as a place to do business.

The EU therefore needs new initiatives to integrate Workers' Voice in its institutional structure. This topic must be put on the political agenda, as a matter of urgency. Workers' Voice is the means by which Europe's social market economy can be made both a democratic and an economic success.

We hereby issue an open invitation for people to join in the political discussion and to support this initiative!

Norbert Kluge, Düsseldorf, 2019

CONTENT

The Workers' Voice project	5
The Workers' Voice project and its goal: seeking socially sustainable solutions together	11
Functional equivalents of Workers' Voice: same objective, different guises	15
A stakeholder rather than a shareholder approach in corporate governance	21
Model of good corporate governance for good and responsible company management	27
Outlook: shaping the future of work and business together.....	30



THE WORKERS' VOICE PROJECT

Europe is a major player in the world economy. The European Union is the largest common economic area in the world; its 28 member states account for 16 per cent of global imports and exports. Around 30 million jobs in the EU depend on exports alone. The fundamental freedoms – free movement of goods, service provision, people and capital within the EU – are key factors in this.

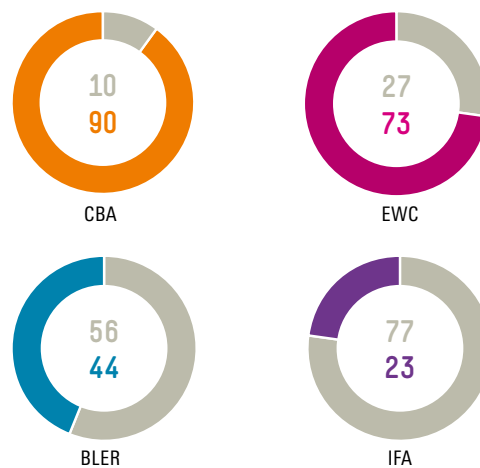
Since 2007, however, the confluence of a banking crisis, a financial and economic crisis, a euro and a public debt crisis has left deep scars and in many areas the EU is profoundly divided politically. On one side, there are the losers, especially in southern Europe, where prosperity has bypassed a whole generation. On the other side, there are the more affluent member states, which even benefitted from the high interest on the bonds of indebted member states.

For decades now the European institutions have mainly been working on perfecting the single market, but it is evident that its approach to the social dimension and distributive justice has fallen far short. Job security, training and social justice are the foremost issues for EU citizens today. To date, the EU has done too little to address them. And in a political context characterised by diminishing credibility, the outlook is grim.

On top of that, whole sectors find themselves caught up in far-reaching, disruptive upheavals, which some blithely call 'disruption'. The 'digital revolution' is causing anxiety and in the very places that the EU is currently unable to offer a political solution. Globalisation and digitalisation demand deeper European integration, but we are seeing precisely the opposite. Strong populist movements in the member states are exploiting growing social inequalities for protectionist ends. Although many people are open to more political integration, the European project is constantly and, it seems, irreversibly being undermined.

Against this background, in 2015 the Hans-Böckler-Stiftung set up the expert group 'Workers' Voice in European Corporate Governance' to

Number of companies with Workers' Voice of 100 surveyed companies



- CBA collective bargaining agreements
- EWC European works councils
- BLER board-level employee representation
- IFA international framework agreements

Source: Own presentation according to Hassel, Anke/Helmerich, Nicole (2017): Workers' Voice in the 100 largest European companies. MB-Report Nr. 31.

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evaluate what contribution workers' participation can make to the central management of multinational companies. What effects can Workers' Voice have as an element of good and sustainable corporate governance, getting companies to commit more deeply to their social responsibilities? In Germany, for example, there have been good experiences with workers' participation in top management. But Workers' Voice has also had positive effects at the top of companies in other EU member states – albeit with different arrangements – in work organisation and business operations. Clearly, Workers' Voice is an instrument that the EU should reinforce.

The Hans-Böckler-Stiftung invited specialists from all over Europe to contribute their expert

What the trade unions are demanding from the EU

The European Trade Union Confederation (ETUC) has compiled the most important policy demands of the European trade unions for the legislative period of the European Parliament (2019-2023).

Strengthening the directive on the European works council (Directive 2009/38/EC)

In 2017, the ETUC formulated ten demands for a revision of the directive. In 2018, there also came a demand for a European EWC ombudsperson. Among other things, the ETUC is calling for:

- effective and dissuasive sanctions and guarantees of access to justice;
- more efficient coordination between local, national and European levels (also by means of the requisite resources and rights);
- the rules on negotiations with the special negotiating body must be improved and tightened up;
- the abuse of confidentiality clauses must be prevented and subsidiary requirements must be tightened up;
- the role of 'representatives of competent, recognised trade union organisations at Community level' must be clarified and reinforced, and the term 'the transnational character of an issue' must be taken up into the main part of the directive;
- competitive conditions on an equal footing have to be created by means of which all provisions laid down in the directive shall apply to all agreements (including so-called voluntary 'Article 13' agreements), either automatically or through renegotiation.

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 representation. 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 provisions in the absence of an agreement.

knowledge and to come up with good arguments for this policy goal from joint analyses. The expert group brought together practitioners from companies, trade unions, civil society and the European Commission, as well as academics. Anke Hassel, the group's research director, summarised the discussions and findings in the final report.¹

This publication explains the function of Workers' Voice, together with the underlying concept, and presents the expert group's findings and proposals. In this context 'Workers' Voice' is defined as follows:

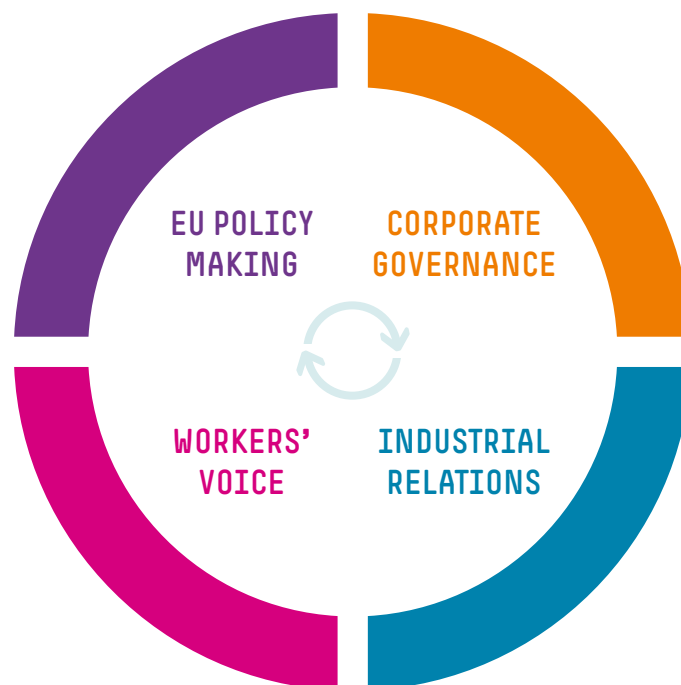
- the articulation of employees' interests;
- representation of employees' interests in the company;
- demanding collective and individual rights;
- supervision of company decision-making on a legal basis.²

With its initiative 'Workers' Voice in European Corporate Governance' the Hans-Böckler-Stiftung is putting its weight behind active and sustainable social partnership at cross-border level with a view to enhancing companies' sustainability and future prospects. To that end, Workers' Voice has to be embedded in European company law. But there are other important reference points for new legislative initiatives at the EU level, which are also reflected in the demands of the European Trade Union Confederation (ETUC) (see box: **What the trade unions are demanding from the EU**). These include more than 25 years' experience with European works councils at the top of multinational companies, as well as the interaction of national company and trade union codetermination. In its

¹ Prof. Dr. Hassel is responsible for the final research report: Anke Hassel, Sophia von Verschuer, Nicole Helmerich (2018): Workers' Voice and Good Corporate Governance. Hans-Böckler-Stiftung, https://www.boeckler.de/pdf/mbf_workers_voice_academical_final_report.pdf [19.08.2019]

² Anke Hassel and Sophia von Verschuer (2019): Ein europäischer Rechtsrahmen für Arbeitnehmerbeteiligung in transnationalen Unternehmen [A European legal framework for workers' participation in transnational companies], WSI-Mitteilungen 02/2019, https://www.boeckler.de/wsi-mitteilungen_119223_119236.htm [19.08.2019]

Components and elements of Workers' Voice



Hassel, Anke (2016): Presentation European Expert Group on Workers Voice.

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analysis the expert group recognises that the different levels of participation are key to the expression of Workers' Voice at the top level of company decision-making.

EXPERT GROUP



Members of the expert group on Workers' Voice at a meeting in Berlin.

- 1 Nicole Helmerich, Université de Lausanne, Switzerland (academic secretariat)
- 2 Theresa Mattheß, Hans-Böckler-Stiftung, Düsseldorf (assistant)
- 3 Amanda Slater, Hertie School of Governance, Berlin (assistant)
- 4 Aline Hoffmann, ETUI – European Trade Union Institute, Brussels
- 5 Jan Cremers, AIAS – Amsterdam Institute for Advanced Labour Studies, Amsterdam
- 6 Anke Hassel, Hertie School of Governance, Berlin
- 7 Eckhard Voss, wmp consult, Hamburg (guest expert)
- 8 Niklas Bruun, Hanken School of Economics, Helsinki
- 9 Sophia von Verschuer, Hertie School of Governance, Berlin (academic secretariat)
- 10 Inger Marie Hagen, Fafo Institute for Labour and Social Research, Oslo
- 11 Bettina Wagner, Hertie School of Governance, Berlin (academic secretariat)
- 12 Albert Krufft, Solvay GmbH, Bad Hönningen
- 13 Janet Williamson, TUC – Trades Union Congress, London
- 14 Wolfgang Kowalsky, ETUC – European Trade Union Confederation, Brussels
- 15 Norbert Kluge, Hans-Böckler-Stiftung, Düsseldorf
- 16 Lucia Peveri, Unicredit, Italian Trade Union Federation UILCA, Milano
- 17 Hermann Soggeberg, Unilever Deutschland GmbH, Essen
- 18 Robbert van het Kaar, AIAS – Amsterdam Institute for Advanced Labour Studies, Amsterdam
- 19 Christoph Florian Harland-Juhl, Volkswagen AG, Wolfsburg
- 20 Sigurt Vitols, WZB Berlin Social Science Center, Berlin
- 21 Aline Conchon, industriAll, Brussels

Further members of the expert group

Gabriele Bischoff, Member of the European Parliament, Brussels
Thomas Fischer, German Confederation of Trade Unions, DGB, Berlin
Michael Guggemos, Hans-Böckler-Stiftung, Düsseldorf
Pierre Habbard, TUAC/OECD, Paris
Peter Kerckhofs, Eurofound, Dublin
Annika Ögren, Husqvarna Group, Stockholm
Valeria Pulignano, Centre for Sociological Research, Katholiek Universiteit Leuven



The Hans-Böckler-Stiftung is striking out on new paths: "Creating new perspectives" for Social Europe supported by an art exhibition in Brussels, representing paintings by Dieter Haist (see also [p. 14](#) and [p. 26](#)). The guiding idea was to promote the idea of workers' participation throughout Europe. In addition to the classic format of the Workers' Voice Breakfast, here the focus was on combining art with social ideas.



WITH DIETER HAIST, WE WERE ABLE TO FIND AN ARTIST WHO IS AN ACTIVE UNIONIST HIMSELF AND WHO EXPRESSES HIS IDEAS ABOUT THE FUTURE OF WORK IN HIS PAINTINGS



THE WORKERS' VOICE PROJECT AND ITS GOAL: SEEKING SOCIALLY SUSTAINABLE SOLUTIONS TOGETHER

Social concerns and Workers' Voice played a leading role in the process of European unification. This is illustrated, for example, by the European Council's European Social Charter, which was adopted as early as 1961. In the revised version of 1996 it lists 31 rights and principles, including the right to work, to an equitable wage, to vocational training, to social security, to freedom of association and collective negotiations and also to special protective rights for children, young people, mothers and families.

National law in many member states recognises various forms of Workers' Voice in top management and in their supervisory or executive boards. Eighteen of the 28 EU member states have legislation on workers' participation in central management, while in 12 member states and in Norway such involvement is far-reaching. In many countries Workers' Voice extends to central management – in Germany, for example, in the form of company codetermination – in state-owned and private companies, and in some cases also in companies that are much smaller than



those in Germany. In some member states it is limited to companies in state ownership, wholly or partly, or privatised companies.

Workers' Voice obtains its impact and agenda-setting potency from the synergy of various elements of workers' participation, as well as from its embedding in collective agreements and social



Workers' Voice in EU corporate governance

- The destination is the same, the protection of workers, but the paths differ in practice, depending on country and corporate culture.
- Workers' Voice is a core element of central management in major multinationals.
- Its impact depends on the fact that it is a – European – right.
- Board-level representation of workers goes hand in hand with the presence of collective agreements and European works councils.
- In conjunction, strong Workers' Voice, strong embeddedness in social dialogue and a long-term orientation on the part of central management.
- Multinational companies with Workers' Voice shape social standards along global supply chains.



THE CHARTER OF FUNDAMENTAL RIGHTS MAKES EUROPE'S WORKERS INTO CITIZENS IN THE WORKPLACE AND IN THE FIRM

partnership. In large companies above all there is a strong, evolved tradition of Workers' Voice in central management. There are also collective agreements in all member states, at least in large companies.

The right to information and consultation is a fundamental citizens' right in the EU. The Directive on European works councils (EWC) is now more than 20 years old. Furthermore, since 2010 the European company (Societas Europaeae or SE) has also come along, which, as a cross-border form of association for limited companies in the EU and in the European Economic Area (EEA), also lays down regulations to safeguard workers' rights. The European Union certainly provides for options here with the Lisbon Treaty. The European Charter of Fundamental Rights, contained within it, explicitly includes workers' rights to information and consultation and to membership of a trade union, as well as to free collective bargaining. The Charter of Fundamental Rights makes Europe's workers into citizens in the workplace and in the firm. That is, broadly speaking, the political consensus in the European Union.

Germany has had good experiences with the intensive use of broad-based Workers' Voice. In this way it was able to overcome the crisis, maintain social peace and enable firms to retain skilled workers instead of having to let them go. It thus proved possible, generally speaking, to keep to the path of social partnership in the course of company restructuring.

Because in Germany, too, the main issue was experiences in multinational companies the question arose of how companies in other EU member states found their way out of the crisis.

'Others have something to offer here, too', declared Reiner Hoffmann, now head of the German Trade Union Confederation (Deutscher Gewerkschaftsbund, DGB) and previously long the deputy secretary-general of the European Trade Union Confederation (ETUC), when he formulated the analytical task facing the expert group. How do the various forms and levels of company and trade union interest representation interact and influence central management ('corporate governance'), so that the outcome is both good prospects for jobs, incomes and sustainable locations and economic competitiveness.

For a long time the wide diversity of national models was not considered conducive to a focused comparison. The expert group came to the opposite conclusion: it regards this variety as the key to understanding how different elements of a social model could be combined to form a common European social model, without the need to harmonise European law (probably in terms of the lowest common denominator). First and foremost, far-reaching codetermination rights may serve as a 'corrective along the lines of sustainable central management'.

WHAT IS THE IMPACT
OF CODETERMINATION
RIGHTS ON SOCIETY?

WHAT LINKS THE
VARIOUS ASPECTS
OF WORKERS' VOICE
TOGETHER?

At this point, an overview would be useful.

- What links the various aspects of Workers' Voice together?
- What could provide a framework or suitable functional elements to effectively support workers' rights and social protection in cross-border companies?
- What are the various guises of company codetermination and how do they differ?
- What is the function of Workers' Voice in companies, especially with regard to good management (corporate governance)?
- How do the various levels of company and trade union interest representation interact and what role do collective agreements play in this?
- What is the impact of codetermination rights on society?
- What has to happen so that Workers' Voice is safeguarded and even reinforced in the single market, too? How can it reach its full potential?

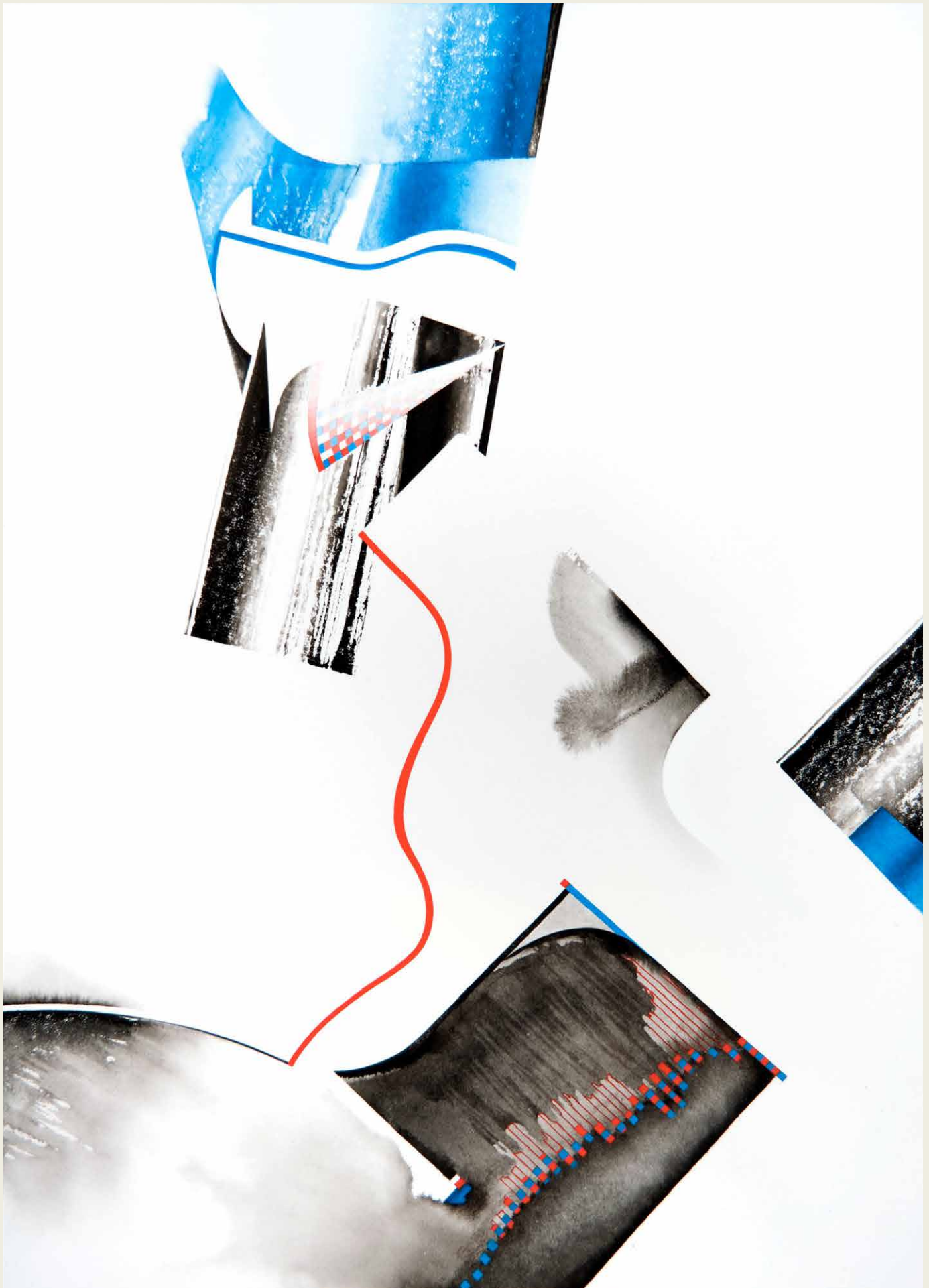
One thing became clear in the course of the expert group's discussions. Workers' Voice is both a programme and a process for exerting influence over the levers of economic power. There has to be a rethink concerning the relationship between good corporate governance and Workers' Voice so that a strong European approach can be developed. There are good reasons to incorporate worker participation – understood as the mandatory and legally safeguarded representation of employees in company supervisory and executive boards (codetermination) – in European company law. There are also good reasons to go further than merely safeguarding national *acquis* concerning codetermination rights.



Issues and work locations of the Workers' Voice expert group

The expert group discussed the function and impact of Workers' Voice at a number of sessions:

- in the process of company restructuring (Prague, April 2016)
- in the context of sustainability and corporate social responsibility (Paris, September 2016)
- in relation to long-term orientation and corporate governance reform (Rome, March 2017)
- the various manifestations of Workers' Voice, which can be regarded as functional equivalents (Stockholm, 2017).



What will the future of work look like? Dieter Haist tried to answer this question with his paintings.

FUNCTIONAL EQUIVALENTS

FUNCTIONAL EQUIVALENTS OF WORKERS' VOICE: SAME OBJECTIVE, DIFFERENT GUISES

The expert group set itself the task of investigating the effects of Workers' Voice in its various manifestations in relation to certain events (for example, overcoming crises, corporate social responsibility, restructuring). It is nothing new in European policy research to draw institutional comparisons between EU member states. For the first time, however, the expert group took a functional approach to its analyses. In contrast to the conventional approach, the expert group did not set out to make the institutional differences in the member states' worker representation and corporate governance systems the starting point of analysis, but rather the function of Workers' Voice: to what extent do different institutional and organisational paths lead to similar outcomes? The use of functional equivalents, by contrast, was based on agreeing on common objectives, combined with a variety of ways of achieving these objectives. Decisive in this respect, however, is that the concept of functional equivalents must not provide an excuse for avoiding minimum standards in future or even diluting existing minimum standards. On the contrary: the European trade unions are explicitly urging the definition of minimum standards at European level.

As the expert group sees it, Workers' Voice is more broadly based than simple worker representation on company supervisory and administrative boards. Workers' Voice is aimed at monitoring and influencing top management's strategic decision-making in the workers' interests. This can be achieved using various forms of Workers' Voice. The expert group mentions, for example, collective agreements, works councils, European works councils, workers' representatives on supervisory boards or as so-called worker directors on company boards, as well as European or even more far-reaching cross-border company agreements.

A broader definition of Workers' Voice offers another advantage: it means that there is no need for a legalistic discussion of thresholds for com-

Functional equivalents of Workers' Voice – similar characteristics and objectives

- Representation of workers' concerns
- Protection and enforcement of workers' rights
- Defence of workers' interests with central management
- A say in management decision-making in good time

pany size, the number of seats and workers' statutory rights on the supervisory board. Instead, it focuses our attention on what the different manifestations of Workers' Voice in the EU member states have in common.

It is important that this does not come down to the isolated consideration of individual elements. In common with the trade unions, the expert group firmly believes that all existing elements of Workers' Voice should be safeguarded and strengthened. After all, the strength of Workers' Voice arises from the interaction of a variety of elements. The expert group focused on participation in central management decision-making because of its significance: research shows that companies with workers' representatives on the supervisory board are much more likely to practice other forms of Workers' Voice, too, such as collective agreements, works councils, European works councils, and cross-border company agreements, among other things.

WORKERS'
VOICE MUST BE
OBLIGATORY

THE EVASION OR
OBSTRUCTION OF WORKERS'
VOICE MUST BE SUBJECT TO
SIGNIFICANT SANCTIONS

'Functional equivalents' open up new policy options for Workers' Voice in Europe

While simple institutional comparisons would lead to a dead-end, the notion of 'functional equivalents' opens up additional options, especially for policy-making. There is no need to come up with a one-size-fits-all solution that would require legal harmonisation at EU level. On the contrary: different approaches can achieve similar effects. The institutions of social partnership change as a result of everyday practice. These changes, too, understood as 'institutional learning', can be acknowledged and taken into account in policy-making. At European level one could, for example, reinforce the legal framework for European works councils or create an optional legal framework for multinational company agreements, which would provide trade unions (European trade union federations) with the role of mandatory negotiator. It is up to the relevant actors to shape Workers' Voice in practice, in accordance with national legal and institutional conditions. This is conditional, however, on establishing an EU legal framework for a comprehensive right to participation in central management decision-making.

What, for example, can be achieved in one context through the right to participation in company supervision (as in the case of German codetermination) can be achieved in a different setting using other approaches and practices. For example, certain functions can be transferred to other stakeholders (see also chapter "A stakeholder rather than a shareholder approach in corporate governance" p. 21). This concerns, for example, extended rights to information and consultation or obligations related to consultation or transparency, perhaps even going so far as to limit the rights of shareholders. Where collective workers' representation is weak at company level and, for example, there is no works council or workers' representation in central management, new regulations could oblige companies to engage in genuine dialogue with the relevant trade unions with a view to effectively enforcing the right to information,

consultation and participation in company decision-making in practice.

The more precisely the relevant function is defined, the simpler it will be to identify gaps and discrepancies and thus evaluate outcomes.

The expert group has underlined, however, that a basic set of fundamental principles and practices must be satisfied, under all circumstances to ensure full implementation of the requisite functions (representation of workers' interests, enforcement of workers' rights, communication of workers' interests and participation in management decision-making). In this context:

- **Workers' Voice must be obligatory** and may not be treated as a voluntary or optional institution. It is a general fundamental right for workers to be able to express their views, not merely a policy recommendation. This right to workers' representation at company level is enshrined in ILO standards and European primary law.
- **The evasion or obstruction of Workers' Voice must be subject to significant sanctions.** Hitherto, failures as regards the enforcement of Workers' Voice have not been punishable at all or have been considered petty offences. Workers' right to a voice cannot be enforced in this way.
- **Individual and collective workers' rights are not interchangeable, but complementary.** Both an individual right to information and consultation and a direct right to exercise collective rights are necessary. Both forms of right must be statutorily protected.
- **Workers' Voice is to be found at various levels in multinational companies.** Local workers' representation at workplace level is complemented by representation at (cross-border) company level and sometimes at sectoral or national level. Trade unions play a key role in coordinating between the different levels of interest representation.

INDIVIDUAL AND COLLECTIVE
WORKERS' RIGHTS ARE
NOT INTERCHANGEABLE, BUT
COMPLEMENTARY

Towards sustainable company management with good prospects for jobs and production locations

The Workers' Voice expert group has taken a closer look at a number of important areas for corporate governance within the framework of functional equivalents.

Responsible companies pay attention to environmental issues and the sustainability of their business model. Concern for the effects of their management decision-making on jobs, employment and the region tends to go hand in hand with this. It seems, however, that in particular international instruments and corporate initiatives on sustainability are often non-binding. As a result, they are not up to the task of tackling human rights violations in the workplace.

On the other hand, Workers' Voice and sustainability goals can be mutually reinforcing. Workers' Voice in company supervision can demand that, and monitor whether, self-imposed company objectives are implemented and complied with. Conversely, sustainability management can help to strengthen consultation and participation rights in the company. In some of the cases dealt with by the expert group sustainable networks of the relevant actors emerged from discussions on sustainability. This in turn consolidated multinational and multi-level alliances on the part of international trade union federations.

There can also be positive reciprocity when workers' representatives tackle the issue of corporate responsibility (CR) and corporate social responsibility (CSR). None of these predominantly voluntary instruments, whether through central management alone or together with employee representatives, is an effective substitute for the statutory or collective agreement-based rights and obligations mentioned above in the context of permanent dialogue between companies and workers in decision-making. But Workers' Voice increases its sway and builds further capacities also by involvement with corporate responsibility and corporate social responsibility. At the same

time, corporate responsibility and corporate social responsibility can pave the way for a dialogue on workers' rights.

Solvay's European works council, for example, has a working group on 'Sustainable Development' that can contribute to company policy in that area with feedback, suggestions or comments. At Solvay the European works council, supported by IndustriALL Europe, thus plays an active role in sustainability policy. Participation in this form can serve as a model for institutionalised cooperation between workers' representatives and management on sustainability issues.

It is true that the relationship between European works councils and corporate social responsibility (CSR) is scarcely unambiguous, but where European works councils are involved in CSR processes they ensure workers' participation. Employees are in the best position to know the effects of management decisions, production and other factors on the environment. The expert group regards it as a serious omission on the part of the legislator that works councils are still not sufficiently involved in corporate social responsibility. After all, there is a wide range of options for European works councils. As the example of Solvay confirms, some European works councils are fully involved in the definition, decision-making process and monitoring of company-specific CSR practices.

WORKERS' VOICE
IS TO BE FOUND
AT VARIOUS
LEVELS IN
MULTINATIONAL
COMPANIES



WORKERS' VOICE IS PROACTIVE, TAKING STEPS BEFORE A DECISION IS TAKEN; IT IS INVOLVED IN DECISION-MAKING ITSELF AND ALLEVIATES NEGATIVE CONSEQUENCES

Research shows, however, that in many cases the activities of EWC members largely involve procuring information rather than active participation in CSR policy. CSR entails decision-making about the company's general orientation within its social environment. Employees should be given more influence. While the European works council's right to information and consultation should be strengthened, trade unions should be able to negotiate substantive agreements.

The effective involvement of Workers' Voice in CSR processes requires, however, that the relevant actors receive the same basic information as company management. That is the only way they will be able to make informed decisions.

The function of European works councils could be strengthened, however, only if the legislator expressly includes CSR in their statutory tasks and competences. The revision of the EWC directive (see also box „EU reforms of corporate governance“ p. 22) does not explicitly mention CSR as a topic for information and consultation, however.

Unfortunately, there is no provision on EWC participation in Directive 2014/95 on non-financial and diversity information. In the event of a revision of the EWC directive European works councils should be given the right to be involved in the establishment of basic principles for applying the directive within the framework of multinational company groups, especially in relation to the disclosure of social information.

Towards socially responsible restructuring

Codetermination at company level and other forms of Workers' Voice have an influence on companies' strategic decision-making and thus their ability to react in good time to possible upheaval (anticipation of change). Workers' Voice has proved to be an important instrument, even when company restructuring is unavoidable. It was possible to ameliorate negative consequences that might have arisen for the employees concerned from the closure of plants or locations and even mass redundancies. Workers' Voice not only contributes to ameliorating negative restructuring, but also to coming up with alternatives. Workers' Voice is proactive, taking steps before a decision is taken; it is involved in decision-making itself and alleviates negative consequences.

However, the expert group also identified a new dimension of the challenge facing Workers' Voice in such instances. In particular in the event of restructuring in multinational companies across national borders it was evident that often there was no pressing reason for it in terms of company strategy. Instead, companies simply sought to cut their tax liabilities or labour costs to boost shareholder value. Practices of this kind are facilitated by legal loopholes in national or European company, tax and labour law.

The expert group coined a new term for this new variety of cross-border restructuring, 'company engineering'. Such practices often give rise to so-called 'extended workbenches' whose future as company locations is in doubt. The prospects of the affected regions and EU member states as regards jobs, incomes and durable economic and regional development are scarcely rosy. Where European works councils are in place, higher social standards than usual can be implemented in all locations in the event of restructuring.

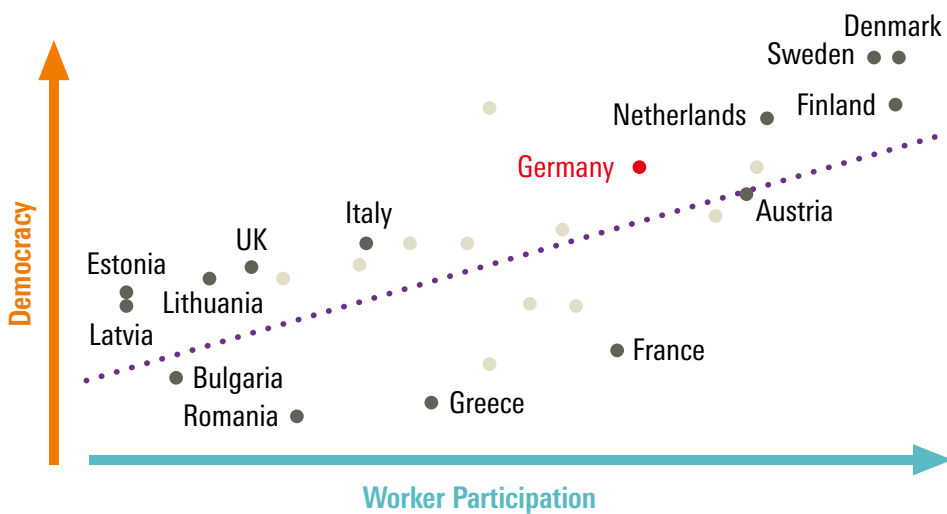
According to the expert group's observations the trade unions in the countries concerned have recognised this and are doing something about it. What would really help them in future is, again,

Workers' Voice: support from strong workers' representatives at top management level, who could exert influence on company decision-making. Strong workers' representation in central management can exert influence over changes in the company. Thus trade unions and employee representatives could contribute jointly to fostering comparable working conditions and pay across borders. Companies would have to pursue competitiveness through real performance improvements and not merely through a race to the bottom in terms of location costs. With the exception of European works councils, however, such interest representation is not mandatory at European level. EWCs are thus particularly useful because they build bridges between national and European levels.

EUROPEAN WORKS COUNCILS BUILD BRIDGES BETWEEN NATIONAL AND EUROPEAN LEVELS

Strong workers, strong democracy

The state of democracy and worker participation in ...



Source: Data from Vltols, Sigurt (2018): Kontinent vieler Geschwindigkeiten. Arbeitnehmer- und Bürgerbeteiligung in Europa. In: WZB Mitteilungen 160, S. 30-32. Illustration based on Böckler Impuls 8/2019, S.7. German Graphic Download: bit.do/impuls1246

WORKERS' VOICE

DEMOCRACY

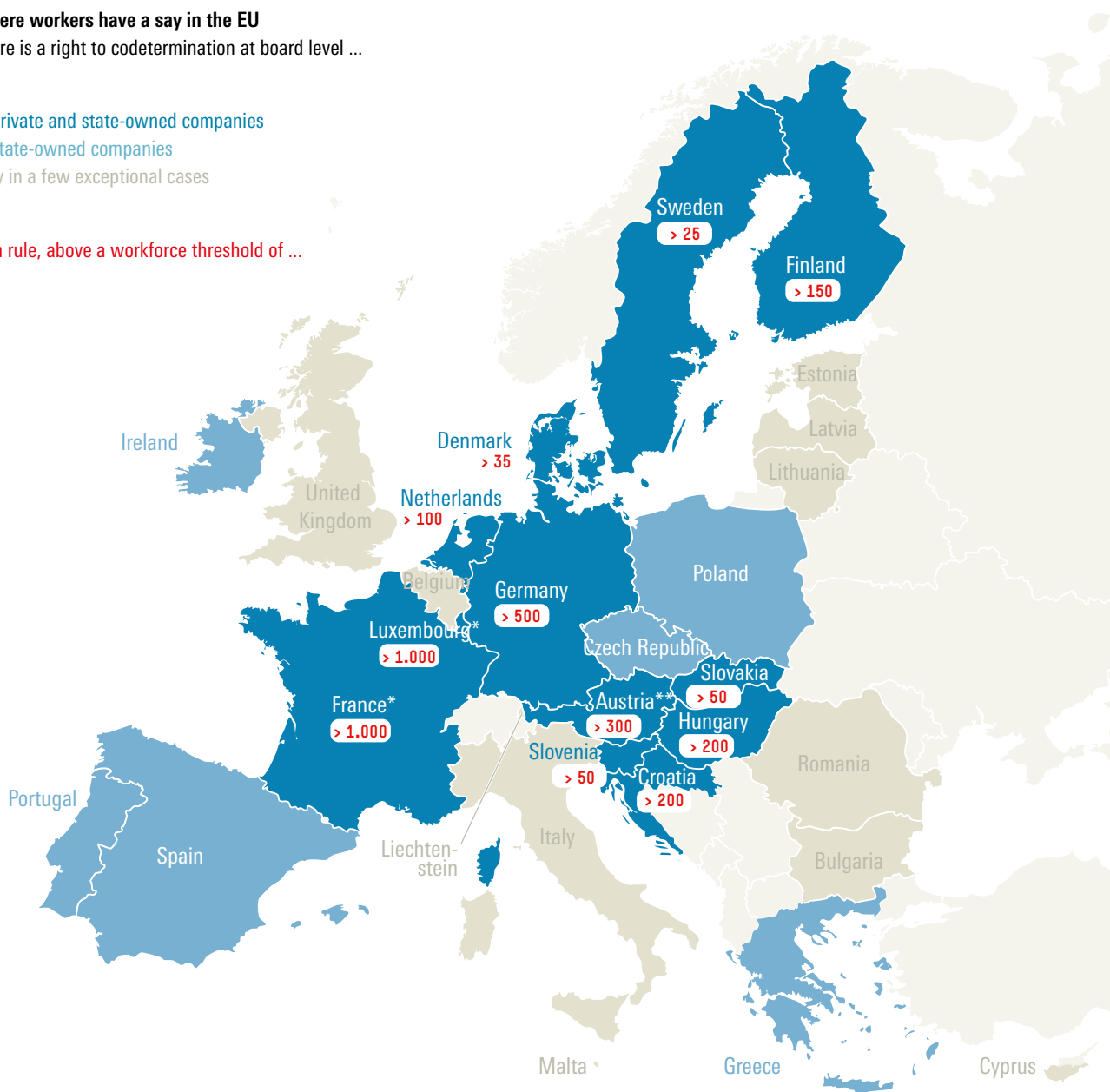
EUROPE

Where workers have a say in the EU

There is a right to codetermination at board level ...

in private and state-owned companies
in state-owned companies
only in a few exceptional cases

as a rule, above a workforce threshold of ...



* Different thresholds for state-owned companies. ** Only limited companies – no threshold in the case of PLCs, if there is a works council.
Source: Data from Conchon, Aline/Kluge, Norbert/Stollt, Michael (2015): Worker board-level participation in the 31 European Economic Area countries. ETUI, Brussels. Illustration based on Böckler Impuls 9/2019, S.5. German Graphic Download: bit.do/impuls1558

STAKEHOLDER APPROACH

A STAKEHOLDER RATHER THAN A SHAREHOLDER APPROACH IN CORPORATE GOVERNANCE

Companies are increasingly being financed through international financial markets. As a result the interests of shareholders and financial investors are gaining precedence over those of other societal interests in the company. The lifting of capital controls and the liberalisation of global financial markets have facilitated global financial flows and encouraged investors to seek investment possibilities all over the world. This attracts investors who are less interested in company growth or the production of goods and services. A company's value is determined on the basis of its stock market price, which does not necessarily coincide with its economic performance. In order to ensure high yield, corporate governance regulations and models increasingly bring shareholder rights to the fore, which means that corporate governance is becoming more and more oriented towards the interests of global investors. In this process the role of other stakeholders, in particular Workers' Voice, has incessantly been sidelined.

The intrinsic purpose of a company has also changed over the decades. Up until the 1970s the consensus was that a company's primary concern was to provide its customers with quality goods or services, while ensuring that it develops and grows. This focus has been shifting towards financial aims, however. These days the principal purpose is to achieve a high return on capital and to maximise shareholder value. The prospect of ensuring that a company has a sustainable future simply does not come into it. This clarity of focus is new.

In the 1990s and 2000s in particular the shareholder value model dominated policy-making at the EU level and in most member states. It also shaped international company law and capital markets. The huge scandals of the 2000s, including Enron and WorldCom, laid bare the shortcomings of this approach to corporate governance.

The financial crisis of 2008 prompted something of a rethink in the direction of longer-term approaches to investment and company orientation. The focus here, however, was more transparency concerning shareholders' activities and getting them to take more responsibility for the company. In other words, the one-sided orientation to shareholders' interests remained. Corporate governance reform thus amounted to no more than improvements in transparency regulations and compliance standards for shareholders. Although the OECD Guidelines on Corporate Governance emphasise company sustainability as a goal this is linked to shareholders' long-term investment returns.

Even when there is political criticism of the short-term orientation of the shareholder value model at EU level decision-makers and their experts do not really tackle the issue. In the current debate on corporate governance they do not regard Workers' Voice as a solution to the regulatory loopholes. Instead they hone in on individual symptoms, such as strengthening the rights of minority shareholders to guard against collusion between major shareholders and management.



**DECISION-MAKERS IN THE
EU AND THEIR EXPERTS
DO NOT REALLY TACKLE
THE ISSUE OF THE SHORT-
TERM ORIENTATION OF THE
SHAREHOLDER VALUE**

EU reforms of corporate governance

2001
SE Directive

2003
Modernising company
law and enhancing
corporate governance in
the EU

2004
Takeover Directive

2005
Directive on cross-
border mergers

2007
Shareholder Rights
Directive

2019
Company mobility
package

Over the past two decades the EU has focused its legislative activity on European company law more intensely on the notion of shareholder value. For example, the main aim of the 2003 Action Plan 'Modernising company law and enhancing corporate governance in the EU' was to reinforce shareholders' rights. The Takeover Directive of 2004 regulated takeovers in Europe and laid down minimum standards for protecting minority shareholders (2004/25/EC Takeover Bids). In the aftermath of the financial crisis the European Commission concentrated on shareholder participation in financial and non-financial companies in its green books of 2010 and 2011. In its 2012 Action Plan the Commission expressed its intention to boost shareholder involvement in corporate governance. In 2014 the Commission put forward a proposal for a directive on shareholders' rights (Shareholder Rights Directive 2007/36/EC EC2014). The primacy of shareholders' rights was also evident in other European initiatives, such as the new proposal for the Company law package, at a number of meetings of experts (for example, the High Level Group of Company Law Experts and the European Corporate Governance Forum) and in rulings of the European Court of Justice (for example, on 'golden shares').

Initiatives such as the SE Directive (2001), the Directive on cross-border mergers (2005) and the Company law package (2019) contain instruments that make it possible to establish Workers' Voice in multinational companies, to continue it beyond the national level and, potentially, to further develop a strong participatory model of corporate governance at cross-border level. The reality is, however, that companies tend to use European legislation on the SE or on cross-border mergers to scrap Workers' Voice in central management (codetermination in the case of Germany) by means of a purely legal change in its form of association at home.

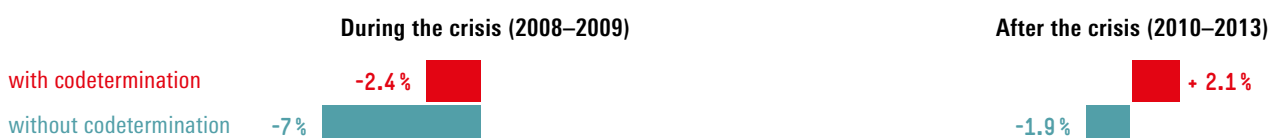
Something similar is looming in the wake of the recent adoption of the Company mobility package, which introduces procedures for cross-border changes of form, mergers or divisions and the possibility for cross-border transfer of company seats. As in the case of the SE directive a dynamic element (escalator principle, see also [p. 30](#)) is lacking, making it easier to evade or freeze codetermination. This applies similarly to the simplification of online company registration in any EU member state, which has also just been adopted.

Companies with codetermination perform better

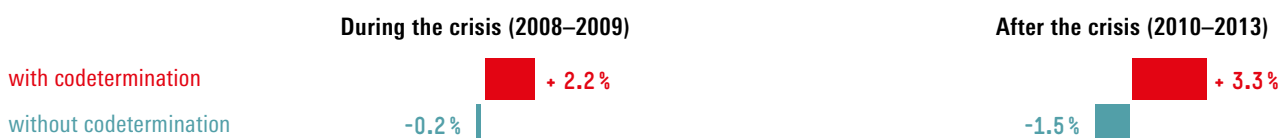
Change in yield (earnings per share) from 2006 to 2011 at:



Change in employment in comparison with the period before the crisis at companies:



Change in investments in comparison with the period before the crisis at companies:



Source: Data from Rapp, Marc Steffen/ Wolff, Michael (2019): Mitbestimmung im Aufsichtsrat und ihre Auswirkung auf die Unternehmensführung, Study Nr. 424. Hans-Boeckler-Stiftung, Düsseldorf. Illustration based on Böckler Impuls 10/2019, S.4. German Graphic Download: bit.do/impuls1573

Hans Böckler Stiftung

Regulation on an alternative approach has been very patchy so far

The main alternative to the shareholder model would be a societally much more broadly based supervisory system involving stakeholders. This model is much more focussed on striking a balance between the important interest groups around the company. Strategic management in this instance is not oriented solely towards shareholders' interests but also towards the company's whole social and economic environment. In the corporate governance reform debate the stakeholder approach complements and reinforces the positive social involvement and inclusory effects that can be achieved by means of mandatory Workers' Voice.

Public awareness of the idea of a statutorily prescribed presence for workers' representatives on company management boards has increased in recent years. Besides positive developments in the United States and the United Kingdom, France launched an initiative to foster (socially) responsible multinational companies with its 'Loi du devoir de vigilance' (Due Diligence Act). Important international reference points include the UN's Guiding Principles on Business and Human Rights, the

ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration) and the OECD's Guidelines for Multinational Enterprises.

The OECD Guidelines in particular represent a strong starting point with regard to procuring a more binding Workers' Voice, although their practical effect is limited. They are 'recommendations' that lay down principles and standards for responsible business conduct on the part of multinational companies. They form part of the OECD Declaration on International Investment and Multinational Enterprises and apply to all 36 OECD countries and 12 accession countries. The OECD Guidelines apply in particular in relation to the implementation of responsible business practices. The latest revision of the OECD Guidelines in 2011 took up some of the demands of trade unions and civil society organisations, which were urged in particular by the OECD's Trade Union Advisory Committee (TUAC). They include due diligence for supply chains, a stronger concentration on human rights – adaptation to the aims of the UN Guiding Principles on Business and Human Rights (UNGPs) – and fairer wages in multinational companies.

The OECD Guidelines contain a chapter on employment and industrial relations, which pro-



THERE IS AN URGENT NEED TO ENSURE THAT THE VARIOUS STAKEHOLDERS IN SOCIETY ARE REPRESENTED BETTER AND MORE EFFECTIVELY

vides specific information on the right of workers and their representatives to organise and implement collective bargaining. For trade unions this chapter offers the possibility to file complaints with national contact points if norms from this chapter are violated. But even though the signatory governments are obliged to set up national contact points to promote and implement compliance the regulations are still too lax, according to many observers.

The expert group saw some steps in the right direction in efforts to introduce standards for Workers' Voice in company management at international level. On balance, however, they consider these to be only rudimentary so far and not efficient enough for practical application. Furthermore, it also sees a risk that stronger national rights for Workers' Voice in EU member states could be undermined if general rules on corporate governance are pushed.

In practice, corporate social responsibility represents both a risk and an opportunity. Because national regulation falls short and there is little binding regulation at the international level multinational companies set their own standards as employers, as well as producers and service-providers. They shape the social and corporate environment in every country in which they are active. In doing so they de facto override existing state norms, while undermining national standards. In many places, however, companies also pursue higher standards than those prevailing in the national context, in their own interest. This kind of 'global deal' offers organised Workers' Voice at company headquarters good opportunities to play a prominent role in the social dimension of working conditions and living standards worldwide.

In order to create the conditions for this policy-makers need to ensure equal and transparent conditions for all. They need to regulate multinational companies more strictly than heretofore and embed them more firmly in the societies in which they operate. That concerns among other things harmonised corporate taxation, which the European Commission has now put on its agenda.

Given the role and significance of multinational companies there is an urgent need to ensure that the various stakeholders in society are represented better and more effectively.

European legal framework

In order to use the potential of Workers' Voice to the full its legal basis has to be reinforced, at European level as well as in the individual member states. This needs to go well beyond the existing EU directives on information, consultation and codetermination (participation) of employees.

Such a minimum directive on workers' participation must also ensure that the loopholes affecting the rights to information, consultation and codetermination – as revealed by ECJ practice – are closed. The expert group makes particular reference to the *Lyttle* and *USDAW* cases.³ They involved massive restructuring and redundancies in the United Kingdom, including the winding up of the venerable retail chain *Woolworths*, with its 27,000 employees. In the United Kingdom, the Directive on collective redundancies 98/59 EEC was transposed in such a way that more than 4,500 of the employees made redundant were excluded from the information and consultation procedure because they worked in units within the company with fewer 20 employees. Furthermore, these cases were in defiance of previous jurisprudence on Article 27 of the EU Charter of Fundamental Rights. The fact is that this legal norm does more than lay down a basic principle; it defines a fundamental right at European level.

Using the freedoms of the EU single market, time and again, to curtail or undermine (national) workers' rights should not be permitted. The trade unions are thus calling for existing primary law to be used much more to create secondary-law regulations to strengthen Workers' Voice.

³ Judgment of 13.05.2015, *Lyttle*, C-182/13 and 30.04.2015, *USDAW*, C-80/14



Working together for a successful event. Dieter Haist and Henning vom Stein (Otone European Affairs) prepare the exhibition.

GOOD CORPORATE GOVERNANCE

MODEL OF GOOD CORPORATE GOVERNANCE FOR GOOD AND RESPONSIBLE COMPANY MANAGEMENT

Key elements of good corporate governance include capable and effective supervisory and management boards, a top management committed to social responsibility, shareholders interested in preserving the company and well functioning and binding self-regulation by means of a code of conduct. The US social scientist Ruth Aguilera, who participated in a meeting of the expert group, has set out the following general criteria for good corporate governance:

- protection of the rights of stakeholders and means of enforcing these rights, by monitoring senior management and making them accountable;
- a balance between the interests and needs of the various internal and external stakeholders;
- providing transparent information;
- providing companies with strategic and ethical guidelines.

If these criteria are to hold good there has to be a paradigm change in the framework of corporate governance in Europe. Corporate governance binds the management more closely to the common interest, represented by all interest groups in the company, including workers' representatives. Sustainability goals such as consideration for the social and environmental effects of investments, which, in turn, should also be long-term and responsible, go hand in hand with an orientation towards stakeholder value. The employees and their representatives should be included in this as key stakeholders, by means of Workers' Voice. It is a hallmark of good corporate governance.

Contribution of European works councils to good corporate governance

The expert group identified European works councils (EWCs) as supporting Workers' Voice in multi-

national companies. Where they exist, employees can bring their concerns to central management across borders. European works councils complement employees' national interest representation with a European dimension. In particular, the EWC's right to information and consultation can counteract information asymmetries. Many companies have long since ceased to be confined by national borders but operate at European level, if not globally, which underlines the need for interest representation beyond the national level. Furthermore, EWCs represent a crucial link with supervisory or administrative boards with codetermination.

In particular in advance of fundamental changes in a company the right to information and consultation can be used strategically to exercise voice in the relevant decision-making. For the future, EWCs' codetermination rights must be enhanced in such a way that their participation functions like an economic committee in the German sense.

EWCs, with the support of national and European trade unions, can provide crucial coordination between local, national and transnational levels of interest representation, as well as between national traditions.

The role of the EWC with regard to company management often depends on a range of factors, such as the management's attitude to it, as well as its financial and personnel resources. The involvement of trade unions is also key.

The institutional reinforcement of European works councils is thus of particular significance for sustainable company management. For that reason the trade unions are calling for a revision of the EWC directive. Closer involvement of the EWC in the areas of corporate social responsibility and reporting would also be useful.



The role of Workers' Voice in good corporate governance – need for reform

Workers' Voice gets its effectiveness and formative potency from the interaction of a number of elements of workers' participation, as well as its embeddedness in collective agreements and social partnership. Trade union support is also crucial.

The main features of Workers' Voice include the following:

- it should be legally binding and thus mandatory;
- its legitimacy is procured democratically through elections or a mandate from the workers or their trade unions;
- it uses its resources to communicate workers' concerns and issues in practice, bringing together different perspectives and experiences, both from the top down and the bottom up;

- it helps to improve productivity by promoting investment in certified training, as well as good work organisation and practice;
- it should have a say in the management's strategic orientation in terms of sustainable goals, long-term growth and continuity;
- it supports and facilitates the company's sustainability strategies with its supervision and communication;
- it enhances transparency and combats corruption by encouraging ethical standards and whistle-blowers;
- it safeguards companies against asset stripping by corporate raiders and certain kinds of institutional investor;
- in the case of substantial changes to a company it seeks dialogue with trade unions and other societal interest groups, for example, groups affected by company decisions in a particular region.

The underlying goal is that employees have a say in all decisions that might affect their jobs and their company.

Within the framework of functional equivalence, the role of Workers' Voice in company management is not tied to one particular organisational model. Differences as regards forms of organisation change nothing in terms of the fundamental function of Workers' Voice, namely raising and advocating for workers' interests and concerns in top-level company bodies, the executive board and the supervisory or administrative board.

What specific demands may arise from all of this? There are a variety of forms of information, consultation and codetermination, in all European countries and at European level. All the different manifestations can exercise a positive influence on company management. In particular, however, the interaction of different instruments of Workers' Voice generates synergies and positive effects on corporate governance. Analysis of companies with workers' participation in the supervisory board shows that they often have other forms of

Workers' Voice, too, such as global framework agreements or collective agreements. The involvement of employee representatives in supervisory boards, European and national works councils and trade unions is also important. Strengthening the various forms of Workers' Voice, and in particular company codetermination at European level, is therefore of the utmost urgency.

To this end, a new European legal framework is required. A key requirement here is a European framework directive on information, consultation and codetermination, for which the DGB and the ETUC are also campaigning. This directive should amalgamate and reinforce EWC rights to information and consultation, for example, through sanction mechanisms and closer involvement of trade unions. Furthermore, it should stipulate dynamic thresholds with regard to employee representatives in the supervisory board, in case companies resort to some of the instruments made available by European company law. In concrete terms that means that workers' participation is also necessary in companies with 50 employees or more, with at least two or three employee representatives.

STRENGTHENING THE VARIOUS FORMS OF WORKERS' VOICE, AND IN PARTICULAR COMPANY CODETERMINATION AT EUROPEAN LEVEL, IS OF THE UTMOST URGENCY



**A NEW
EUROPEAN LEGAL
FRAMEWORK IS
REQUIRED**

OUTLOOK

OUTLOOK: SHAPING THE FUTURE OF WORK AND BUSINESS TOGETHER

The future remains open as regards working and doing business in the digital age. What kind of creative design rules are available from European policymakers and legislation for shaping radical digital structural change in the world of work that would enable everyone to share equitably in the expected digital dividend? What regulations would be needed to explicitly respect national law and integrate it legally within the framework of functional equivalence without watering it down through harmonisation?

The Hans-Böckler-Stiftung's expert group on 'Workers' Voice in European corporate governance' has addressed these questions. The outcome can itself be regarded as an invitation to debate a focused, modern European company law that is viable for the future, taking into consideration and incorporating the interests of all stakeholders.

This is part and parcel of the goal covenanted by all EU member states: to promote participatory democracy in a united Europe. The fundamental right to information and consultation makes workers in Europe into 'citizens in the company' (Article 27 European Charter of Fundamental Rights as an integral part of the European treaties). Workers' representatives can play their part in proactively shaping structural transformation. The concept of Workers' Voice offer new approaches and options for this purpose. The binding right to have a say enriches and revitalises social democracies.

European regulations and measures must contribute, together with corresponding ECJ jurisprudence, to strengthening workers' rights and thwarting any development that might lead to the dilution or restriction of such rights. In its TUI ruling the ECJ even explicitly recognises that enterprise codetermination in Germany is part of company law and thus a key component of the German economic and social order.⁴

The expert group was able to show the fundamental importance of Workers' Voice in enterprise decision-making and agenda-setting. Nevertheless even today EU company law gives a significantly higher priority to shareholder interests than to employees' concerns, which are oriented towards good company management, secure

prospects for jobs, incomes, production location and a viable environment. This imbalance also manifests itself in the fact that the European Parliament has focused its efforts on a Shareholders Directive that, generally speaking, would give capital owners even more sway over company management.

A reorientation, from the ground up, of the European legal framework on corporate governance and workers' participation would involve three main elements:

- revision and extension of the EU directive on investors' rights along the lines of a stakeholders' directive, taking into account all societal groups in the company, including Workers' Voice;
- implementation of a separate new EU directive on minimum conditions for information, consultation and codetermination;
- protection of existing participation rights at national level.

Generally speaking, European law should not offer an open invitation to undermine existing rules. This is already the bitter reality on the ground, however, as many cases in, for example, Germany testify. For example, by reregistering as a European company (SE) a firm can avoid workers' participation unless it was established before the transformation. In this context European law must provide for a so-called escalator effect. In accordance with the escalator approach, companies that resort to instruments of European company law (merger, changes of legal form, division) would be required to establish employee representation at board level. In the case of small companies such board-level representation would initially be modest, increasing to larger proportions in accordance with company size. The European trade unions have been calling for this for a long time, so far in vain.

We would like to harness the impetus of the European Workers' Voice expert group's conclusions to develop the cornerstones of a modern and future-oriented company governance, responsive to citizens.

Workers' participation is a civil right. The issue must urgently be put on the agenda of European politics.

⁴ Judgment of 18.07.2017, Erzberger/Tui, C-566/15, paragraph 19

FURTHER READING



Policy Brief

The I.M.U. Policy Briefs concisely link issues of employee participation with the political agenda and point out political scope for action.

www.boeckler.de/116308.htm



Report

The Mitbestimmungsreport aims to increase public awareness of workers' participation issues. In a short and concise manner, it provides data, facts and recommendations for action on the subject of workers' participation. It is published several times a year on specific occasions and topics.

www.boeckler.de/51908.htm

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