

The policy implications for the UK debate

The debate about board-level employee representation in the UK will have to address the points of variation in existing European systems, including:

- **sectoral coverage:** in some countries board-level employee representation applies to all companies irrespective of sector, whereas elsewhere coverage is restricted to the public sector;
- **legal status of the companies:** in most countries board-level employee representation applies to both private and public limited listed companies, but in the Czech Republic, France, Luxembourg and Slovakia the regulations are restricted to public limited companies;
- **company size:** the range of workforce size thresholds within which board-level employee representation is mandatory varies from companies with 25 employees in Sweden to those with 1,000 employees in Luxembourg and Spain;
- **eligibility criteria:** in most countries board-level employee representatives must be employees of the company. In Austria board-level employee representatives are drawn from members of the works council, while in Germany and Luxembourg eligibility varies by sector. In The Netherlands board level employee representatives are neither employees of the company nor trade unionists with interests in the company, but are normally those viewed as sympathetic to the labour movement;
- **the proportion or number of board level employee representatives:** the provision most frequently found in Europe allows one third of the board to comprise board-level employee representatives. This proportion rises to 50 per cent in some German companies and in the Czech Republic, Slovakia and Slovenia where the company's articles of association allow.

In addition to these sources of variation in European systems, the research presented here suggests three further dimensions for debate:

- **quality of the rights available to employee representatives:** it is clear that a substantial minority of European board-level employee representatives do not have the power to directly influence board-level decision-making. Any UK legislation would thus have to specify the precise form of rights available to employee representatives on the board in order that they are in a position to co-determine decision-making rather than merely having information made available to them and participating in consultation;
- **timing and form of information made available:** both the timing and the form of information must allow board-level employee representatives sufficient scope to assess the information (or receive advice/specialist commentary on the information) and to consult with other board-level employee representatives before an opinion is expressed at the board;
- **training provisions:** if employee representatives are to participate meaningfully in board decision-making a measure to introduce board-level employee representation will need to ensure that representatives have access to appropriate training facilities.

As well as being grounded in the research findings presented above, each of these three points also address the objections raised to the Report of the Bullock Commission concerning the skills of employee representatives and incorporation. In rejecting the recommendations of the Bullock Commission, for example, the Confederation of British Industry argued that employee representatives would not have the skills and expertise necessary to engage meaningfully within the board. Similarly, some trade unionists argued that the recommendations of the Bullock Commission would lead to the incorporation of employee representatives who would come to represent the interests of the company in preference to the interests of the employees and/or would be party to decisions over which they could exert no or little power.

Concluding remarks

Although board-level employee representation is found in a majority of EU Member States, the terms of its operation vary markedly. This briefing has demonstrated that this variation is also a feature of the interventions made by board-level employee representatives at the board and their capacity to influence corporate restructuring. If board-level employee representation is to be introduced to the UK a wide range of policy questions need to be addressed, central to which are those measures that might ensure that representatives who serve on the board are in a position to affect decision-making outcomes. The point here is that a system that allows representatives to be present at decision-making, but does not allow such representatives to affect the outcome of board-level decision-making will be brought into disrepute as representatives will be held responsible by their electorate for decisions over which they are unable to exert power.

Recommendations

- Board-level employee representation needs to be addressed in the light of economic and political changes.
- Supportive measures are needed to ensure that representatives who serve on the board are in a position to affect decision-making outcomes.
- Any system that allows representatives to be present at decision-making must allow such representatives to affect the outcomes in some way of board-level decision-making to avoid falling into disrepute.

Further reading

Gold, M. 2011. 'Taken on Board: An Evaluation of the Influence of Employee Board-level Representatives on Company Decision-making in Europe', *European Journal of Industrial Relations*, Vol. 17, No. 1, pp. 41-56.

Report of the Committee of Inquiry on Industrial Democracy. 1977. Chairman: Lord Bullock. London: Her Majesty's Stationery Office.

Trades Union Congress. 2013. *Workers' Voice in Corporate Governance: A European Perspective*. London: Trades Union Congress.

Trades Union Congress. 2013. *Workers on the Board: The Case for Workers' Voice in Corporate Governance*. London: Trades Union Congress.

The UK policy challenges implicit in board-level employee representation

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Summary

Following the election of a Conservative government in May 1979 debate on board-level employee representation in the UK fell away as industrial democracy was downgraded as a matter of policy concern and attention shifted to the terms of the neo-liberal agenda and, in particular, the means being employed to curtail trade union organisation. A long sequence of corporate scandals, including the banking crisis of 2008, has led to wide-ranging support for new forms of corporate governance. This briefing presents some research findings on the situation regarding board-level employee representation in Europe and assesses the implications of these findings for the current debate on UK corporate governance.ⁱ

ⁱ The Hans Böckler Stiftung funded the research, which resulted in the findings reported here.

Introduction

ii. The Member States with some form of board-level employee representation in place are: Austria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Luxembourg, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. Croatia joined the EU in 2013 after the survey on which this briefing is based was conducted and hence is excluded from the analysis. The legal arrangements for board-level employee representation in Portugal are very rarely implemented. Portugal is thus also excluded from the analysis.

iii. The nine other Member States with no system of board-level employee representation are: Belgium, Bulgaria, Cyprus, Estonia, Italy, Latvia, Lithuania, Malta and Romania.

iv. The 2X+Y formula envisaged X to comprise the representatives of capital and labour in equal numbers and Y to comprise a smaller number of independent members who were acceptable to both elements of X.

Systems of board-level employee representation underpinned by legislation are present in 18 of 28 Member States of the European Union (EU).ⁱⁱ Similar arrangements are also present in Norway. In addition, the terms of the European Company Statute (or Societas Europaea, henceforth SE), adopted in 2001, stipulate rules on board-level employee representation within companies that opt for this European-wide company legal status. These systems vary along a range of dimensions including sectoral coverage, legal status of the company, company size, eligibility criteria for board-level employee representatives, and the proportion or number of board members that are employee representatives. Board-level employee representation is found, however, in companies that operate with unitary board structures and those with dual board structures. Within this majority of EU Member States board-level employee representation is viewed as a key element of employee participation at company level, alongside works councils in dual systems of representation and trade unions in single channel systems.

The UK is one of ten Member States within which there is no system of board-level employee representation.ⁱⁱⁱ Earlier initiatives in this field culminated with the Report of the Bullock Commission in 1977, which recommended the '2X+Y' formula for the composition of the unitary boards characteristic of UK companies.^{iv} Although the Trades Union Congress (TUC) of 1978 carried a motion in favour

of the recommendation of the Bullock Commission and encouraging the then Labour government to implement a system of board-level employee representation in the UK, enthusiasm for the proposal among affiliated unions was far from uniform. The Conservative election victory of May 1979 effectively took board-level employee representation off the political agenda.

Following a lengthy series of corporate scandals in the UK and elsewhere, there is considerable and wide-ranging support for the principle of the reform of corporate governance in the UK. Spokespersons from the three major parties have expressed the view that workers on the board would promote diversity and encourage a shift away from short-term decision-making at board level. There is, however, no consensus in the UK as to the character of preferred reform. In a recent contribution to the current debate the TUC has published two pamphlets, which argue in favour of board-level employee representation for the UK (see further reading section). This briefing outlines the results of a survey of more than 4,000 board-level employee representatives that serve on company boards in 17 European countries or in European companies. The survey results illustrate the variation in European practice, demonstrate that board-level employee representation is not a monolithic single entity, and identify some of the points for debate should board-level employee representation appear on the policy agenda in the UK.



The research

Existing European practice

v. In countries where it was not possible to access or assemble a list of individual board-level employee representatives, questionnaires were sent to companies covered by the national legislation. On this basis an additional 3,898 companies received the questionnaire (in the Czech Republic, Finland, The Netherlands, Slovakia and in the German one-third codetermination system) from which 578 individual responses from board-level employee representatives were received.

The questionnaire-based survey was distributed between 2009 and 2012 to 17,430 board-level employee representatives in their native language of which 4,124 returned the questionnaire, constituting a rate of return of 24.9 per cent.^v For ease of presentation the data are grouped into eight clusters: all; Germanic: Austrian and German respondents; Nordic: Danish, Finnish, Norwegian and Swedish respondents; The Netherlands; Francophone: French and Luxembourgish respondents; New Member States (NMS): Czech, Hungarian, Polish, Slovakian and Slovenian respondents; IGS: Irish, Greek and Spanish respondents; and SEs: respondents based in companies that have adopted the status of a European company. Table 1 shows how board-level employee representatives define their intervention at the board. Two points are immediately apparent.

First, there is marked variation in the character of the interventions made by board-level employee representatives between country clusters. Board-level employee representation is thus not a monolithic category. In the

Germanic and NMS clusters, where dual board systems predominate, for example, the largest single proportion of board-level employee representatives 'control the management through supervision'. This situation is replicated among board-level employee representatives in the SEs, the majority of which operate in companies of German origin. Compared to the Germanic and NMS clusters, a greater proportion of Nordic board-level employee representatives both 'discuss matters with other board members until a shared position is reached' and 'co-manage the company by participating in decision-making'. The character of interventions at the board made by Nordic board-level employee representatives thus differs from that of Germanic and NMS board-level employee representatives. More pronounced in this regard is the pattern of intervention in The Netherlands. It should be acknowledged, however, that Dutch representation at board level comprises persons who are neither employees of the company nor trade unionists with interests in the company. That Dutch representation differs from elsewhere may contribute to the unique character of intervention illustrated by Table 1.

Note:
1. The index score was calculated by subtracting the sum of percentage scores recorded for 'not very influential' and 'not at all influential' from the sum of percentage scores recorded for 'very influential' and 'influential'. 'Intermediate' scores were thus excluded from the calculation of the index scores.

Table 1: Regarding the actual practices of the board, do you...?

	All %	Germanic %	Nordic %	The Netherlands %	Francophone %	New Member States %	Ireland, Greece and Spain %	SEs %
Co-manage the company by participating in decision-making	12.6	11.5	14.6	37.8	0.7	10.4	7.1	10.5
Discuss matters with other board members until a shared position is reached	20.4	15.8	23.5	35.1	7.5	22.8	35.7	13.2
Control the management through supervision	21.7	31.5	11.0	16.2	10.9	38.4	28.6	21.1
Are consulted, but the final decision rests with other board members	29.2	28.9	30.2	8.1	60.5	19.5	14.3	39.5
Are informed, but have little opportunity to discuss matters	16.0	12.2	20.7	2.7	20.4	8.9	14.3	15.8
	N=4,008	N=1,386	N=1,902	N=37	N=147	N=508	N=28	N=38

Second, a substantial minority of board-level employee representatives, 45.2 per cent of all respondents, intervene at the board only by means of information and consultation. This minority does not have the power to directly affect the outcome of board-level decision-making, although an indirect influence may be brought to bear through consultation. While the exclusion of board-level employee representatives from a direct effect on board-level decision-making is a phenomenon present in all country clusters, only in the Francophone cluster is it a majority phenomenon with no fewer than 80.9 per cent of board-level employee representatives reporting that their intervention is at the level of either information or consultation. This result for the Francophone cluster is particularly surprising in the light of French legislation enacted in June 2013 with the agreement of three of the French trade union confederations (Loi relative à la sécurisation de l'emploi), which extended the coverage of board-level employee representation to include large private sector companies in addition to the state-owned and privatised companies that were covered before 2013 without strengthening the capacity of board-level employee representatives to influence the board-level decision-making.

Table 2 further explores the character of the interventions made by board-level employee representatives at the board in asking how much influence they were able to exert over decisions to restructure the company in which the board was located. Note that the values

of 'N' for Table 2 are lower than for Table 1 as 28.2 per cent of all respondents reported that no restructuring had taken place during the two years prior to the distribution of the survey, thus confirming the high current rate of company restructuring in Europe.

The headline point from Table 2 is that, with the exception of the IGS and Dutch clusters, the index scores are negative, indicating that more board-level employee representatives reported that they lacked influence than claimed that they exerted influence over company restructuring decisions. The negative index scores are particularly high in the Francophone (-25.7) and NMS (-22.8) clusters. The negative index score for the Francophone cluster is consistent with the absence of direct power reported by Francophone board level employee representatives in Table 1. The situation in the NMS does not replicate that in the Francophone cluster on two counts. First, there are particularly high rates of company restructuring in the NMS as the transformation of the command economies continues apace. Second, the high rates of foreign direct investment in the NMS has resulted in many companies operating in the NMS with headquarters based elsewhere. In these circumstances board-level representation does not guarantee access to managerial decision-makers. Senior managers of a multinational company based in the United States making a decision to restructure European operations, for example, are likely to make no or little reference to board-level employee representatives of a subsidiary based in a NMS.

Table 2: If your company has restructured over the past two years, how influential were you on the process?

	All (N=3,008) %	Germanic (N=1,094) %	Nordic (N=1,463) %	The Netherlands (N=33) %	Francophone (N=101) %	New Member States (N=298) %	Ireland, Greece and Spain (N=19) %	SEs (N=27) %
Very influential	6.8	6.0	7.7	12.1	2.0	6.4	5.3	3.7
Influential	25.3	27.0	25.0	45.5	20.8	18.4	42.1	29.6
Intermediate	27.3	32.1	23.8	24.2	28.7	27.5	15.8	33.3
Not very influential	24.5	27.0	21.4	18.2	33.6	27.9	31.5	25.9
Not at all influential	16.1	7.9	22.1	0	14.9	19.8	5.3	7.4
Index score ¹	-8.5	-1.8	-10.9	+39.4	-25.7	-22.8	+10.5	0