

**“FINAL CALL: NOW BOARDING!” Expressing
Employees’ Strategic Interests in Europe’s
Boardrooms and the European Internal Market**

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Extent of EBLR across Europe: Germany

Employee board-level representation (EBLR)
until 1970s largely restricted to Germany

Roots in Weimar Republic, though
contemporary form dates from 1951 (iron and
steel) with many later extensions and
amendments

Extent of EBLR across Europe: elsewhere

France: 1946 (consultative capacity); 1983 (public sector – compulsory); 1986 (private sector – optional)

Netherlands: 1971

Denmark, Sweden: 1973

Austria, Luxembourg: 1974

Ireland, Greece, Portugal, Spain: public sector

Czech Republic, Hungary, Malta, Poland, Slovakia, Slovenia:
more or less extensive rights

Belgium, Italy, UK: no legislation

EBLR: patterns of implementation

EBLR most likely to be found in 'co-ordinated market economies' rather than 'liberal market economies':

- generally consensus-based industrial relations (IR)
- creation of 'industrial citizenship'

Industrial citizenship includes collective rights to information, consultation and co-decision making at board and sub-board levels

Impact of EBLR: the economy

Rather sparse research, with focus on

- Company, e.g. share value
- macro-economic performance, e.g. GDP, labour productivity

Impact appears to be neutral/ beneficial

Impact of EBLR: operation of the board

Theory: high level of integration of EBLRs with other board members leads to high influence... Low level of integration implies exclusion

Risk: might high integration alienate EBLRs from their constituents (problem of incorporation)?

That is, EBLRs may gain influence through compromise, but the cost is incorporation into management norms and values (UK/US literature)

But this risk appears not to concern EBLRs... Why? What strategies do EBLRs adopt on the board to maximise their influence?

Hence this research...

An initial attempt to evaluate EBLR influence in Europe

20 interviews (April-July 2009) with EBLRs

Selected through ETUI (all union activists)

Semi-structured format, on phone

EBLRs asked to:

- Reflect on their influence on the board
- Evaluate relationships with other board members
- Assess achievements/disappointments

Operation of the board

13 countries in the survey, complex institutional arrangements:

- 5 unitary boards
- 6 supervisory boards
- 2 allow choice (France, Hungary)

Single EBLR: four cases

Minority EBLR in all other cases, bar two (one parity, one majority)

Boards met between once and 12 times a year

Only four had no subcommittees: EBLRs generally involved in them too

Links with workplace representatives and unions

EBLRs have close links with workplace representatives, e.g. works councils and unions, according to national legislation

All are active unionists, e.g. branch secretaries

Nordic EBLRS also sit on company negotiating committees

French law prohibits EBLRs from membership of works councils;

Dutch law requires EBLR nomination through works council, but prohibits any other link with the company

Austrian/German EBLRs active on works council

Nordic, Czech and Polish EBLRs active in trade union branch (equivalent of works council)

Relationship with other board members (1)

Focus on employment relations

‘Professional relationship with shareholder representatives’

Specialism in employment relations rather than general strategy

– not competing with shareholder interests but adding a worker perspective:

‘We think of the employees, who other board members sometimes forget.’

‘I try to ensure that a return on capital isn’t the only criterion of company policy.’

Discourse generally reflects sense of common purpose with other board members.

Relationship with other board members (2)

Disagreement

Occasional serious disagreement, e.g. in a Dutch company, over dividend payments

But shareholders themselves not always a cohesive bloc:

- Mergers and acquisitions
- Outsourcing to 'low cost' EU countries
- New building

Relationship with other board members

Of course, the shareholders' representatives can outvote us, if they wish. But the dividing line between the two sides is not as clear-cut as it may seem. We don't just vote against everything on principle, but we don't just say 'yes' and 'amen' to everything either. Sometimes the better argument wins and our proposal is accepted... As a result of preliminary talks, ultimately, it happens only rarely that we vote against submissions on the supervisory board. *However, everyone knows that 'no' is always an option for us and this knowledge is enough to get people to seek a consensus.*

(Austrian EBLR)

Relationship with other Board members (3)

Compromise

Opening discussion on the board is important in its own right
- implicit is a 'mutual readiness to compromise'

The board wants compromise so that EBLRs 'can't turn round later and say, "we didn't agree!"'. (German EBLR)

Ad hoc alliances create a 'critical consensus'

Czech, Hungarian and Polish law allows EBLRs to submit minority reports to shareholders in case of dissent – all had used this right, e.g. on health and safety and redundancies

Relationship with other board members (4)

Confidentiality

EBLRs develop coping strategies:

One refused all confidential information unless it affected the workforce

Others removed certain figures or provided data without a source

Some requested prior clarification with senior management over what could/ could not be disclosed, and negotiated accordingly

One requested senior management or the CEO to brief staff

Evaluation

Membership of board generally seen positively as it:

- provides an additional way to acquire information/represent workers
- makes both sides 'more realistic' about issues
- 'improves quality of decisions'

Specific areas included health and safety, investment strategy, grading and remuneration, mergers and acquisitions, pensions and relocation.

'Global financial crisis might alter the challenges, but the basic role would stay the same.'

Discussion

The board is the key arena in which decisions about corporate strategy are made: linked to this *level* is the *stage* at which decisions are taken

- Strategic decisions involve *planning*
- Sub-board decisions generally involve *implementation* and *monitoring*

So level and stage are intrinsically linked:
a failure to study EBLR is a failure to study corporate planning

Discussion

Incorporation not an issue, as EBLRs:

- Are well integrated into works council and/or union structures
- Share support structures, for advice/discussion
- Share sense of identity
- Develop knowledge of employment relations as specialist skill
- Are generally supported by other EBLR colleagues on the board (important that there is more than one EBLR)

Discussion

EBLRs shared many similar experiences:

Consensus building on the board

Generally constructive relationships with shareholder representatives

Challenges faced

Constraints of time/confidentiality

Links with workplace representatives and unions

Some similarities reflect length of service/ union profile, but also the common challenges facing multinationals

All EBLRs cited some degree of influence over decisions and most cited ability to form ad hoc alliances with shareholder representatives

Conclusions

Resistance to incorporation

EBLR experiences appear to reflect pluralist, not unitarist, perspectives

Focus on employment matters allows discourse generally to reflect common purpose with other board members

Compromise is generally reached because 'voting no is always an option', and boards want to keep members united so no one can later say 'we didn't agree'

Ad hoc alliances with shareholder representatives create a 'critical consensus'

Confidentiality is an issue, but EBLRs develop coping mechanisms (forms of 'creative compliance')

Conclusions

These findings bear out earlier research on EBLRs in Europe: they are closely linked to other channels or representation, especially unions, and relatively satisfied with their position.

But *influence* over board-level decisions is patchy (Carley, 2005; Stern, 1988), and is generally limited to employment relations. However, advantages for EBLRs include:

- Improved access to information
- Ensuring greater management caution over decisions affecting job security
- Introduction of employment relations into the boardroom
- Formulation of more balanced corporate strategy and creation of a more broadly-based stakeholder-oriented company structure...

References

- Addison, J.T. and Schnabel, C. (2009) 'Worker Directors: A German Product that Didn't Export?', *IZA Discussion Paper* no. 3918, January. Bonn: Forschungsinstitut zur Zukunft der Arbeit/ Institute for the Study of Labour.
- Appelbaum, E. and Hunter, L.W. (2005) 'Union Participation in Strategic Decisions of Corporations', in R.B. Freeman, J. Hersch and L. Mishel (eds) *Emerging Labor Market Institutions for the Twenty-First Century*, pp.265-92. Cambridge, Mass.: National Bureau of Economic Research.
- Auberger, M.-N. and Conchon, A. (eds) *Les administrateurs salariés et la gouvernance d'entreprise*. Collection les études. Paris: La documentation française.
- Bank, J. and Jones, K. (1977) *Worker Directors Speak*. Farnborough: Gower Press.
- Carley, M. (2005) 'Board-level Employee Representatives in Nine Countries: A Snapshot', *Transfer* 11(2): 231-43.
- Dukes, R. (2005) 'The Origins of the German System of Worker Representation', *Historical Studies in Industrial Relations* 19: 31-62.
- Fulton, L. (2006) *The Forgotten Resource: Corporate Governance and Employee Board-level Representation. The Situation in France, the Netherlands, Sweden and the UK*. London: Labour Research Department.
- Gold, M. (2005) 'Worker Directors in the UK and the Limits of Policy Transfer from Europe since the 1970s', *Historical Studies in Industrial Relations*, No. 20: 29-65.
- Hall, P.A. and Soskice, D. (2001) 'An Introduction to Varieties of Capitalism', in P.A. Hall and D. Soskice (eds) *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage*, pp. 1-68. Oxford: Oxford University Press.
- Hunter, L.W. (1998) 'Can Strategic Participation be Institutionalised? Union Representation on American Corporate Boards', *Industrial and Labor Relations Review* 51(4): 557-78.
- Kluge, N. and Stollt, M. (2006) *The European Company – Prospects for Worker Board-level Participation in the Enlarged EU*. Brussels: Social Development Agency and European Trade Union Institute.
- Kluge, N. and Vitols, S. (2009) 'The European Company: A Pilot for Integrating Shareholder Value into Stakeholder-oriented European Societies?', in M. Gold, A. Nikolopoulos and N. Kluge (eds) *The European Company Statute: A New Approach to Corporate Governance*, pp. 67-83. Brussels: Peter Lang.
- Levinson, K. (2000) 'Codetermination in Sweden: Myth and Reality', *Economic and Industrial Democracy* 21(4): 457-73.
- Levinson, K. (2001) 'Employee Representatives on Company Boards in Sweden', *Industrial Relations Journal* 32(3): 264-74.
- Stern, R.N. (1988) 'Participation by Representation. Workers on Boards of Directors in the United States and Abroad', *Work and Occupations* 15(4): 396-422.
- Vitols, S. (2008) 'The Evolving System of Corporate Governance: Implications for Worker Participation', *Transfer* 14(1): 27-43.