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Corporate Governance and Employee Voice: An EU Perspective (full text)

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Introduction

The economic power of corporations raises problems of governance and accountability. Shareholders who invest capital often become remote from those managing corporations, creating a separation of ownership and control (Berle/Means 1932) or in many European countries large block shareholders come to dominate relative to minority interests (Becht 1997). In addition, the large scale employment of labour within national and multinational corporations raises questions of representation for employees in corporate decision making and the effects of financial markets and corporate governance on employment systems. More broadly, corporate management faces questions of social responsibility and democratic accountability to other national and public interests (Donnelly, et al. 2001).

While these issues are universal, corporate governance is addressed in different ways in different countries. International comparisons often contrast two broad types of systems, variously labelled as market vs. relational, shareholder vs. stakeholder, Anglo-Saxon vs. Continental European. However, much comparative research supports the idea that there are more variants of corporate governance and that no one best system exists. In practice, different arrangements may contribute to comparative advantage for different countries, industries and firms, and phases of economic development (Hall/Soskice 2001)

Over the last two decades, national diversities in corporate governance have come under pressure from the growing internationalisation of firms and finance. In particular, countries with more relational / stakeholder systems have faced pressure to adopt practices from the more market / shareholder systems. At the same time, new national laws and codes have been introduced in a number of countries, especially in the wake of various corporate scandals. In addition, international standards have been developed, in the case of the European Union (EU) by laws and in the case of the Organisation for Economic Cooperation and Development (OECD) by codes (Aguilera/Cuervo-Cazurra 2004)

Corporate governance reform operates in the context of different national regimes of employee participation and diverse institutional arrangements for employee voice (Streeck 1997; Streeck 2001; Gospel/Pendleton 2005). Key questions are as follows. How do these pressures affect different national systems of employment relations and employee voice ? How do different institutions for employee participation and voice cope with these new pressures and practices ? What is the role of employee voice in governance ? What should or might be the role of employee voice in developing national systems such as that of the EU ?

This paper considers the linkages between corporate governance reform and employee voice in the context of the EU. Section 2 provides some basic perspectives on corporate governance. Section 3 briefly reviews the literature on different national systems of governance, with particular reference to diversity within the EU. Section 4 then identifies certain key mechanisms of corporate governance. Section 5 attempts to map these governance mechanisms against present EU regulation, with special reference to employee voice. This is done, so as to be able in section 6 to identify whether a gap or deficit exists at the present time in the EU approach to corporate governance, viewed from an employee voice perspective. The penultimate section considers whether greater employee voice would make for better governance and better company performance. Finally, policy considerations are considered in the final section.

What is corporate governance ?

Broadly, corporate governance is concerned with the rights and responsibilities of different groups in the firm and how this relates to the protection, creation, and distribution of wealth. Different perspectives exist on how to define corporate governance, as well as what constitutes 'good' corporate governance. Here we present a spectrum of three different, albeit stylized, views, broadly representing shareholder, enlightened shareholder, and stakeholder perspectives.

(1) One perspective sees the key relations in corporate governance as revolving around the link between investors, primarily shareholders, and the directors, executives, or senior managers who run the firm. According to this 'shareholder' perspective, the company is viewed as a private body whose members are the shareholders engaged in a private contract that should be subject to as little public regulation as possible. Corporate governance concerns principal-agent relationships, in other words the relationship between shareholder principals and managerial agents, with the latter overseeing and running the firm on the former's behalf. Good corporate governance means aligning the interests of shareholders and senior managers with a view to the maximisation of shareholder value (Shleifer/Vishny 1996 ; JEcLit article). According to this view, employees are assigned no role in corporate governance.

(2) A second perspective on corporate governance is the 'enlightened shareholder' or 'instrumental stakeholder' perspective (Jones 1995 ; Kay ; Keasey/Thompson/

Wright 1997; Parkinson/Kelly 2001). With some variants, this states that satisfying various stakeholders is both morally desirable and makes good business sense; firms which build good relations with stakeholders gain competitive advantage. However, the primary responsibility for the running of the firm is vested in senior managers and their task is essentially to balance or integrate the interests of the different stakeholders; ultimately, the basic test of good governance remains the protection and increase of shareholder wealth (O'Sullivan 2000; Parkinson/Kelly 2001). According to this view, employees should be involved in governance, but the means of involvement are left indeterminate.

(3) A third 'stakeholder' perspective sees the key relations as more diverse and also more explicitly conceives of a public interest in relation to corporate governance. Corporate governance is seen in terms of the relationship between various parties, including not only investors and senior managers, but also employees and other stakeholders, including those external to the firm, such as local and national communities. A broader set of stakeholder goals and interests are to be satisficed, and there is more of a role for the state in ensuring this occurs. This view has been influential in continental European law and practice (Donaldson 1989; Donaldson/ Preston 1995; Freeman 1984; Parkinson 1993; Parkinson/Kelly 2001). Under this view, employees are involved in governance and the means of involvement are likely to be more constitutionalised.

In part these three perspectives relate to which groups constitute the firm. Under the first, perspective, investors and senior managers are the only significant group. Under the second perspective, some role is given to employees and other stakeholder groups. Under the third perspective, a greater and more formal role is given to stakeholders and the state is conceded more of a role in shaping corporate governance systems. This latter is an important historical fact. At certain key junctures, states have intervened in ways which have significantly shaped governance systems. For example, even in the market-orientated US, Roe (1994) has argued that, in the late nineteenth century, the government intervened to constrain big finance, especially banks, to favour small shareholders, with important long-term consequences for the US system of corporate governance. Germany provides another example. In the aftermath of two world wars and with fears of labour strife, governments in that country intervened to create governance systems which gave labour voice via board representation and works councils, and to the present date these are important aspects of the German corporate governance system.

While this debate between different perspectives cannot be resolved here, two common elements can be discerned here. One is that corporate governance concerns the accountability of directors and senior managers for how they run the firm. In short, corporate governance relates to the 'structure of rights and responsibilities' of those with an interest in the firm (Dore 2005; Aoki 2001a). A second is that corporate governance should both minimise downside risks and enable management to engage in entrepreneurial activities that maximise the benefits of upside wealth creation (Keasey/Thompson/Wright 1997). This has sometimes been referred to as the wealth-protecting and wealth-creating sides of corporate governance (Filatotchev/Wright 2005). The focus on the creation of wealth.

Different systems in practice

In considering the possibilities for developing an EU corporate governance framework, it is important to keep in mind the existence of different European systems in practice, since this will shape and constrain what the EU may be able and may wish to introduce.

As already suggested, the empirical literature has tended to identify countries as having one of two bipolar models of corporate governance. Thus, one type is referred to as a 'market / outsider' and the second as a 'relational / insider' system. Market forms of finance emphasise equity and short-term debt, and the possibility of shareholder exit and the market for corporate control are important outsider aspects of governance. Relational forms of finance emphasise more long-term shareholdings and debt and the ability of large shareholders and debtholders as insiders to be directly involved in governance (Allen/Gale 2000; Mayer 1998). These typologies usually contrast the Anglo-Saxon with other continental European or Asian models of corporate governance (Becht/Roel 1999; Berglöf 1991; La Porta/Lopez-de-Silanes/Shleifer 1999). The US, UK, and other Anglo-Saxon countries are usually seen as having market / outsider systems and their economies have more broadly been typified as liberal-market economies. The stylized characteristics involve significant financing via equity, dispersed ownership, and active markets for corporate control. Many of the countries of continental Europe are seen as having relational / insider systems and their economies are sometimes broadly described as coordinated market economies (Hall/Soskice 2001). The latter are typified more by long-term debt finance, ownership by large blockholders, and weak markets for corporate control.

These typologies provide some insights. However, they may be criticised as excessively broad, failing to capture differences and similarities between systems and emerging international trends. In practice, the EU countries have a number of broad 'models' – Anglo-Saxon, German, Scandinavian, and Latin types (Rhodes/van Apeldoorn 1997). Closer examination shows further differences within these types – for example, differences in the role of equity, banks, and the state between 'Latin' countries of France, Italy, and Spain (Aguilera/Jackson 2003). This classification also only partially fits emerging Eastern European practices (Martin 1999; Wright/Buck/Filatotchev 2003).

Here we briefly cite two European archetypes to demonstrate the complexities and trends in corporate governance and employee voice systems at the present time.

In the case of the UK, it is true that there are elements of a market-outsider system: it has a large and active stock market, puts emphasis on shareholder value, and has a high level of M&As. However, most financing is via retained earnings. The UK also has a high and growing concentration of ownership which allows a few large investors to play a quasi-insider role and for these investors to reduce the emphasis on short-term returns. Voice has not been legally embedded in UK companies. However, these arrangements are not incompatible with investment in human capital and with the provision of voice to employees (Armour/Konzelmann 2003; Bacon/Berry 2004; Pendleton/Gospel 2005). In terms of the regulatory framework, UK company law has developed to acknowledge a role for other stakeholders in the firm and this is included in new legislation. The present Company Law Reform Bill states that it is the directors' duty to promote the success of the company for the benefit of its members as a whole, and, in fulfilling this duty, the directors must have regard to both short- and long-term factors and wider interests including those of employees and other stakeholders. In addition, it should be added that, along with collective bargaining, UK firms often have joint consultative arrangements and these now potentially have legal support through the Information and Consultation of Employees Regulations, derived from EU regulation (ref Directive and Regs; Gospel/Willman 2005).

In Germany, the finance and governance system has been characterised by the importance of banks in finance, high ownership concentration, patient long-term investment, and legally-based insider stakeholder participation in governance. However, in recent years, there have been major changes in the finance and governance system – a decline in the role of banks, an unwinding of corporate networks, a rise of foreign and institutional investors, the beginnings of a market for corporate control, and a growing financial orientation of top management. It has been argued that such moves in Germany are feeding through to labour, with the growth of contingent employment and contingent pay. To date, they have had less effect on employee voice systems via codetermination, works councils, and trade unions. However, some have suggested that such developments may be one factor behind a shift in the balance between what is done via trade unions and codetermination on the one hand and works councils on the other hand, with works councils playing an increasing role in concession-type bargaining (Höpner 2001; Jackson/Hoepner/Kurdelbusch 2005).

It is necessary to keep in mind such complexities and dynamics when considering the possiblities for a corporate governance framework encompassing the EU, establishing a floor, let alone any harmonisation, of arrangements.

What are the main mechanisms of 'good' corporate governance?

Given our broad perspective on corporate governance, what elements or practices can be considered as mechanisms of good corporate governance? Moreover, how is, or might, employee voice be related to different governance mechanisms? Here we draw on a recent review of corporate governance which has identified broad families of mechanisms and within them more specific dimensions (Filatotchev, Jackson, Gospel, Allcock. 2006). We also consider possible mechanisms for employee voice or involvement. These are outlined below.

Corporate boards. Boards are key monitoring and controlling institutions which provide essential resources for senior managers. Independent directors are usually seen as playing a particularly important role. Most countries have moved toward some separation of supervisory and managerial functions within the board, either by a two-tier board or by separating the functions of chairman and chief executive within a one-tier board. Special board committees, such as audit and remuneration committees, play a role in assuring qualified engagement in particular aspects of monitoring, providing detailed specialist resources and adding further checks and incentives for directors and senior managers. In terms of boards, the main mechanism for employee voice is to have employee representation within the supervisory board and its committees that gives employees some rights of codetermination in major company decisions. A majority of EU countries have such provisions, although these remain weak in some countries (Jackson 2005). The argument for employee involvement is that this increases board independence, since members are nominated independently from management, and it also increases diversity by having more pluralistic boards. Some debate remains as to whether the divided nature of codetermined boards leads to lower engagement in board processes, but no conclusive empirical evidence exists on this point (unclear sentence, citation).

Incentive structures. Aligning incentives between principles (shareholders) and agents (directors) is often considered an important element of good corporate governance. Executive remuneration is made up of various elements, including basic salary and increasingly share-option schemes of various kinds. On the one hand, executive remuneration can play an important role in encouraging senior managers to ensure good governance and to reward performance. On the other hand, remuneration systems can be misused and can be an indicator of bad governance. If well designed, executive remuneration can act as an incentive to senior managers to ensure good governance and wealth creation. In terms of pay, employees can play a potential role in designing schemes that set careful performance targets. For example, some important differences exist in the nature and composition of incentive schemes in Germany and the UK which may reflect the input of labour representation (Buck/Shahrim 2005;

Fiss/Zajac 2004). Likewise, strengthening the link between managerial salaries and employee salaries or well-being may help align incentives inside the firm, and limit internal agency problems that may hinder effective implementation of company strategy.

Audit and internal control. An independent audit process which scrutinises financial and strategic information and documents represents a potential driver of good governance. Moreover, internal organisational rules and procedures are important to assure effective risk management and transparency of the organization. This integration requires appropriate functional links and information flows. Employee participation may help strengthen corporate cultures with regard to transparency. More directly, employment protection for whistleblowers is a feature of good corporate governance that supports the early discovery of unacceptable and illegal practices within the company.

Information disclosure. The provision of good and timely information is a cornerstone of corporate governance. Disclosure allows stakeholders effectively to monitor directors and senior managers and to make decisions about their investments and assets within the firm. The employee dimension here is two-fold. First, information rights are an important prerequisite for any effective employee involvement in company decision making, through works councils, joint consultation committees, or other mechanisms . Importantly, information disclosure must be early enough to affect company decisions, which raises important issues around the timing of disclosure to employees relative to disclosure to investors. Second, information disclosure more broadly might incorporate more detailed or standardized reporting of employment patterns, investments in human capital, or compliance with international labour standards. This information would be an important prerequisite for more effective socially responsible investment among funds wanting to support greater stakeholder orientation using market mechanisms.

Investor involvement. Shareholders and debt holders may be more or less active in monitoring the board and senior management of the firm. Involvement is seen as a requirement for good corporate governance in that other mechanisms, such as information disclosure, board independence, or the market for corporate control, depend on effective input from investors taking an active stance toward the company and making informed and responsible decisions. Employees may play a role here in several ways. First, employees may have a direct ownership stake in the firm through employee share ownership plans. These schemes can also include an element of voice in so far as they are collectively administered so that shares stay in the hands of employees and votes can be exercised in an active way. Second, employees also have indirect ownership stakes through company pension plans. Here the use of socially responsible investment (SRI) guidelines and employee representation in the governing bodies of pension funds may play an important role in those funds ensuring a more active stance toward corporate governance issues. Third, employment considerations can play an important role for investors using SRI funds that take account of labour practices as part of their investment criteria.

The market for corporate control. Takeovers constitute a potentially important mechanism for replacing inefficient senior management and bringing about important business restructuring. However, the market for corporate control may also lead to opportunistic behaviour and 'breach of trust' through asset stripping and the elimination of healthy competition. Here employees and employment outcomes are important considerations in M&A strategy, and may be reinforced by disclosure of relevant information regarding business strategy and employment outcomes by bidding firms. In some countries, employee representatives are also allowed to respond formally to takeover bids as part of the target firm's published response. Moreover, employees may play an important role in supporting or vetoing takeover defences through the board – where defensive actions entrench managers without creating value, employees may support removing them.

Stakeholder involvement. Good corporate governance is associated with the protection of stakeholders from residual risks and facilitation of firm-specific investments that help protect and protect and create wealth. Stakeholders such as employees, customers, communities, and the state may address their interests by contractual or external regulatory measures, or be given internal 'voice' as part of corporate governance. In terms of employees, such voice is traditionally supported through channels of collective representation regarding employment issues, such as works councils, joint consultation committees, or trade unions. These bodies may have rights to information, consultation, co-decision, or bargaining regarding particular business decisions. More broadly, stakeholders may also be represented with corporate boards. Likewise, stakeholders may form other advisory, professional, or regulatory bodies on a voluntary or soft-law basis to promote dialogue with companies, as in the case of standard setting on employment or environmental matters.

Table 1. Mechanisms of 'Corporate Governance and their Employee Dimensions

Family of corporate governance mechanisms	Specific sub-mechanisms	Potential employee-related dimensions
Corporate boards	Independence Diversity Effective board committees e.g. for audit and remuneration	Board representation
Incentive alignment	Long-term performance-related incentives for directors Transparent and independent control of executive remuneration committee	Board representation Pay related to company performance
Audit and internal controls	Independence of the external auditors Competence of the audit committee Presence of internal control systems	Board representation Board representation Whistleblowing by employees
Information provision	Breadth and depth of public information disclosure Breadth and depth of private information sharing	Information disclosure to employees and their representatives. Information disclosure regarding employment, investments in skills, etc.
Investor involvement	Shareholder involvement Debtholder involvement Presence of large-block shareholders	Employee share ownership plans and pension fund involvement Employee share ownership plans and pension fund involvement Socially responsible investment (SRI)
Market for corporate control	An active market for corporate control Transparency and protection for shareholders and stakeholders during M&As Board power in takeover bids, subject to shareholder veto	Employee voice during mergers and transfer of undertakings Bidder and target firm disclosure of business strategy and employment prospects
Stakeholders	Broad stakeholder involvement in corporate governance (e.g. community, NGOs, employees, etc.) Employee participation in financial outcomes and collective voice in decision-making	Individual and collective voice mechanisms for employee voice (e.g. codetermination, works councils, etc.) Employee share ownership, performance related pay Representation in pension fund management

These broad families of mechanisms and the more specific sub-mechanisms are summarized in Table 1. Potential employee-related dimensions are also outlined.

Where does the EU stand at present in terms of corporate governance regulation, with particular reference to employee voice?

There are a number of sources of regulation of corporate governance in the EU. These exist along a spectrum from 'hard' to 'soft' law. In practice, the former facilitates the latter and the two increasingly intersect.

Hard law refers to the primary law contained in EU Treaties, dating from the initial 1957 Rome Treaty onwards. For the most part, the various Treaties set out broad principles and have traditionally had little to say about details such as corporate governance or employee voice. Hard law also covers the secondary legislation which is based on the Treaties and which takes the form of Regulations and Directives. Regulations are directly applicable to all member states and are binding in their entirety. They have automatic effect across the EU, without the need for transposition into national law. Directives are also binding, but are not directly applicable and only become effective after transposition into national law. Within the spirit of the law, Directives are therefore intended to allow for greater flexibility and for introduction according to the circumstances of each member states.

Soft law measures take various forms. Some are broad such as the 2000 Charter of Fundamental Rights which enshrines concepts such as decent work and collective rights. Some are more specific and take the form of Recommendations and Opinions on particular matters. In addition, since the 1990s, the Social Dialogue process has allowed for rulemaking by employers' organisations and trade unions, at the level of the whole EU or for particular sectors. To date, agreements have been concluded on topics such as telework and stress. Likewise, an agreement is in the making on equal opportunities [?]. The agreements are not legally binding, though they can be incorporated into hard law and the actors have to take account of them. Also under the heading of soft law are Employment Strategies, as introduced through the 1990s. This now also takes the form of the Open Method of Coordination. Again, these are not legally binding, but member states have to report back on their actions and attainment of targets. This constitutes a form of indirect pressures brought on governments via benchmarking. Finally, soft law also encompasses areas such as accounting standards, where regulation has been created by self-governing bodies, but underpinned by EU law.

Regulation relevant to corporate governance and employee voice is to be found in various areas of EU law. We group these under two broad headings – employment and company law. These come under different Directorates General and, in practice, have been two largely separate trajectories of development in the EU.

Employment law is anchored in the Treaties, a number of Regulations (e.g. mainly concerned with the movement of workers and equal treatment), and a large number of Directives. Many Directives deal with health and safety matters and have little relevance to corporate governance, except where they place obligations on management and allow for the information and consultation of employees on such matters. A significant number of other Directives are concerned with discrimination and equal treatment. However, a number of Directives touch on corporate governance questions. Some are essentially single event-driven in that they allow for information and consultation in specific instances, such as collective redundancies and mergers and acquisitions. Two Directives are more process-driven in that they allow for employee voice of a more on-going kind, through European works councils and information and consultation of employees in domestic companies. Softer law, in the form of Recommendations, Opinions, and Social Dialogue in the employment law area have been little concerned with corporate governance type issues.

In the company law area, a number of Regulations cover corporate governance, in particular those covering European economic interest groups, insolvency, and the status of international accounting standards. In addition, a key Regulation regards the establishing of the European company (*Societas Europea* SE). The European company is a potentially important aspect of European corporate governance in that it provides a possible constitution for companies which desire to have a European-wide legal entity. A related Directive provides possible forms of employee participation in such companies. However, the SE is an enabling piece of law and to date few companies have chosen to adopt the form.

Over the years, Directives have been introduced related to areas of company law such as the establishment of companies, capital maintenance, annual accounts, auditors, affiliated undertakings and branches, and the transfer of registered offices between member states. In the area of securities law, Directives also regulate listing rules, prospectuses, reports, major shareholdings, and insider dealings. Other directives relate to insolvency law and corporate restructuring. An important area related to both company and competition law concerns Directives on mergers, the division of companies, cross border mergers, and takeovers. Here some intersection exists with employment law, in the case of acquired rights of companies which transfer undertakings. Recommendations and Opinions on corporate governance cover topics such as the quality of audits, the independence of auditors, and the disclosure of information on environmental issues.

At the present time, various proposals exist related to corporate governance as discussed above. In the area of employment law, the current agenda has only very few ongoing proposals, especially regarding what touches on corporate governance. In the area of company law, however, a more extensive action plan exists and proposals have been made for a Directive on disclosure.

The two Tables below present a summary 'map' of present EU regulation of corporate governance organised according to our key mechanisms. Thus, the rows represent the various groups of mechanisms and the columns show the different elements of regulation. The mechanisms are then ranked against the regulatory framework. A score of O indicates that there is nothing which deals with the particular mechanism in EU law. The mechanisms are then assessed against the law on a three-point scale of high, medium, and low as to whether regulation covers and supports each mechanism.

Table 2. Is there EU regulation?

Mechanisms and of corporate governance	Employment Law	Company law, including securities, insolvency, and competition law
Corporate boards	O	Medium
Incentive alignment	O	O
Audit and internal control	O	Low
Information provision	Medium	Medium
Investor involvement	O	Low
Market for corporate control	Low	Medium
Stakeholders	Medium	Low

Notes: The table includes the main relevant Regulations and Directives in the following areas – employment law, company law, securities law, insolvency law and competition law. Soft law is also included. European-wide accounting standards are also included.... The scores indicate high, medium, low, and no regulation. This attempts to capture the content and amount of regulation on a particular topic. It does not attempt to capture the actual implementation and feed through of the regulations.

Table 3. Does EU regulation provide for employee voice?

Mechanisms of corporate governance	Employment Law	Company law, including securities, insolvency, and competition law
Corporate boards	O	Low
Executive remuneration	O	O
Audit and internal control	O	Low
Information provision	Low	Low
Investor involvement	O	O
Market for corporate control	Low	Low
Stakeholders	Medium	Low

Notes: The table includes the main relevant Regulations and Directives in the following areas – employment law, company law, securities law, insolvency law and competition law. Soft law is also included. European-wide accounting standards are also included…. The scores indicate high, medium, low, and no regulation. This attempts to capture the content and amount of regulation on a particular topic. It does not attempt to capture the actual implementation and feed through of the regulations.

This summary of complex regulation necessarily involves simplification. Moreover, an important caveat must be registered. In making this assessment, we take into account the content of the regulation in terms of the quantity and coverage of law and regulations in the area. We have not considered implementation or effectiveness, such as how the regulations actually feed through and the degree to which they are implemented and used. The latter analysis would require a more extensive empirical base than is presently available.

Is there a corporate governance deficit / gap in the EU vis-à-vis employees?

The Tables above suggest a number of gaps in the regulatory framework.

→ First, from Table 2, it will be seen that some areas and mechanisms are better covered than others by EU regulation. Under this heading, we include information provision and the market for corporate control. Some areas have medium coverage, such as the role of boards and auditors. Employee remuneration and investor involvement are less well covered. The least well covered areas are executive remuneration and control systems / risk management.

→ Second, also from Table 2, it is striking how little employment law touches on corporate governance, with the exception of information provision. This is to be found in areas such as transfer of undertaking and collective redundancies and in relation to European and domestic works councils. Not surprisingly, corporate governance is mainly the domain of company law and this evidences little overlap with employment law.

→ Third, turning to Table 3, we assess the amount of employee voice in these areas. The most striking aspect is the absence of employee voice in most mechanisms of corporate governance. In part, this is because there are areas where there is little or no EU regulation, as with the case of incentives around the issue of executive remuneration. In other areas, some EU regulation exists, but does not provide for employee voice – audit and internal control and investor involvement. Employee voice is most extensive in the areas of information provision, and in the case mergers and acquisitions that involved transfers of undertakings.

→ As stated, we are not able to deal here with the actual implementation of the regulatory framework in terms of employee voice. However, we make the following points. First, an important area of employee voice relates to specific events-driven regulation, such as collective redundancies and transfer of undertakings. This can be very important, but it is essentially circumscribed by the event itself. Second, the more process-driven aspects of European works councils cover only certain types of enterprises. Here also the degree of employee voice is determined in large part by the relevant industry and company context. Third, the Directive on domestic information and consultation committees is still in the process of being introduced in certain countries, such as the UK. It is too early to adjudge its impact. However, in other EU countries, such as Germany and France, it adds little to existing domestic legislation. Fourth, ….

Would filling the gaps matter?

There are two questions here. First, does good corporate governance matter in the sense of having a beneficial effect on governance and outcomes? Second, does employee voice in corporate governance have a beneficial effect on outcomes? These are obviously large questions and only summary answers are given here.

First, the link between particular corporate governance mechanisms and company performance is difficult to measure or demonstrate. An extensive review of the empirical literature by Filatotchev, Jackson, Gospel, and Allcock (2006) suggests that the mechanisms identified above, where appropriately designed, do individually have beneficial effects on various performance outcomes. However, 'good' corporate governance is much more likely to be achieved when various governance mechanisms work together as a whole in the context of various firm-specific contingencies. A wider literature on institutional complementarities suggests that different elements of corporate governance can have mutually reinforcing and beneficial effects (Aoki 2001b; Roberts 2004; Crouch, et al. 2005).

Second, the empirical literature generally suggests that employee involvement in corporate governance may also have beneficial effects on economic outcomes (Filatotchev, Jackson, Gospel, and Allcock, 2006). Employee involvement may affect a wide range of different economic outcomes (Vitols 2005). In relation to employment, participation may influence job satisfaction, motivation, turnover, or training. In relation to the company, participation may influence productivity, innovation, profitability and the distribution of value-added among stakeholders. In relation to shareholders, employee participation may influence share prices or stock market valuation. For example, recent studies in Germany show that supervisory board codetermination has small, but significant, impacts on innovation and productivity (Kraft/Stank 2004; FitzRoy/Kraft 2005). Likewise, a recent review of research on German works councils shows similar positive effects (Addison/Schnabel/Wagner 2004). These results are largely consistent with studies from other countries with different legally-based forms of employee voice or largely informal channels of participation (Vitols 2005). The costs of employee involvement are typically considered in terms of slower decision making times, but these costs are often offset with quicker and more effective implementation (Streeck 1992). These results on performance suggest that a case can be made for an enlightened shareholder value approach, whereby greater employee participation can be justified as a means to better corporate performance.

Third, stakeholder position says good governance is about responsibility and accountability, thus legitimating employee involvement as a value 'in itself' without direct regard to performance. Here the main criteria are whether employee involvement helps to increase managerial accountability and the responsibility of employees toward the company. Employee involvement in this regard should not be considered merely as an alternative to shareholder-oriented corporate governance. Rather 'good' corporate governance is one where shareholder and employee involvement may complement one another in a non-zero-sum manner, where both groups contribute to assuring the accountability of directors and senior managers and maintaining and creating wealth in the long-term (Jackson/Hoepner/Kurdelbusch 2005).

What is to be done and how?

We have argued above that good corporate governance matters and has a positive effect on outcomes. However, we have also suggested that there is a gap or deficit in the EU regulatory framework in terms of mechanisms or dimensions of governance. There is an even larger gap in terms of the role of employee voice. This prompts the questions: what, if anything, is to be done and how?

→ One approach would be to leave employee voice to already existing voluntary mechanisms such as trade unions and collective bargaining. These have an important role to play and have shown themselves effective in some countries and across countries in some firms and industries. However, such voluntary action leaves real gaps and employers will be unlikely to voluntarily bind themselves to employee participation, even if beneficial economic effects can be expected {Streeck, 1995 #983}. Collective bargaining is likewise underdeveloped in many countries, industries, and firms. Even where it exists, it is often concerned with traditional subjects such as wages and conditions and does not penetrate through to corporate governance type issues.

→ It might be argued that international standards could be developed and extended with self-regulatory mechanisms used to provide a basis for employee voice in corporate governance. For example, the OECD has adopted a code on corporate governance that covers a broad set of governance topics and applies across all OECD states. It also provides some mention of employee voice with regard to national economies with stakeholder-oriented corporate governance frameworks. However, the OECD code is purely voluntary and lacks any binding nature through 'comply of explain' rules in the way that UK corporate governance codes have operated. Here the EU would seem to have more leverage in promoting effective transnational forms of self-regulation.

→ Another approach would be to leave corporate governance and employee voice therein to national governments and national regulation. As already suggested above, this makes sense given different national traditions, complementarities between parts of national systems, and a preference on the part of the EU for subsidiarity wherever possible. However, against this must be set a growing internationalisation of finance and business which constrains single states and companies operating within them. In addition, European companies and government policy are increasingly affected by regulatory developments outside the EU, such as international accounting standards and US requirements such as the Sarbanes-Oxley Act. Moreover, the European Commission has already moved beyond a pure reliance on national regulation, reflected in its extensive corporate governance action programme. However, as noted, this includes little on employee voice.

→ Another approach would be to leave the question of employee voice to already existing mechanisms as created by the EU. The EU already has an extensive system based on the European company, European works councils, and national level information and consultation arrangements. As already stated, to date, the European company has not yet been adopted by a large number of companies. Similarly, research on European works councils show that these are limited in number and restricted in the sort of issues covered. With some exceptions, under domestic law in countries such as Germany and the Netherlands, neither European nor domestic works councils penetrate through to many of the corporate governance type matters identified above.

→ An argument can be put that the EU has developed other mechanisms of a 'soft law' kind which have the potential to promote employee voice at various levels. Thus, the Social Dialogue at multiple levels provides scope for unions to be involved in constructing possibilities for employee involvement in corporate governance. Similarly, the so-called Open Method of Coordination, as introduced in the 1990s, also offers possibilities for the development of standards. This can lead to indirect pressures on governments and other actors and is central to the European Social Model. However, this is not a legally binding process and to date has not penetrated through to corporate governance type issues.

These considerations suggest that the EU has an important and unique position with regard to promoting good corporate governance, in general, and employee voice as a mechanism of corporate governance, in particular. A realistic regulatory approach would likely to draw upon the development of both 'soft' and 'hard' law in the corporate governance area. This would require in particular the ETUC being active in areas beyond its traditional concern with social affairs matters as coordinated by Directorate General V and being more focussed and involved on matters within other Directorates General with responsibilities for corporate and competition issues. Employee voice would need to be strengthened within present EU regulatory frameworks, such as board representation, information disclosure, and the market for corporate control. It would also mean extending employee voice in newer areas, such as incentives of directors, audit and internal control systems, and investor involvement

Nesting within this, a number of further policy choices exist:

→ Should the emphasis be placed more on hard or soft law? Hard law is more difficult to enact and more inflexible. On the other hand, it is more effective in terms of enforcement. At the present time, there seems to be a greater preparedness to accept hard law in the company than in the employment law area. Wherever possible, it would seem preferable to use hard law interventions.

→ Should regulation be enabling and support structured choices of different 'models' of employee participation? Or should it be mandatory and seek to impose basic minimum standards and requirements? Enabling law is more flexible, but may be less effective in terms of enforcement. Mandatory regulation can help to overcome market failures and weak diffusion of governance practices, but may be inflexible in addressing the governance needs of different types of firms.

→ Is there scope for soft law, such as codes, based on comply-or-explain principles? The UK has used these extensively in the corporate governance area and been emulated by other countries at the national level.

→ What is the appropriate role for self-regulation by professional groups, such as accountants, in setting international standards?

→ Should regulation be event-driven or process-driven? The advantages of event-driven regulation are that they may be more acceptable and can be more specific. However, by definition, it is only applicable in certain circumstances. More process-orientated regulation provides for more on-going employee voice.

Conclusions

This paper has argued that the modern business enterprise poses problems of corporate governance that have important implications for employees. Different perspectives on 'good' corporate governance have been outlined. The argument was made here that substantial social science evidence exists to support an 'enlightened shareholder value' approach and additional considerations of accountability may be enhanced by a stakeholder approach to corporate governance. Both perspectives suggest an important role for employee voice within corporate governance. More specifically, the paper was outlined how employee voice might support various other mechanisms of 'good' corporate governance.

Turning to regulatory issues, the paper was briefly reviewed the extensive and growing EU framework on corporate governance. However, it was noted that these initiatives do not provide for much by way of employee voice in corporate governance. Various ways of filling this gap have been suggested, in particular ones which favour a combination of new hard and soft regulation from the EU.

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