Employee as Director

Legislation looks to put employees in the boardroom. But should U.S. follow in the footsteps of Germany, UK, or other nations pushing for codetermination? By April Hall

A 1991 article in the *New York Times* with the headline "Chrysler to Drop Union President's Spot on Its Board" may have sounded the death knell of a brief experiment in this country to get employees in the boardroom.

The practice never really made it much past the auto industry, and it's been decades since employees have served on the board of a major U.S. company. But legislation from by U.S. senator and presidential hopeful Elizabeth Warren hopes to resurrect the boardroom practice.

Other nations are already further along the path of codetermination — the term for having employee representatives as board directors.

In Germany, for example, it's been a mandate since the 1970s. Depending upon a German public company's size, it must have employee representative-directors make up half of the board. And in the UK, former prime minister Theresa May began to push for codetermination as a mandate. There was pushback on the proposal and a Local Authority Pension Fund Forum survey found some company officials thought their workforces were either too small or too large for the proper representation of employees. The Forum saw the unwillingness to add employees to the boardroom as a "lack of innovation in workforce engagement," especially since those polled did not think codetermination would be a detriment to their business.

After getting pushback on the proposal, the mandate was downgraded to a suggestion, though *Personnel Today* recently reported that workers on boards are increasingly the norm at European Union companies.

There are varying opinions on the prospect of the practice coming to our shores.

Bringing codetermination to the United States would give employees more of a voice, maintains Stephen Silvia, an American University professor in both the school of international service and the department of economics.

Charles Elson, the director of the Weinberg Center for Corporate Governance, a director at HealthSouth and a member of *Directors & Boards* editorial advisory board, calls it a "bad idea" because of a potential conflict of interest.

Codetermination in the U.S.

Employees on the board used to be a negotiation tactic in the U.S., most notably with seats held by union representatives like Owen Bieber, the former president of the United Auto Workers who lost his Chrysler director chair in the early '90s. Losing that seat at the table was a result of union concessions or "givebacks" when the auto industry was struggling.

Workers spend most of their waking hours at their job and while they live in a democracy, most people do not have a say in the company for which they work, Silvia says. He testified for the Senate Democratic Policy Committee in support of another proposal, The Reward Work Act, introduced by Wisconsin senator Tammy Baldwin, which calls for one-third of a board represent employees. Warren's Accountable Capitalism Act proposes boards have 40% employee representation. Both bills are in committee.

"For the average working person, they spend a good deal of their daily lives in a workplace. Workplaces are not democratic places, though they live in a democracy and want a democratic citizenship," Silvia says. "Codetermination is the idea of giving people a say, not just when they go to vote — more to give people a say in their day-to-day lives.

"We have political democracy in our political existence; codetermination is a modest effort to have democracy in our working lives."

As a result of an elevated place in the business, Silvia says codetermined firms show higher investment, a higher number of patents and a higher level of training.

Not everyone agrees.

Elson points to the Volkswagen emissions scandal as an example of why codetermination doesn't work. While he cites the company's dual-class structure and government as a major shareholder as the top issues that contributed to the malfeasance at the German carmaker, he also faults employees in the boardroom.

"Basically, the presence of employees led to a lack of focus on compliance issues," he maintains.

"Employees are most interested in employment, wages and hours," he continues,. "This is an inherent conflict of interest in a board which is tasked with overseeing the management of the company. How can you monitor the person who employs you?"

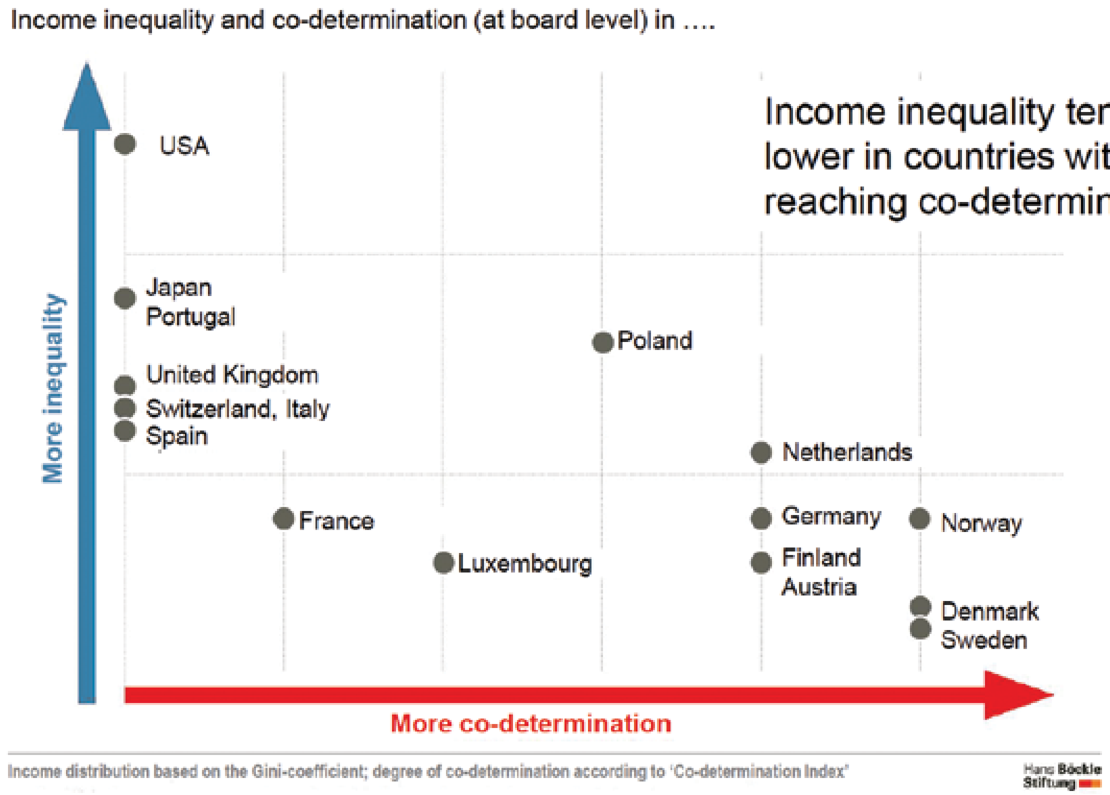
The role of worker-directors

No matter where you stand, it's hard to deny that having employees voices in the boardroom will benefit communications, especially if management and the board are out of touch with what's going on among the rank and file.

Shareholders benefit from transparency. With representation on the board, employees are able to share their experiences and what they see in the day-to-day of the business.

A proxy proposal presented at Google's parent Alphabet's June 19 annual meeting, requested that a non-executive employee be added to board in 2020. The CtW Investment Group – an institutional investment company that works with union-backed pension funds – submitted the proposal, that was ultimately voted down, as a way to repair frayed employee relations at the search giant.

"We are troubled by the substantial deterioration of Alphabet's workplace brand over the last year, especially considering the company's heavy reliance on intellectual capital and the fierce competition in the tech industry for top talent," said Dieter Waizenegger, executive director for the investment firm, in the proxy. "Adding a non-executive employee representative to the board will help restore employee confidence in senior leadership and help re-



Source: Hans-Böckler-Stiftung: Why Co-determination? A collection of good arguments for strong workers' voice.

solve the cultural crisis by adding much needed depth to the board's perspective."

"Worker presence [on the board] really makes a difference in communication in a direct way and, indirectly, makes it harder for CEOs to present a rosy scenario to board members," Silvia says.

Consider the transparency's effect on compensation, he adds. Employees know what they are paid compared to what executives are paid, they can do the math quickly and speak up about it. While CEO salaries have ballooned to 300 times of the average employee in the U.S., in Germany CEOs make just 30 times more.

According to "The Macro-economic Effect of Codetermination on Income Equality," by Felix Horisch, the U.S. has the least amount of codetermination and the most income inequality by far. Sweden, by contrast has the most co-determination, and the least income. (See graph)

But do you need an employee in the room to derail such inequity and to bolster strong corporate cultures?

In the case of Alphabet, proxy advisory firm Institutional Shareholder Services voted against the CtW proposal.

"Employee representation on boards got some major buzz around the time that Sen. Warren introduced her Accountable Capitalism Act, but the issue rarely comes up on ballots at U.S. firms," explains Patrick McGurn, special counsel head of strategic research & analysis for ISS and a member of the *Directors & Boards* editorial advisory board.

ISS' statement opposing the proposal noted that: "A vote 'against' this proposal is warranted, as the company's existing board framework seems to be adequate to allow for robust oversight of issues related to its employees and the necessary steps to begin sufficiently addressing employees' concerns have been taken."

In other research on the benefits of codetermination, it seems to lead to greater gender diversity. Most board members traditionally come from the C-suite where there is still a struggle to get women behind the desk. By voting for employee representation on the board, seats are open for women who have expertise in the company but may not be in a traditional executive position.

In the UK, for example, its largest sports retailer, Sports Direct, has employee representation on the board who is a store manager. Cally Price started at the chain as a part-time employee and has worked her way up.

In her role, Price can move on staff interests not only regarding profits and losses, but also regarding culture that can include uniform changes and paid time off policies that traditional directors might not even know about.

Some saw the employee appointee to Sports Direct's board as window dressing in the face of scandals surrounding the company's treatment of its workforce. However, Price is the second to serve on the board and before handing over the mantle, Sports Direct's first employee representation, Alex Balacki, noted in the company's 2019 annual report that he was instrumental in raising employee discounts and accessibility to them, and launching uniform upgrades.

Getting onboard

In its current iteration in Europe, worker representative directors are voted on by the employees, not the shareholders as a whole; employees do not necessarily vote for the shareholder representatives. As such, it is in the voting body's best interest to get the most qualified and passionate person in the position.

That person does not necessarily need to have a Ph.D. in economics, Silvia says. There are other seats for directors with that type of expertise — the workers' representative is in place to serve a very specific role.

The workers' director also does not need to be a direct employee of the company in some countries where codetermination is mandated. In Germany, the director is sometimes a representative of the industry's union. Mediclinic, an international publicly UK-traded hospital group, appointed the former CEO as the employee representative.

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> *— Stephen Silvia, American University professor*

The Independent took issue with that move in an editorial saying a former boss might be the least appropriate person to be the voice of the workers.

Making sure employee board members are prepared for the challenge is critical in making the process work. Once the workers' representative is elected in Germany, for example, the onboarding process can look a little different than it does for other directors.

The Hans Böckler Foundation, a labor advocacy group, is one organization in Germany dedicated to providing information about codetermination and training employee directors, points out Silvia. The foundation's specially focused training is not mandated, he says, but "has developed in practice."

After the training and meetings and input, codetermination has to benefit not only the employees, but also the business and its shareholders.

"Economics are obviously important — you don't want to leave anything worse off," Silvia says. "You need to make an argument that [codetermination] has to be better than the status quo. As long as it is as good as the status quo, it's worth considering." ■