PROTECTION OF EMPLOYEES

Corporate law may flank labor law to support the interest of workers which could be harmed by corporate's decisions

From an economic perspective, employees are particularly vulnerable because they make "firm-specific human capital investments"—skills and knowledge that are only valuable within their employer's organization. This makes them exposed to opportunistic behavior, plant closures, and deteriorating working conditions.

- Appointment and decision rights

US-UK-Italy-Japan do not mandate employee board participation

In the U.S., UK, Italy, and Japan, the absence of mandatory employee representation reflects a corporate governance model focused on shareholder primacy rather than stakeholder involvement. .

France: 1/3 of the board members in company in which employees own more than 3% shares, in other company only 2 representative with no voting rights!

Under German codetermination, employee representatives hold 50% of the seats in the Supervisory Board for companies with more than 2,000 employees. Although shareholders appoint the chair—who holds the tie-breaking vote—employees exercise significant informal influence by vetoing candidates for the Management Board, whose election requires a two-thirds supermajority.

The chairman of such supervisory board is appointed by shareholders and has a tie breaking vote in case of deadlock however the employees have a statutory informal right to veto nominees to the management board (management board elected with supermajority of 2/3!)

- Corporate law never confers direct decision making rights on non-shareholders constituencies

- Employee **information** and/or **consultation** but no decision rights

Works councils offer info/consultation rights but no decision powers.

EC WORK COUNCIL DIRECTIVE (45/1995)

EC GENERAL FRAMEWORK DIRECTIVE (14/2002)

N.B. work councils representatives are employees rather than trade unions appointees.

[Employment and social policy - EUR-Lex (europa.eu)]

+ Incentive strategy

- Independent directors could work as weak trustees on behalf of employees

Because employees receive fixed wages rather than equity-linked compensation, they do not benefit from gains in firm value the same way shareholders do. This limits the effectiveness of incentive-based strategies designed to align interests across constituencies.

- duty of loyalty accomplishes the interest of the company rather than of its stakeholders

- non shareholders constituencies do not enjoy equal sharing norm as employees receive fixed payments

- directors owe their duty of loyalty towards the company! That should maximize all corporate constituencies welfare!

+ Constraints strategy

Should directors consider the interest of employees whenever making relevant corporate decisions??

- in some jurisdictions (UK) the duty of care involves the protection also of employees (but there is no constraining force)

Even where legal systems require directors to “consider” employee interests, courts rarely enforce such duties vigorously. Therefore, these constraints often lack meaningful impact on managerial decision-making.

- in Germany management board must establish “risk management systems” to avoid threatens to company survival

PROTECTION OF EXTERNAL COSTITUENCIES

- Corporations' activity could harm the interests of society (environment, national interest, systemic risks, human rights, antitrust, gender equality, bribery, etc.)

Unchecked corporate conduct can generate major social harms—environmental degradation, human rights violations, anticompetitive practices, or systemic risk. The Volkswagen emissions scandal, referenced in the text, illustrates how governance failures can produce widespread negative externalities.

Even if such interests are protected by other areas of law, legal rules and standards (constraints strategy) could help in supporting external interest

Corporate social responsibility (CSR)

The EU commitment: CSDDD e CSRD Directives

These directives require large companies to integrate sustainability into their business models, report on their impacts and risks, and conduct due diligence to prevent and mitigate environmental and human rights harms throughout their value chains. Failure to comply can result in significant fines and civil liability.

Other commitments include promoting the adoption of sustainability disclosure standards like the ISSB standards, fostering a sustainable economy, and improving access to justice for those harmed by corporate actions. This is driven by the understanding that sustainability is essential for risk management, economic viability, and stakeholder relationships.

Regulatory commitments

Short-termism vs. long-termism

AFFILIATION STRATEGY

Functions of the non financial disclosure: Non-financial disclosure is intended to improve transparency regarding environmental, social, and governance risks. It is premised on the idea that better information enables investors and the public to discipline firms more effectively.

Environmental and social reporting – the CSRD Directive + ISBB

Ethics reporting, ethics code, ethics auditing

Appointment and decision rights

Golden shares

Qualification requirements for directors

Ban of interlocking directorate

Gender quotas and Gender fairness (all individuals should have equal access to rights, resources, and opportunities, regardless of their gender)

Even though empirical evidence shows limited correlation between board diversity and firm performance, many jurisdictions adopt gender quota rules for political and fairness-related reasons, aiming to promote equal representation rather than shareholder value maximization

State-owned corporations- SOEs often use their voting power to pursue public policy objectives—sometimes at the expense of financial returns. This creates a governance structure where non-shareholder interests (public welfare goals) influence corporate strategy more directly than in private firms.

Institutional investors activism

Incentive and constraints strategy

Trusteeship strategy

Limiting directors compensation

Liability of directors towards external constituencies

Corporate law increasingly employs directors' liability to protect external constituencies—for example, by imposing liability for failure to implement adequate compliance systems in areas such as antitrust, bribery, or environmental protection.

Many jurisdictions now expect directors to consider long-term shareholder value, which may align with the interests of external constituencies, although the boundaries of this duty remain indeterminate.

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