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## Codetermining the Future of Work: Lessons from Germany

By **Thomas A. Kochan, Wilma B. Liebman, and Inez von Weitershausen**

What can we learn from the way management and labor leaders in Germany are working together to address the future impacts of technology on business and the workplace?

That question was the focus of lively and informative dialogue at an event held on September 7, 2018 at the MIT Sloan School of Management in Cambridge, Massachusetts.

The event featured Jürgen Hartwig, Head of Human Resources at Daimler Trucks, and Michael Brecht, a Daimler employee who serves as Chairman of Daimler AG's Group Works Council, Deputy Chairman of its Supervisory Board, and President of Daimler's World Employee Committee. The Good Companies, Good Jobs



Michael Brecht (left) with moderator Wilma Liebman (center) and Jürgen Hartwig (right)

Initiative at MIT Sloan cohosted the event, in partnership with the Transatlantic Labor Institute, the Embassy of the Federal Republic of Germany, and the Friedrich Ebert Stiftung.

As part of the discussion, Hartwig and Brecht described how the German system of codetermination requires them to work together—and how

Daimler's management and work councils representing employees are jointly preparing for technological change in the years ahead. In Germany, *codetermination* is an important part of labor law and corporate governance that mandates certain forms of employee participation in business decisions. This employee participation is accomplished via *works councils* elected to represent all employees of a given establishment, as well as by employee representation on company's supervisory boards. (For more information about how works councils and codetermination work, see page 7.)

In the second part of the event, a panel of experts discussed what lessons for the U.S. can be drawn from the Daimler experience—with the caveat that practices from one country cannot be simply exported and replicated in another.

### **A TIMELY DISCUSSION**

It was an ideal time for this discussion for at least three reasons. First, while there once was little interest in the U.S. in considering works councils or worker representation on company boards, that appears to be changing. In the past, labor law reform debates in the U.S. focused on incremental

changes within the existing structure of labor law and collective bargaining. Today, however, there is increasingly widespread recognition not only that labor unions are an essential tool for combating income inequality but also that labor law is sufficiently out of date and failing to meet its objectives that more fundamental changes in law are needed. These changes might involve different institutional arrangements, including, among other things, reforms to corporate governance. This is especially true as we begin to analyze the challenges and opportunities associated with changing technologies like artificial intelligence and robotics—a set of changes some have begun to call Industry 4.0.

Second, the AFL-CIO has created a Commission on the Future of Work and Unions. The effects that changes in technology will have on work are central to those discussions, and the Commission will undoubtedly consider the experience of unions in Germany in dealing with these issues.

Third, two bills calling for reforms to corporate governance, including worker representation on company boards, have been introduced into Congress, one by Senator Tammy Baldwin (D-Wisconsin) and the other by Senator Elizabeth Warren (D-

Massachusetts). While there is no expectation that either of these bills will progress through Congress in the short run, their filing signals a willingness by these two lawmakers and perhaps others to start discussions about law and policy options outside the existing structure of labor law and collective bargaining.

### **LESSONS FOR THE U.S.**

The discussion at the Sept. 7<sup>th</sup> event started from the well-established premise that practices from one country (Germany, in this case), cannot be simply exported and replicated in another. Rather, learning requires a good understanding of the larger “ecosystem” in which the practices are situated. Codetermination, MIT Professor Kathleen Thelen reminded the audience, must therefore be understood within the larger institutional and cultural context that makes up the German labor relations ecosystem. A crucial legal requirement in this regard is that, in a workplace in Germany, neither management nor labor representatives can avoid engaging each other.

By contrast, in the U.S., employers avoid dealing with labor representatives if they are non-union

or by limiting union involvement to the scope of issues labor law requires them to negotiate on in good faith. Since U.S. law does not require engaging employee representatives in discussions of strategic issues, such as decisions about what kinds of new technologies to invest in, employers can choose to exclude union participation even if a union is present. (However, bargaining over the *effects* of new technologies on work conditions is required under U.S. labor law.)

What’s more, there are other features of the German ecosystem that support input from employees into technology strategies, such as the extensive German training and apprenticeship system. Workers, businesses, and the state all participate in that system, and it provides a broad base of workers with the skills and training that prepare them for technological changes. Similarly, features of the German financial system and corporate governance reinforce each other and thereby allow for more of a stakeholder-oriented view (rather than a shareholder-maximizing view) of the firm and its responsibilities than is the case in the U.S.

In large German companies like Daimler, there are, in fact, three

levels of codetermination, as Brecht explained during the event: 1) individual plants each have a works council; 2) there is also a general works council to address issues that affect more than one plant; 3) and workers have representation on the company's supervisory board. (Under German law, half of the members of large companies' supervisory boards are employee representatives. The supervisory board then elects an executive board (*Vorstand*) that oversees the day-to-day running of the company.)

For codetermination to work effectively, Hartwig stressed the importance of three qualities:

**Attitude:** All parties must believe in the value of interacting with each other and be willing to operate in good faith.

**Knowledge and Understanding:** All parties must have deep knowledge about the firm, relevant business issues, challenges, options, and choices as well as an understanding of their counterparts' roles and responsibilities.

**Trust:** While it may take time and experience to develop good relations, transparency, the sharing of information and regular

communication are keys to fostering successful cooperation. Brecht agreed with Hartwig and stressed the importance of mutual trust and communication, as well as training for employees elected to workers councils.

Brecht and Hartwig described how they engage on the issue of new technology in the workplace. Due to their long-standing relationship of personal trust, their interaction may well go beyond the levels of interaction legally required from them. It includes: involvement throughout the decision-making process, including at the early stages; ongoing discussions of future plans related to new technologies, such as the design and production of electric vehicles that will change the size and skill mix of the workforce, and analysis of likely effects on jobs and tasks; and training during the lead time before technologies are ready to be introduced into a specific work setting.

There are a number of advantages to this kind of collaboration. Consulting each other well in advance of the technology design and implementation phases is valuable as it reduces the time required to implement the changes in technology and associated organizational and

work processes. Moreover, the joint analysis of the effects of new technology on jobs has at least two advantages: It provides time to develop the additional training workers will need to make the new systems work, and gives both sides a shared information base to assess which jobs will change or are likely to be eliminated and to negotiate appropriate adjustment provisions.

The best union-management relationships in the U.S. find ways to engage on technology issues regardless of the constraints of U.S. labor law. Nonetheless, the U.S. labor relations “ecosystem” neither mandates anything resembling works councils or codetermination, nor encourages or incentivizes that kind of cooperation or worker role in decision-making. While the success of day to day worker-management relationships in the U.S. and Germany may turn on similar qualities of trust, leadership, respect, and understanding, the plain fact is that the underlying “ecosystems” are quite different, with Germany seeming to provide a more enabling legal environment for the development of these relationships and institutional structures.

One of the panelists in the second half of the event, Professor Tobias

Schulze-Cleven, observed that the long-term focus that the German system fosters—where management and employee representatives have to work together for the long term—is something that the U.S. could learn from. Schulze-Cleven is an Assistant Professor of Labor Studies and Employment Relations and Associate Director of the Center for Global Work and Employment at the Rutgers University School of Management and Labor Relations.

Another panelist, Gary Casteel, described the ongoing efforts of the UAW to develop some version of a works council arrangement in U.S. plants as he reflected on the UAW’s effort to organize a union and works council at the Volkswagen plant in Chattanooga, Tennessee. Casteel listed a number of reasons why this is difficult, but he noted a big constraint is the feature of U.S. labor law that requires a majority of workers to vote for union representation to get any form of employee voice in a facility. Casteel, who is a retired UAW Secretary-Treasurer and Director of the UAW Transnational Department and former Director of UAW Region 8, also observed that in most U.S. workplaces today, there is an absence of employee representation—and that, in the U.S., there is a lot of money put behind

opposing employee representation of any kind.

A number of participants at the event readily agreed that there is a deep and widespread ideological resistance among American managers and executives to formal worker representation, whether through unions and collective bargaining or through formal structures that approximate an American version of works councils or through representation on company boards.

How to address and/or overcome this resistance provoked a lively debate. Some argued that this requires political action—a change in legislation that would compel a more receptive managerial response. But others argued that legislative changes are not possible in the absence of strong public support for a change in policy.

Many participants also agreed it is important to continue a dialogue on how to achieve engagement on future technological changes and other pressing issues in a way equivalent to what occurs under codetermination in Germany. This summary is an invitation to all who share an interest in these issues to keep the discussion going.

Among other things, this summary will inform a conference on worker voice that will be hosted by the Good Companies, Good Jobs Initiative at MIT Sloan on November 8, 2018. Moreover, we are committed to further promoting dialogue on the topic through initiatives such as the MIT Task Force on the Work of the Future, the Labor and Worklife Program at Harvard Law School’s “Clean Slate” discussion of the future of labor law, the AFL-CIO Future of Work and Unions Initiative, and the World Economic Forum’s Program on the Future of Production.

### **ABOUT THE AUTHORS**

**Thomas A. Kochan** is the George M. Bunker Professor of Management at MIT Sloan and Co-Director of the MIT Institute for Work and Employment Research. **Wilma B. Liebman** is the former Chairman of the National Labor Relations Board and an adjunct professor at New York University School of Law, as well as a visiting research fellow at the Rutgers University School of Management and Labor Relations. **Inez von Weitershausen** is a postdoctoral associate at the MIT Industrial Performance Center.

## Appendix: Codetermination in Germany

The German system of codetermination institutionalizes specific forms of employee participation in the regulation of working conditions, as well as in economic planning and decision-making. An underlying value is the resolution of disputes between employees and employers through dialogue and joint decisions.

Governed by law, codetermination takes place at the **establishment** level by works councils, eligible in firms with five or more employees, at the discretion of the employees, and at the **enterprise** level by employee representatives on the supervisory boards of larger companies. The proportion of supervisory board members who are employee representatives varies from one-third (in firms with between 500 and 2,000 employees) to half (in firms with more than 2,000 workers).

At the societal level, there is also dialogue between government, labor and business. There are partnerships between employers' groups and trade unions that operate effectively as political bodies with advisory tasks, and there are institutions in which employers' groups and trade unions have equal representation, engaged

in issues such as vocational training and health insurance.

The system of employee representation in Germany is dual: by trade unions, which represent workers at the bargaining table, mostly about wages and hours, and by works councils, which are legal bodies independent of trade unions tasked with representing a company's workers on statutorily enumerated subjects.

Under Germany's Works Constitution Act, employers must consider the interest of the employees at the establishment level. Works councils represent these interests. The Works Constitution Act states that the overriding goal is cooperation between the works council and management. They shall discuss the matters at issue with an earnest desire to reach agreement and make suggestions for settling differences.

The works council has specified general duties, including to make recommendations for action, and the employer has a series of corresponding obligations to enable the works council to discharge its duties, including to supply comprehensive information in good

time. The costs of the works council are borne by the employer, including the costs of elections for a works council, training, travel, legal or expert advice, and compensation for works council members when they are doing official council work.

Works councils enjoy specified codetermination and participation rights under German law, ranging from the right to information and consultation to the right to codetermination. Works councils are empowered to enter into works agreements with the firm that embody the results of their negotiations. Works councils cannot call strikes, but in some cases they may appeal to an internal dispute resolution body, chaired by an outsider, or to the labor court.

The works councils' main tasks relate to personnel, operational, and what the law calls "social" matters, which include issue like company rules, working hours, and leave arrangements. On such social matters, the works council has a right of codetermination. That means that the employer may not implement measures if agreement on them has not been reached with the works council. On some other matters, like dismissals, the works council has a right to information and consultation.

The works council has information and consultation rights about the introduction of new technology. Employers must inform and consult the works council in good time, so that its suggestions and objections can be taken into account.

A 2001 reform of the Works Constitution Act strengthened works councils' participation rights in several respects and introduced new issues for participation. For example, works councils now have the right to:

- be informed about and involved in all relevant aspects of environmental protection in the establishment and to negotiate works agreements on this subject;
- suggest measures to fight racism and xenophobia at the workplace, veto employment of people with racist views, and demand the dismissal of employees involved in racist activities in the workplace;
- suggest measures on skill upgrading and further training that are likely to safeguard employment, and to initiate training measures. Employers are required at least to enter a consultation process with the works councils on this issue.