



# EUI Working Papers

MWP 2007/04

Transnational Employer Lobbying when one Size  
does not fit all:

Anglo-German Wrangles under the UNICE  
Umbrella, 1970-2003

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**EUROPEAN UNIVERSITY INSTITUTE  
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ISSN 1830-7728

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Printed in Italy  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy

<http://www.eui.eu/>  
<http://cadmus.eui.eu/>

## **Abstract**

Transnational interest groups can lobby forcefully if and only if national member associations agree on a policy stance. This paper explores the conditions for transnational cohesion by examining German and British employer positions on EU company law directives from 1970 to 2003. Employers were divided over directives concerning shareholder rights but formed a united front against directives concerning worker participation. Why did cross-national differences in the status quo undermine cohesion within UNICE -the European peak employer federation- in one case but not in the other? I argue that “externality” considerations are part of the explanation. Employers consider not only whether they are better off if a directive applies in their own country, but also how it affects them that the same directive will apply abroad. In the takeover case, the externality effect was positive, undermining intra-class cohesion. In the worker participation case, with negative externality effects, class cohesion was reinforced.

## **Keywords**

Interest intermediation, preference formation, employers, lobbying, Europeanization, corporate governance, industrial relations, Varieties of Capitalism



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Anglo-German Wrangles under the UNICE Umbrella, 1970-2003*

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### **Introduction**

Transnational interest groups like the European peak employer federation UNICE can lobby forcefully if and only if their national member associations agree on a policy stance. What induces them to stick together? Until now, this question has been neglected in studies of transnational interest intermediation. Mazey and Richardson (1993) document access points and lobbying practice in the European Community. Streeck and Schmitter (1994), Green-Cowles (1996, 2001), and Coen (1998) investigate how business groups organize to make their voice heard at the European level. Marks, Hooghe and Blank (1996) argue that 'multilevel governance' allows interest groups to bypass national governments and directly access the European political arena, while Moravcsik (1994) suggests that European integration strengthens the state vis-à-vis interest groups by redistributing control over central power resources in favor of national executives.<sup>1</sup> While this body of research illuminates *how* transnational interest

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1 Sonia Mazey and Jeremy Richardson, eds., *Lobbying in the European Community* (Oxford: Oxford University Press, 1993). Streeck, Wolfgang, and Philippe Schmitter. "From National Corporatism to Transnational Pluralism: Organized Interests in the Single European Market." *Politics and Society* 19, no. 2 (1991): 133-64. D. Coen, "The European Business Interest and the Nation State: Large-Firm Lobbying in the European Union and Member States," *Journal of Public Policy* 18, no. 1 (1998), Maria Green Cowles, "German Big Business and Brussels: Learning to Play the European Game," *German Politics and Society* 14, no. 3 (1996), Maria Green Cowles, "The Transatlantic Business Dialogue and Domestic Business-Government Relations," in *Transforming Europe - Europeanization and Domestic Change*, ed. Maria Green Cowles, James A. Caporaso, and Thomas Risse, *Cornell Studies in Political Economy* (Ithaca: Cornell University Press, 2001). Marks, Gary, Liesbet Hooghe, and K. Blank. "European Integration from the 1980s: State-Centric versus Multi-Level Governance." *Journal of Common Market Studies* 34, no. 3 (1996). Andrew Moravcsik, "Why European Integration Strengthens the State," in *American Political Science Association* (New York: 1994).

groups promote the common interests of members based in different countries, it fails to explain *when* and *why* they do so.

Transnational employer cohesion is not self-evident on corporate governance issues, with two influential research programs suggesting different cleavage lines. Class-centered perspectives, focusing on the implications of corporate governance for the division of power inside the firm, suggest strong intra-class cohesion: workers of the world should unite across borders, as should capitalists. By contrast, firm-centered perspectives, focusing on the implications of corporate governance for companies' production strategies, suggest cross-class coalitions with production regime as the main cleavage line.

By mapping German and British employer positions on EU directives concerning takeovers and worker participation, I show that, contrary to both perspectives, employer cohesion differed across corporate governance issues. In the case of worker participation, class is the better predictor, with German and British employers forming a united front against the EU directives. By contrast, in the case of takeover law, firm-type does better. Both national employer federations were internally divided along sectoral lines, and different factions had the upper hand in each country. German employers as a group fought the removal of barriers to hostile bids, whereas British employers favored the removal.

My analysis of debates inside the employer associations reveal what both literatures neglect, causing their failure to anticipate that employers' propensity to join cross-class or cross-border coalitions differs across cases: the European dimension alters actors' decision-calculus by influencing the relative salience of class-level and firm-level considerations. Apart from deciding whether they are better or worse off if their own company is subjected to a proposed EU directive, actors consider how it affects them the same directive will also apply to companies in countries other than their own. The direction of this externality effect, which may be positive or negative, can decisively influence cleavage patterns: where the externality effect pulls in the same direction as the direct class-level effect, as in the case of worker participation, class cohesion is reinforced. Where the two effects pull in opposite directions, as in the takeover case, class cohesion is weakened.

### **Production strategies, class conflict and expected cleavage patterns on corporate governance issues**

Most existing research in comparative political economy draws on one of two competing indicators to derive the preferences of workers and employers. Firm-centered perspectives focus on sectoral or structural characteristics of the company with which these actors are associated.<sup>2</sup> Theoretical basis for this approach is an insight from the New Economics of Organization that not all firms are identical.<sup>3</sup> Due to variation in company strategies and structures, different types of firm may be affected differently by the same corporate governance arrangement. Firm-centered perspectives assume, often implicitly, that all stakeholder groups inside the firm have a joint interest in supporting

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<sup>2</sup> Cf. Peter Hall, "The role of interests, institutions and ideas in the comparative political economy of the industrialized nations," in *Comparative Politics: Rationality, Culture, and Structure*, ed. Mark Irving Lichbach and Alan S. Zuckerman (New York: Cambridge University Press, 1997), 176.

<sup>3</sup> Paul Milgrom and John Roberts, *Economics, Organisation and Management* (Englewood-Cliffs NJ: Prentice Hall, 1992).

arrangements that optimize the performance of their company as a whole.<sup>4</sup> By contrast, class-centered approaches derive the preferences of workers and employers from their relationship to the means of production. Since corporate governance determines the division of power inside the firm, adherents to the class-centered approach regard it as implausible to subsume the preferences of all stakeholders under a single objective function.

Which perspective is more appropriate is not always self-evident because many political economy choices have both class-level and firm-level implications. Rules regarding takeovers and worker participation are an example. On the one hand, rules on both aspects of corporate governance affect the distribution of power inside firms. The neutrality rule – the most controversial aspect of the proposed EU takeover directives – shifts control rights within the firm from managers to shareholders,<sup>5</sup> while mandatory worker participation shifts control rights from managers to workers. These intra-firm distributional effects are similar everywhere, regardless of the sectoral or structural characteristics of firms. On the other hand, both sets of rules have firm-level effects that differ across firms. The greater a company's dependence on long-term, firm-specific investment, the more likely is it that the net firm-level effect will be negative:

The neutrality rule has negative firm-level effects for firms pursuing production strategies that rely extensively on specialist skills and equipment<sup>6</sup> because shareholder value pressure discourages long-term and non-transferable investment. Managers under constant pressure to satisfy footloose investors have incentives to increase the short-term stock market valuation of their companies by raising dividends at the expense of productivity-enhancing investments.<sup>7</sup> Workers and suppliers with little hope that their relationship with a particular firm will last beyond the short term lack incentives to acquire specialist skills or equipment.<sup>8</sup> By contrast, for firms pursuing strategies that do not rely on firm-specific investments, shareholder value pressure provides less cause for concern and its net firm-level effect may even be positive. Advocates argue that

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<sup>4</sup> Karl-Orfeo Fioretos, "The Domestic Sources of Multilateral Preferences: Varieties of Capitalism in the European Community," in *Varieties of Capitalism*, ed. Peter Hall and David Soskice (Oxford: Oxford University Press, 2001), 255, footnote 4.

<sup>5</sup> The rule requires that managers of a company subject to a takeover bid ask shareholders for permission before undertaking any measures that might deter the bidder.

<sup>6</sup> See Wolfgang Streeck, "On the Institutional Conditions of Diversified Quality Production," in *Beyond Keynesianism: The Socioeconomics of Production and Full Employment*, ed. Egon Matzner and Wolfgang Streeck (Brookfield, VT: Edward Elgar, 1991).

<sup>7</sup> In a world of perfect information, the price of a share should accurately reflect future payments to which the share gives title. Any cuts in productivity-enhancing investment would lead to an instant drop in the share price by reducing the company's net present value. In reality, the value of investments in research and development, human capital, cooperative labour relations or reputation may be difficult to assess without inside knowledge of the company. Jeremy C. Stein, "Takeover Threats and Managerial Myopia," *The Journal of Political Economy* 96, no. 1 (1988).

<sup>8</sup> In a world of perfect contracts, workers and suppliers could ensure financial compensation in the event of premature contract termination. In reality, contracts may be implicit and therefore not legally enforceable. See Andrei Shleifer and Lawrence H. Summers, "Breach of Trust in Hostile Takeovers," in *Corporate Takeovers: Causes and Consequences*, ed. Alan J. Auerbach (Chicago, IL: University of Chicago Press, 1988).

takeover threats contribute to a better allocation of production factors by forcing managers to get their act together or risk being fired.<sup>9</sup>

Worker participation has positive firm-level effects for firms pursuing strategies that rely extensively on specialist skills because it facilitates worker input into production processes and cooperation in times of economic difficulty. By increasing job security, it may also encourage investment in firm-specific skills.<sup>10</sup> By contrast, firms dependent on quick decision-making and flexibility to restructure might find that the costs of worker participation outweigh the benefits. The direct costs include time and material resources spent on meetings. Additional indirect costs arise where delays associated with lengthy consultation hold up urgent decisions or prevent attractive deals.<sup>11</sup>

Given these implications, class-centered and firm-centered perspectives suggest competing hypotheses regarding the cleavage pattern on rules pertaining to takeovers and worker participation. Class-centered perspectives, focusing on intra-firm distributional implications, suggest deep class cleavages and strong transnational cohesion within classes on both issues. Firm-centered perspectives, focusing on implications for the performance of the company as a whole, suggest “the formation of cross-class coalitions, as firms and workers with intense interests in particular regulatory regimes align against those with interests in others.”<sup>12</sup>

### **Empirical puzzle: Divergent cleavage patterns**

The following sections map German and British employer positions on EU directives concerning takeovers and worker participation to show that, contrary to both perspectives, cleavage patterns differed across issues. Over the takeover directives, both national employer federations were internally divided, and different factions had the upper hand in Germany and the UK. Against directives concerning worker participation rights, employers formed a united front, closely coordinating their campaigns through UNICE.

#### *Weak transnational interest group cohesion over takeover regulation*

On the issue of takeover regulation, British and German peak employer federations failed to reach a common stance. British employers always backed a shareholder-oriented European takeover regime. In the late 1980s, the Confederation of British Industry (CBI) urged the government to give

“strong support to Commission initiatives which aim to remove structural barriers to contested takeovers in the EC. [...] The UK should put its weight behind the

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<sup>9</sup> Jennifer Cook and Simon Deakin, "Stakeholding and Corporate Governance: Theory and Evidence on Economic Performance," *discussion paper*, ESRC Centre for Business Research, University of Cambridge (1999).

<sup>10</sup> See Richard B. Freeman and Edward P. Lazear, "An Economic Analysis of Works Councils," in *Works Councils*, ed. Joel Rogers and Wolfgang Streeck (Chicago: University of Chicago Press, 1995).

<sup>11</sup> See *Ibid.*

<sup>12</sup> Peter Hall and David Soskice, eds., *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001), 58.

draft Directive on Takeovers, subject to agreement on a text which will permit the Takeover Panel to keep its current status and flexibility of operation. The Directive will give a degree of harmonization of shareholders' rights and put some restraints on defensive measures available on boards."<sup>13</sup>

While British employer enthusiasm for the directive waned quickly due to growing concern that EU legislation would spell the end of Britain's non-statutory regulatory system, the desire remained to spread the shareholder-friendly British takeover regime to Continental Europe:

"What is required are measures that will remove barriers in other Member States not proposals, such as those contained within this Directive, that will create further barriers and supersede a system for takeovers which already is in place and works well in the UK. The CBI believes that more worthwhile effort should be spent in studying the barriers to contested takeovers within the European Community. [...] What is important is to consider carefully measures that will redress the imbalance of contested takeovers within Europe already noted, without it is stressed in any way providing protection for management."<sup>14</sup>

Unlike other UNICE member organizations,

"[t]he CBI has always stressed that the shareholders' views are paramount. [...] We cannot support the attitude taken by UNICE towards poison pills which expresses a view quite other than our own of the operation of the market; in particular, UNICE does not acknowledge the paramount interest of shareholders in being entitled to form their view and consent to, or reject, a takeover bid."<sup>15</sup>

The CBI supported the controversial neutrality rule (requiring managers to seek shareholder consent before taking measures that might deter hostile bidders) throughout negotiations on the directive.<sup>16</sup>

The attitude of the German peak employer federations starkly contrasted with the strong British support for EU efforts designed to ensure shareholder primacy in takeover situations. German employers during the 1970s and 1980s "emphatically reject[ed]" EU initiatives in this area because they did not see "the slightest need for such a directive, and the excessive regulation and bureaucratization associated with it would be a reason for major concern."<sup>17</sup> The German view, first expressed in 1975 and reiterated verbatim in 1987, was that

"[t]he fact that there are different national provisions and that some Member States have no specific provisions in this area still does not justify harmonization. [...] There is no reason why a situation which has proved satisfactory in the past,

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<sup>13</sup> CBI, "CBI memorandum: Contested takeovers - the international dimension," (1989).

<sup>14</sup> CBI, "CBI response to DTI consultative document," (1989).

<sup>15</sup> Ibid.

<sup>16</sup> Helen Callaghan, "European Integration and the Clash of Capitalisms - British, French and German disagreements over corporate governance, 1970-2003" (doctoral dissertation, Northwestern University, 2006), 167-8.

<sup>17</sup> BDA, "Jahresbericht," *Der Arbeitgeber* (1989): 159, BDA and BDI, "Stellungnahme zum Vorschlag einer 13. gesellschaftsrechtlichen Richtlinie über Übernahmeangebote," (1989), BDI, "BDI comments in UNICE memo 22.6/12/2 on O.P.A. -Takeover bids," (1987).

and which has developed without any formal harmonization, should give rise to problems in the future.”<sup>18</sup>

This attitude persisted throughout the negotiations.<sup>19</sup> Unlike their British counterparts, German employer federations disapproved of the neoliberal motivations behind the proposals. Responding to the 1991 Bangemann report, the BDI complained that the European Commission had not sufficiently considered the advantages and disadvantages of hostile takeovers, especially in the light of the “excesses in takeover battles which the Anglo-Saxon economies have gone through in recent years”. Peter Wiesner, responsible for company law issues at the BDI, feared that

“takeover threats would force managers to only pursue short-term profit maximization at the expense of long-term planning, research and development, and the accumulation of sufficient financial reserves. The resulting negative effects on credit ratings and asset erosion could threaten jobs and weaken creditor protection. The employer federations believe that hostile takeovers with the goal of asset stripping are undesirable for economic as well as for social policy. In addition, the growth of takeover opportunities implies an increased danger of economic concentration and foreign infiltration (*Überfremdung*).”<sup>20</sup>

The neutrality rule, advocated by the CBI, was persistently opposed by the German federations.<sup>21</sup>

Both national employer federations were also internally divided, the most conspicuous dividing line being between managers of industrial companies versus managers in the financial services sector. In the UK, a pronounced City-industry cleavage was discernable in intense battles inside the CBI over appropriate responses to an unprecedented number of hostile takeovers during the second half of the 1980s. The CBI conference in November 1986 split down the middle over a resolution stating that “[g]overnment and financial institutions in particular must recognize that if manufacturing industry is to survive, a long-term view must be taken in terms of financial returns, rather than the short-term view forced by them on British managers.”<sup>22</sup> The same winter, a survey of 200 senior company directors conducted by the Institute of Directors showed almost 40 per cent of respondents saw the relationship between manufacturing and industry on one side and the city and the financial sector on the other as unsatisfactory or very unsatisfactory.<sup>23</sup> Among those questioned two years later in a CBI survey of 250 companies in manufacturing and service sectors, 64 per cent said

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<sup>18</sup> BDI, "BDI comments in UNICE memo 22.6/12/2 on O.P.A. -Takeover bids."

<sup>19</sup> Callaghan, "European Integration and the Clash of Capitalisms - British, French and German disagreements over corporate governance, 1970-2003", 169-70.

<sup>20</sup> Peter Wiesner, "Die deutsche Wirtschaft ist gegen ein Verbot des Höchststimmrechtes," *Handelsblatt Nr. 056*, March 20 1991.

<sup>21</sup> BDA and BDI, "Stellungnahme zum Vorschlag einer 13. gesellschaftsrechtlichen Richtlinie über Übernahmeangebote.", BDI, "BDI comments in UNICE memo 22.6/12/2 on O.P.A. -Takeover bids." BDA and BDI, "Stellungnahme zum geänderten Vorschlag für eine 13. Richtlinie über Übernahmeangebote," (1998), BDI, "BDI: Neue EU-Übernehmerichtlinie benachteiligt erneut deutsche Unternehmen," *BDI Pressemitteilung*, 2. Oktober 2002.

<sup>22</sup> Times, "CBI Conference: City men defend themselves from industry attack," *The Times*, November 12 1986.

<sup>23</sup> Hazel Duffy, "CBI Sets Date For Talks To Help Links With City," *Financial Times*, December 29 1986.

they did not think that financial institutions were taking a long-term and strategic evaluation of their company.<sup>24</sup> In 1987, CBI president David Nickson urged businessmen at the CBI annual dinner to put an end to "fast buck short-term thinking" because

"[t]o compete with our international rivals in Germany, France, Italy, Japan and the United States we have - all of us, city and industry together - to start thinking, planning and investing long-term. (...) There have been recent examples of takeover situations where short-term consideration seems to have been paramount, and where there appears to be little concern for longer-term industry performance."<sup>25</sup>

A CBI task force report on City-Industry relations, presented four days before the Black Monday stock market crash, struck a more conciliatory note, maintaining that

"[the City's alleged short-term attitude towards the return on investment] were part of a pervasive mythology that needs to be debunked in the interests of both the City and industry alike. [...] [M]any British companies have given insufficient weight to long-term development, but this does not arise primarily from City pressures. It arises mainly from underlying economic and political factors including inadequate profitability."<sup>26</sup>

However, the task-force report soon proved non-representative and ill-timed. Two days after Black Monday, John Banham, CBI director general, reported the first unanimous resolution by the 400-member CBI council since Arthur Scargill's miners' strike, condemning the 'short-term gyrations' in the stock market.<sup>27</sup> A year later, in early November 1988, John Banham accused City fund managers of being so keen to make quick profits that they would be prepared to "sell their own grandmothers for a profit",<sup>28</sup> that "ownership and speculation are becoming dangerously close to becoming the same thing"<sup>29</sup> and that companies which have taken a lifetime to build "are not to be traded away heedless of the consequences by a collection of high rollers concerned only for their own financial gain in some kind of economic casino."<sup>30</sup> As in the previous year, City short-termism featured largely at the 1988 CBI conference. A resolution declaring that "[t]his conference is concerned that the national attitude towards investment appears to place greater emphasis on the values of the City rather than those of manufacturing industry" ended in a tied vote.<sup>31</sup>

The same cleavage line was visible in Germany from the second half of the 1990s. The lobbying campaign which resulted in the spectacular reversal of the German

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<sup>24</sup> Hazel Duffy, "City 'Short-Termism Hurts UK Industry'," *Financial Times*, November 4 1988.

<sup>25</sup> PR Newswire, "Cut interest rates, end fast buck thinking, urges CBI chief," *PR Newswire European*, February 18 1987.

<sup>26</sup> Edward Townsend, "Gulf between industry and City is a myth, says CBI," *The Times*, October 15 1987.

<sup>27</sup> Times, "Crash barriers to limit computerized chaos," *The Times*, October 22 1987.

<sup>28</sup> Andrew Cornelius, "Fund chiefs 'would sell their grannies': CBI head attacks the City's rush for profit," *The Guardian*, November 3 1988.

<sup>29</sup> Ralph Atkins, "Age-Old Rivals Renew Their Feud," *Financial Times*, November 12 1988.

<sup>30</sup> Andrew Cornelius, "Bank concerned at foreign bids," *The Guardian*, November 9 1988.

<sup>31</sup> Hazel Duffy, "Laing Warns On Foreign Bidders," *Financial Times*, November 8 1988.

government position in the spring of 2001 was spearheaded by a number of prominent executives of large manufacturing companies, including Ferdinand Piëch of Volkswagen and Wendelin Wiedeking of Porsche. Managers of the construction combine Hochtief, energy provider REW, pharmaceutical company Bayer and the machine tool maker Linde also condemned the directive, and the neutrality rule in particular.<sup>32</sup> By contrast, some financial sector CEOs condemned the German government's withdrawal of support from the takeover directive and lobbied for the neutrality rule. Among them were Rolf Breuer of Deutsche Bank, Paul Achtleitner of Alliance insurance, Leonhard Fischer of Dresdner Bank, Bernhard Termühlen of the financial services provider MLP, Roland Flach of the holding company WCM, and the CEO of Union Investment.<sup>33</sup> German corporate finance teams - largely based in London - reportedly also lobbied for the directive, reportedly hoping that it would "generate more fee-rich European takeover activity."<sup>34</sup>

*Strong transnational interest group cohesion over worker participation*

By contrast to their divisions over the takeover directives, employers across Europe united against EU worker participation initiatives, using UNICE to coordinate their lobbying activities. During the 1970s, employer federations everywhere fought against the provisions for board level participation in the European Company Statute and the Fifth company law directive. Careful observers at the time did "discern different degrees of hostility, or, to put it more positively, differences in the readiness to put up with worker participation"<sup>35</sup>, but such divergences were not strong enough to undermine trans-national intra-class cohesion. French employer associations, alongside the Italians, categorically opposed granting even a third of board level voting rights to employees, whereas the German peak employer federations did not object to one-third participation per se, and the CBI had "not found a clear, uniform line" on the matter.<sup>36</sup> Nonetheless, the latter two both joined the protestations. The German peak federations regarded Commission efforts in the area of worker participation "with the greatest skepticism,"<sup>37</sup> "strongly objected" to the provisions for worker participation in the draft fifth directive<sup>38</sup> and "emphatically rejected" proposals for employee representatives on the supervisory board of companies formed under the European Company Statute.<sup>39</sup> The CBI insisted

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<sup>32</sup> Ulrich Schäfer, "Angst vor dem Feind," *Der Spiegel*, June 11 2001.

<sup>33</sup> Ibid, Peter Wilson, "Germany lags in shareholder culture," *Financial News* 2001.

<sup>34</sup> Alasdair Murray, "Hostility surrounds latest directive," *The Times*, December 15 1999, Christian Schubert, "Deutschland steht wegen der Übernahmerrichtlinie am Pranger," *Frankfurter Allgemeine Zeitung*, May 14 2001.

<sup>35</sup> Karlheinz Nagels and Arndt Sorge, "Kapitel 6: Die Mitbestimmungsregeln der SE im Schnittpunkt von Interessen," in *Industrielle Demokratie in Europa* (Frankfurt: 1977), 163.

<sup>36</sup> CBI, "Recommendations to the CBI's Employment Policy Committee by the CBI's EPC Subcommittee for European Social Affairs (draft)," (1973), Nagels and Sorge, "Kapitel 6: Die Mitbestimmungsregeln der SE im Schnittpunkt von Interessen," 165.

<sup>37</sup> BDA, "Jahresbericht," *Der Arbeitgeber* (1975): 153.

<sup>38</sup> BDA, "Jahresbericht," *Der Arbeitgeber* (1973): 192.

<sup>39</sup> BDA, "Jahresbericht," 153, BDA, "Jahresbericht," *Der Arbeitgeber* (1974): 167.

that “the system which is adopted should be suitable to the British economic and social context. The present proposals do not meet this requirement.”<sup>40</sup>

During the early 1980s, the Vredeling directive proposals to impose central works councils on multinationals and conglomerates provoked what was then the “most expensive lobbying campaign in the history of the European Parliament.”<sup>41</sup> In this campaign, which was carefully orchestrated by UNICE and also backed by American and Japanese multinationals, German and British employers were both active. BDI and BDA communicated the “negative assessment” of the fifth directive<sup>42</sup> and “categorical rejection of the draft Vredeling directive by German industry”<sup>43</sup> emphasizing that

“the rejection of the [Vredeling] directive proposal by European Trade is at the same time unanimous and decisive, and that this concerns not only its individual proposals but also its basic principle.”<sup>44</sup>

The CBI “unequivocally oppose[d] both the draft Vredeling and Fifth Directives.”<sup>45</sup> By contrast to the 1970s, when it had “not [been] opposed to legislation in principle”<sup>46</sup>, the CBI of the Thatcher era fundamentally rejected all efforts to “overturn the UK’s voluntary approach to employee involvement and [...] instead impose a legal strait-jacket.”<sup>47</sup>

During the early 1990s, the employer federations fought side by side against the European Works Councils directive. Strong transnational cohesion is reflected in a letter from the director of the CBI Brussels office to colleagues at UNICE, expressing delight at the

“hard line that all Presidents [of national employer federations] asked UNICE to take about this [European Works Councils] directive. It must have been encouraging to you to listen to the chorus of words like “unacceptable” and “intolerable” and the new President’s complaint that the Commission had “cheated” employers - and of course this reflects the discussion at the Vice Presidents meeting on the preceding day.”<sup>48</sup>

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<sup>40</sup> CBI, "Interim Recommendations by the CBI Subcommittee for European Social Affairs on EEC proposals for worker participation in management," (1973).

<sup>41</sup> Richard P. Walker, "The Vredeling Proposal: Cooperation Versus Confrontation in European Labor Relations," *International tax & business lawyer* 1, no. 1 (1983).

<sup>42</sup> BDA, "Jahresbericht," *Der Arbeitgeber* (1982).

<sup>43</sup> BDA, "Jahresbericht," *Der Arbeitgeber* (1981).

<sup>44</sup> BDA and BDI, "Comment on the Amended Proposal for a Directive on Procedures for Informing and Consulting Employees - COM (83) 292 Final- ("Vredeling Directive Proposal")," (1983).

<sup>45</sup> CBI, "CBI response to the Government's consultative document on the "Vredeling" directive and draft EC fifth directive on the harmonisation of company law," (1984).

<sup>46</sup> CBI, "Interim Recommendations by the CBI Subcommittee for European Social Affairs on EEC proposals for worker participation in management."

<sup>47</sup> CBI, "CBI response to the Government's consultative document on the "Vredeling" directive and draft EC fifth directive on the harmonisation of company law."

<sup>48</sup> CBI, "Letter from the director of the CBI Brussels office to the UNICE director of Social affairs," (1994).

Employers in both countries rejected European Works councils as cumbersome, bureaucratic and expensive, claiming that the directive would seriously threaten the international competitiveness of the companies concerned.<sup>49</sup> The CBI also found the idea of European Works Councils “at least twenty years behind the times. [...] British employers are not interested in a ritualistic doing-it-by-numbers approach to employee involvement.”<sup>50</sup> A BDA spokesman dismissed EWCs as “permanent tourist events.”<sup>51</sup>

During the late 1990s, the Information and Consultation directive was fought by employer federations everywhere. The CBI warned that the proposals would “throw a monkey wrench into the works [...], grinding business decisions to a halt.”<sup>52</sup> The BDI and BDA could not credibly claim the same, because the contents of the proposed directive closely resembled German practices that were approved of by employers. After admitting this, they nevertheless refused “to support EU regulation in an area that is without any cross-border relevance. In agreement with the European industrial and employer associations in the framework of UNICE, we reject a directive of this sort.”<sup>53</sup>

As in the takeover case, cross-national asymmetry *was* perceived as a problem by those subject to the stricter standards, but contrary to British employers’ support for the neutrality rule, German employers opposed all attempts to level the playing field by exporting their own standard to the rest of Europe. Instead, they insisted that the only acceptable way of redressing imbalances was to relax their own domestic participation standards:

“Coordination does not imply that the highest level of regulation that exists in one national jurisdiction should be imposed as a binding standard on everyone. That would not be coordination, but maximization, which is all the more cause for fundamental concern where it yields lop-sidedly to particular group interests which, moreover, are extraordinarily contentious at the national level.”<sup>54</sup>

To prevent their worst-case scenario of harmonization on the high German standard, the BDA at times joined the CBI in disputing claims that absence of level playing field posed any significant problems at all:

“The European Union is a market economy based on market principles. Information and consultation can very well be dealt with satisfactorily at the national level, as is

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<sup>49</sup> BDA and BDI, "Stellungnahme zum Vorschlag für eine Richtlinie des Rates über die Einsetzung Europäischer Betriebsräte zur Information und Konsultation der Arbeitnehmer in gemeinschaftsweit operierenden Unternehmen und Unternehmensgruppen," (1991), BDI, "Brief von BDI Präsident Klaus Murmann an EU Kommissar Martin Bangemann," (1994), CBI, "Response to the European Commission's proposal for a directive concerning the establishment of European Working Councils in Community Scale Undertakings," (1991)

<sup>50</sup> CBI, "press release," July 28 1993.

<sup>51</sup> Handelsblatt, "Die europäischen Betriebsräte werden künftig eine permanente touristische Veranstaltung sein", *Handelsblatt*, August 5 1993.

<sup>52</sup> CBI, "CBI "deeply concerned" by EU plan to strengthen controversial consultation laws," *CBI News Release*, October 23 2001.

<sup>53</sup> BDA, "Stellungnahme: Richtlinien-vorschlag zur Errichtung eines allgemeinen Rahmens zur Verbesserung der Informations- und Konsultationsrechte der Arbeitnehmer in der Europäischen Gemeinschaft," (1998).

<sup>54</sup> BDA and BDI, "Stellungnahme zum geänderten Vorschlag einer Fünften gesellschaftsrechtlichen Richtlinie zur Koordinierung der Strukturvorschriften von Aktiengesellschaften in der EG," (1983), 2.

proven by the different models across member states. These different models by no means imply a distortion of competition.”<sup>55</sup>

Like their counterparts abroad, German peak employer federations portrayed

“harmonization as unnecessary and not legally justifiable with reference to the Treaties of the European Community. [...] It is not evident that different information and consultation practices have so far impeded the functioning of the Common Market or that they will do so in the future.”<sup>56</sup>

However, while the lack of intra-associational divisions does not imply that the direct firm-level effects of mandatory worker participation were equal for all firms, German employers, unlike their British counterparts, were already subject to many of the worker participation requirements proposed by the EU worker participation directives. The changes mandated by the directives would therefore have been smaller in Germany than in the UK. Moreover, employers everywhere agreed that the workability of the EU participation proposals depended on the national industrial relations set-up, which was seen as exceptionally favorable in Germany. British employers frequently complained that the directive proposals would cause greater disruption in their own country than in other member states because they were “based on continental suppositions and labor market institutions” and did not take account of “conditions peculiar to Britain”:

“They are based on a number of assumptions about industrial relations which are not valid in this country, such as the universal existence of works councils systems and clearly defined negotiation and consultation levels and subject matters. Moreover in Britain other complicating factors arise out of trade union structures, strengths and philosophy differing considerably from the situation in those countries on whose models the proposals are based. These differences mean that in their present form the proposals could not be applied in this country.”<sup>57</sup>

Aspects of the British industrial relations system that were regarded as incompatible with the proposals included

“multi-unionism and the absence of single industry-based unions; the difficulty unions have in accepting that their operations should be confined within a legal framework; and a more adversarial attitude towards collective bargaining and industrial relations which reflects the political structure and culture of Britain.”<sup>58</sup>

German employers repeatedly acknowledged that they did not fare badly with the worker participation arrangements on which EU proposals had been based, albeit never

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<sup>55</sup> BDA, "Stellungnahme: Richtlinien-vorschlag zur Errichtung eines allgemeinen Rahmens zur Verbesserung der Informations-und Konsultationsrechte der Arbeitnehmer in der Europäischen Gemeinschaft."

<sup>56</sup> BDA and BDI, "Stellungnahme zu dem Vorschlag der EG-Kommission für eine Richtlinie über die Unterrichtung und Anhörung der Arbeitnehmer von Unternehmen mit komplexer, insbesondere transnationaler Struktur (Doc. KOM (80) 423)," (1981), 1.

<sup>57</sup> CBI, "Interim Recommendations by the CBI Subcommittee for European Social Affairs on EEC proposals for worker participation in management."

<sup>58</sup> EEF, "Response by the Engineering Employers' Federation to a Department of Employment consultative document on the draft "Fifth" and "Vredeling" directives," (London: 1984), 4, Walter Ellis, "Directors object to EEC's plans for worker participation," *Financial Times*, October 30 1984, Neil Hamilton, "Employee participation and the Common Market," *Financial Times*, August 6 1982.

without insisting that this was due to aspects of German industrial relations that were lacking elsewhere. Commenting on the 1972 draft of the European Company Statute, the BDI chief explained that

“[f]rom our German point of view, there are no objections to the principle of granting one third of seats on the supervisory board to employee representatives [...] This participation would correspond to the provisions in our national company law, which are approved of by German industry, and which, against the backdrop of the socio-economic structure of the Federal Republic, have generally proven their worth. However, as has been emphasized several times already, the European Company Statute must not be judged primarily by our national criteria.”<sup>59</sup>

A similar approach was taken to the second draft of the fifth company law directive:

While “all participation laws practiced in the Federal Republic are subsumed by the norms of the draft directive”<sup>60</sup>, “imposition of those extensive worker participation rules [on companies in other EU member states], which largely and for historical reasons face entirely different socio-economic structures, [would] cause friction and a decline in company performance [in these countries][...]”<sup>61</sup>

With regard to the Information and Consultation directive, the BDA declared that it had

“always supported the information and consultation of employees on issues that immediately concern them. In Germany, such practices have stood the test of time.”<sup>62</sup>

However, by contrast to the takeover case, firm-level differences did not undermine transnational intra-class solidarity among employers. The BDA condemned the EU directives “as an instrument for the spread of worker participation. Even though this primarily concerns the other member states of the Community [...]”<sup>63</sup> The German employer federation stressed that

“[T]he positive evaluation by the BDA of information and consultation arrangements at the national level by no means implies support for Community intervention in an area that has no cross-border dimension whatsoever. In agreement with the European employer federations within UNICE, we reject a directive of this sort.”<sup>64</sup>

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<sup>59</sup> Heinz O. Vetter, "Der Mitbestimmungsvorschlag aus der Sicht der Gewerkschaften," in *Europäische Aktiengesellschaft- Beitrag zur sozialen Integration?*, ed. Hans von der Groeben, Heinz Oskar Vetter, and Otto A. Friedrich (Europa Union Verlag, 1972).

<sup>60</sup> BDA, "Rundschreiben an die Mitgliedsverbände. Betreff: Vorschlag der EG-Kommission einer 5. Richtlinie; dated July 22, 1982," (1982).

<sup>61</sup> BDA and BDI, "Stellungnahme zum geänderten Vorschlag einer Fünften gesellschaftsrechtlichen Richtlinie zur Koordinierung der Strukturvorschriften von Aktiengesellschaften in der EG," 6.

<sup>62</sup> BDA, "Stellungnahme: Richtlinien-vorschlag zur Errichtung eines allgemeinen Rahmens zur Verbesserung der Informations-und Konsultationsrechte der Arbeitnehmer in der Europäischen Gemeinschaft."

<sup>63</sup> BDA and BDI, "Stellungnahme zum geänderten Vorschlag einer Fünften gesellschaftsrechtlichen Richtlinie zur Koordinierung der Strukturvorschriften von Aktiengesellschaften in der EG."

<sup>64</sup> BDA, "Stellungnahme: Richtlinien-vorschlag zur Errichtung eines allgemeinen Rahmens zur Verbesserung der Informations-und Konsultationsrechte der Arbeitnehmer in der Europäischen Gemeinschaft."

Intra-class cohesion despite differential firm-level effects can also be observed at the level of individual firms. As a BDA memo noted with satisfaction, the representative of Bayer spoke as vehemently against the proposed EWC directive at a public hearing in the German Bundestag in 1991 as his colleagues from Siemens and Daimler-Benz, even though Bayer already had already set up a European Works Council on a voluntary basis.<sup>65</sup>

### **Explanation: Externality effects**

The observed variation in cleavage patterns raises the question why the effect of employers' embeddedness in different national production regimes varies across corporate governance rules. As argued above, the direct implications of rules concerning worker participation and shareholder control are similar. Both rules make managers worse off in class-level distributional terms by shifting control rights away from them to either workers or shareholders, and both have firm-level effects that differ across firms depending on production strategies. Why did universal class-level considerations prevail over production regime specific firm-level considerations in one case but not in the other? According to the Varieties of Capitalism perspective, German employers should have been more reluctant than British employers to spend costly resources fighting EU worker participation proposals which were compatible with their production strategies and the domestic status quo. In reality, they opposed the EU directives as actively as their counterparts in other EU member states and even coordinated the aggressive UNICE campaign against the directives for much of the period under consideration. Why did differences between Britain's liberal market economy and Germany's coordinated market economy, which eroded intra-class solidarity over takeovers, not drive a wedge between employers on the issue of worker participation?

I argue that what I call "externality effects" are part of the explanation. Apart from deciding whether they are better or worse off in direct terms if their own company is subjected to the rule in question, actors consider how it affects them that the same rule is imposed on companies other than their own. The direction of such externality effects can decisively influence cleavage patterns.

***Proposition:*** *Class cohesion is reinforced where the externality effect pulls in the same direction as the direct class-level effect. Where the externality effect pulls in the opposite direction, class cohesion is weakened.*

A key difference between rules regarding takeovers and worker participation is the direction of their externality effects. An increase in shareholder control over takeovers via the neutrality rule has a positive externality effect for all managers. Managers are better off if the rule is imposed on their competitors because it facilitates acquisitions by preventing managers in target companies from blocking hostile takeovers. Depending on characteristics of their own firm, some managers may be more likely than others to actually use the option of acting as a raider, but even those managers who are unlikely to ever launch a hostile bid are no worse off with the option than without. Managers

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<sup>65</sup> BDA, "BDA Dokument II-30-21-20-6: Bericht in der Montagsrunde am 11. November," (1991).

may dislike being stripped of their own takeover defenses, but this direct effect of the rule is analytically distinct from the externality effect for them when the rule is imposed on others. *Ceteris paribus*, all managers are at least weakly better off if they can launch hostile bids on other companies.

By contrast, mandatory worker participation has negative or neutral externality effects for all managers. There are at least three reasons why managers dislike having it imposed on their competitors. First, EU legislation on the matter locks in unpopular requirements at home. Managers who dislike mandatory participation in their own country are better off sparing their foreign competitors a similar yoke to the extent that regime competition helps the quest for change at home. For example, exit threats and complaints about the high level of German worker participation requirements are more credible if German requirements remain unique in Europe. Second, mandatory participation has consequences for the balance of power between capital and labor beyond the actual content of the proposed rules. Even managers who do not object to the proposed level of participation *per se* are worse off with EU-wide legislation to the extent that, through spillover and slippery slopes, it increases the likelihood that less tolerable labor-friendly EU directives will be passed in the future. Third, participation requirements reduce efficiency-wage type motivation effects. Even managers who reap firm-level benefits from participation are worse off with EU-wide requirements to the extent that participation rights, like efficiency wages, have greater motivational effects on employees when they are not universal.

The opposite direction of the externality effects can explain why cleavage patterns vary across corporate governance rules despite similar direct class-level and firm-level effects. In the case of the takeover directives, the positive externality effect counteracts the negative direct class-level effect. On the one hand, managers dislike increases in shareholder control over their own company, which makes them vulnerable to hostile bids. On the other hand, they like it when other companies are easy to take over. Which of the two effects prevails differs across firms. It depends, among other things, on the company's vulnerability to takeover and on the compatibility of its production strategy with constant shareholder value pressure. The result is deep intra-class division reflected in heated debates inside the employer federations. By contrast, in the case of worker participation, the negative direct effects are reinforced by negative externality effects. All managers are at least weakly worse off in class-level terms by being forced to share decision-making powers with their workforce. In addition, the externality effects are also negative, providing managers of all firm types in all countries with a further reason to oppose the proposals. The result is strong class cohesion among managers across sectors and countries.

	<b>Worker participation</b>	<b>Shareholder control (takeovers)</b>
Direct class-level effect	- (control shift from M to W)	- (control shift from M to O)
Direct firm-level effect	+/- (depends on importance of relationship-specific production factors)	+/- (depends on importance of relationship-specific production factors)
Externality effect	- (↓ regime competition strengthens L)	+ (facilitates hostile takeover of other companies)
Overall position	-	+/-

Figure 1: Direct and indirect effects of EU directives on managers

*Takeovers: Positive externality effects undermining intra-class cohesion*

That employers considered the positive externality effects of takeover regulation is reflected in their frequent complaints about “asymmetric vulnerability” and calls for a “level playing field.” Employers in both countries cared about the level of anti-takeover protections elsewhere relative to the level of regulation at home. Exposure to hostile bids without a commensurate ability to launch takeovers elsewhere was seen as disadvantageous. In the UK, a 1989 CBI memorandum notes that

“many CBI members remain sceptical about the net benefit to the UK economy of contested takeovers, whilst opportunities for UK companies to restructure on a European scale by the same process are largely denied.”<sup>66</sup>

Sir Hector Laing, Chairman of United Biscuits, expressed the sentiments of many when he lamented a situation where “successful British businesses can be hijacked by Europeans with bullet-proof waistcoats.”<sup>67</sup> In a CBI survey of 250 companies in manufacturing and service sectors, two-thirds of respondents felt that the lack of “reciprocity” in a bid from overseas was grounds for government intervention. There was widespread support for proposals to refer bids to the Monopolies and Mergers Commission wherever the predator was immune to a counterbid.<sup>68</sup> The prospect of the

<sup>66</sup> CBI, "CBI memorandum: Contested takeovers- the international dimension."

<sup>67</sup> Peter Rodgers and Clare Dobie, "Curbing foreign takeovers is a job for Government," *The Independent*, February 22 1990.

<sup>68</sup> Duffy, "City 'Short-Termism Hurts UK Industry'."

Single European Market further stoked British worries about asymmetric vulnerability. As John Banham, CBI director general, explained,

“In the run-in to 1992 the risk of a wave of foreign takeovers is of great concern to many CBI members. When a company outside the EEC wants to acquire a base in the Community, the relative openness of the UK means that it has only one port of call: Britain. It is extremely difficult to carry through a contested bid in other Community countries. If contested takeovers continue at their present rate, by 1992 strategic control of much of British industry will be exercised from outside the Community.”<sup>69</sup>

In Germany, asymmetric vulnerability did not trouble employers while they were not at the receiving end of hostile bids. Unlike their British counterparts, the German peak employer federations in the late 1980s thought that the

“lack of specific regulations in a number of Member States has not given rise to problems, as there are very seldom any takeover bids in these countries [...] There is no reason why a situation which has proved satisfactory in the past, and which has developed without any formal harmonization, should give rise to problems in the future.”<sup>70</sup>

However, after the dismantling of anti-takeover defenses with the 1998 German KonTrag legislation, “level playing field” became the war cry of German employers. From 2001 onwards, the BDI campaign against the neutrality rule centered around the objection that it would strip German companies of their last remaining protection, while defense mechanisms and structures illegal in Germany, such as multiple voting rights, Golden Shares, unlimited cross-shareholdings or foundations, would remain available to companies elsewhere.<sup>71</sup>

“It is not acceptable that instruments and structures for the defense against hostile takeovers are permitted in some member states and illegal in others. [...] The result would be a perpetuation of the current tilted playing field.”<sup>72</sup>

BDI chief Rogowski saw only two possible solutions:

“Defense rights must either remain intact everywhere, or be prohibited without exception.”<sup>73</sup>

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<sup>69</sup> Colin Narbrough, "Industry criticizes City and Government on foreign bids," *The Times*, November 7 1988.

<sup>70</sup> BDI, "BDI comments in UNICE memo 22.6/12/2 on O.P.A. -Takeover bids."

<sup>71</sup> BDI, "BDI-Präsident Rogowski: Die Neuvorlage der Brüsseler Übernahmerichtlinie muss Chancengleichheit garantieren," *BDI Pressemitteilung*, 10. Januar 2002, BDI, "BDI: Neue EU-Übernahmerichtlinie benachteiligt erneut deutsche Unternehmen.", BDI, "Rogowski zum Scheitern der Übernahmerichtlinie: Jetzt muss ein einheitlicher europäischer Rahmen her," *BDI Pressemitteilung*, 4. Juli 2001, BDI and BDA, "Stellungnahme zum Kommissionsvorschlag für eine neue Übernahmerichtlinie," (2002).

<sup>72</sup> BDI and BDA, "Stellungnahme zum Kommissionsvorschlag für eine neue Übernahmerichtlinie."

<sup>73</sup> BDI, "BDI: Neue EU-Übernahmerichtlinie benachteiligt erneut deutsche Unternehmen." BDI, "BDI-Präsident Rogowski: Die Neuvorlage der Brüsseler Übernahmerichtlinie muss Chancengleichheit garantieren.", BDI, "Rogowski zum Scheitern der Übernahmerichtlinie: Jetzt muss ein einheitlicher europäischer Rahmen her.", BDI and BDA, "Stellungnahme zum Kommissionsvorschlag für eine neue Übernahmerichtlinie."

*Worker participation: Negative externality effects reinforcing intra-class cohesion*

The BDA explicitly referred to externality effects in its deliberations on the EU worker participation directives, noting that

“[...] the consequences of the proposed rules for employers in other member states are also relevant from a German perspective and must not be ignored.”<sup>74</sup>

By contrast to the takeover case, the externality effects of worker participation were seen as negative. German employers thought that they would be worse off, rather than better off, if the rules binding themselves were spread across Europe. The BDA argued that

“[i]f the imposition of those extensive worker participation rules [on companies in other EU member states], which largely and for historical reasons face entirely different socio-economic structures, causes friction and a decline in company performance [in these countries], then this could only myopically be regarded as a competitive advantage for German companies. In actual fact, it would be a loss of competitiveness for the Common Market as a whole, which would be cause for concern also from a German point of view.”<sup>75</sup>

Of the negative externality effects discussed above, slippery slopes, spill-over and implications for the balance of power between capital and labor all featured prominently in intra-associational debates. As the CBI put it in a comment on the Vredeling directive, employers feared that “fresh possibilities for industrial conflict would be created.” The BDA warned that the Information and Consultation directive would

“provide employees with much leeway to make demands beyond the rules contained in the directive proposal and in the German Works Constitution Act.”<sup>76</sup>

Similarly, during the 1970s, Gesamtmetall opposed early attempts to set up EWC-like structures on the grounds that

“The danger associated with these union efforts should not be underestimated. Once such “contact talks” have become the rule, then it is only a small step to demands for some degree of consultation and codetermination in the area of entrepreneurial decision-making.”<sup>77</sup>

German employers also worried that European initiatives might rekindle the codetermination dispute at the national level, forcing employers to make even greater concessions to strong German unions:<sup>78</sup>

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<sup>74</sup> BDA and BDI, "Stellungnahme zum geänderten Vorschlag einer Fünften gesellschaftsrechtlichen Richtlinie zur Koordinierung der Strukturvorschriften von Aktiengesellschaften in der EG," 6.

<sup>75</sup> Ibid.

<sup>76</sup> BDA, "Stellungnahme: Richtlinien-vorschlag zur Errichtung eines allgemeinen Rahmens zur Verbesserung der Informations- und Konsultationsrechte der Arbeitnehmer in der Europäischen Gemeinschaft."

<sup>77</sup> Gesamtmetall, "Geschäftsbericht 1968-70," *Arbeitgeberverband Gesamtmetall* (1970): 194.

<sup>78</sup> BDA and BDI, "Comment on the Amended Proposal for a Directive on Procedures for Informing and Consulting Employees - COM (83) 292 Final- ("Vredeling Directive Proposal")," 4, BDA and BDI,

“Through the necessary amendment of the Works Constitution Act in German law, which would become necessary with the implementation of the Directive Proposal, the German legislator would be forced into a political dispute by Brussels, which would be difficult to limit. The extensive demands of German trade unions for extension of the Works Constitution Act are known. It would appear to be an illusion to expect that an implementation of the Directive Proposal would be possible without the dispute on co-determination in the Federal Republic of Germany being rekindled with all its bitterness. [...] [The] general political strain and implications would be so serious, that the decision as to whether one would be willing to accept this must remain the exclusive responsibility of national politics and cannot, through inaccurate quotation of the EEC Treaty, be imposed on the Federal Republic of Germany by the Commission.”<sup>79</sup>

Apart from spill-over to the domestic level, German employers also feared spill-over to other international organizations:

“It must be feared - and particular concern is appropriate here - that a binding legal instrument in the EC would prejudice the treatment of the issue area “transnational enterprise” by other international institutions, especially by the United Nations. [...] The consequences would be completely unacceptable to German industry.”<sup>80</sup>

Beyond that, German employers complained about the likely consequences of extending German-style participation rights to the worker representatives of the non-German branches of German multinationals. Fears of “foreign union members who are not familiar with our national practices”<sup>81</sup> are a recurrent theme in German employer statements concerning EU legislative proposals:

“For a German company with a foreign subsidiary or branch, this [Vredeling proposal] means that a situation may arise where highly sensitive information must be provided to foreign trade unions who as Communists are programmatically committed to the promotion of class war. How can a confidential treatment be guaranteed under such conditions?”<sup>82</sup>

“In most member states, there are no worker representatives comparable to the German Works Constitution Act, who, independent from the trade unions, are supported by the trust of the entire workforce. [...] In any case, the existing national differences in the tradition, self-perception and legitimacy of worker representatives can lead to severe conflicts that would also burden the company itself.”<sup>83</sup>

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“Stellungnahme zum geänderten Verordnungs- und Richtlinienvorschlag für Europäische Aktiengesellschaften (SE),” (1989), 3.

<sup>79</sup> BDA and BDI, “Comment on the Amended Proposal for a Directive on Procedures for Informing and Consulting Employees - COM (83) 292 Final- (“Vredeling Directive Proposal”),” 4.

<sup>80</sup> BDA and BDI, “Stellungnahme zu dem Vorschlag der EG-Kommission für eine Richtlinie über die Unterrichtung und Anhörung der Arbeitnehmer von Unternehmen mit komplexer, insbesondere transnationaler Struktur (Doc. KOM (80) 423),” 2.

<sup>81</sup> Gesamtmetall, “Geschäftsbericht 1968-70.”

<sup>82</sup> Rolf Thüsing, ““Vredeling-Richtlinie” - Schon vom Ansatz her verfehlt,” *Der Arbeitgeber*, Nr. 16, 17/34 1982, 906.

<sup>83</sup> BDA and BDI, “Stellungnahme zum Vorschlag für eine Richtlinie des Rates über die Einsetzung Europäischer Betriebsräte zur Information und Konsultation der Arbeitnehmer in gemeinschaftsweit operierenden Unternehmen und Unternehmensgruppen,” 8.

In sum, negative externality effects contributed to transnational employer cohesion over worker participation because they were shared by those who were not adversely affected by the immediate content of the proposed directives. As in the takeover case, the direct effects of the EU proposals were less disconcerting for managers in countries where similar legislation was already in place: British managers had more reason to worry about the compatibility of their production strategies and industrial relations systems with EU directives mandating worker participation than German managers, who were already subject to worker participation requirements through German law. However, by contrast to the takeover case, this asymmetry did not undermine transnational intra-class cohesion among employers because negative externality effects, such as the threat of spill-over and slippery slopes, provided a second motive for opposing the directive that was shared by employers everywhere.

## **Conclusion**

The analysis presented above bridges the artificial chasm between class-centered and firm-centered perspectives by providing an analytic framework that treats efficiency and distribution as separate but interrelated and equally important dimensions. The firm-centered Varieties of Capitalism literature has been criticized for “privileg[ing] considerations pertaining to efficiency and coordination at the expense of considerations pertaining to conflicts of interests and the exercise of power” and downplaying the “conflict between labor and capital that constitutes a common feature of all capitalist political economies.”<sup>84</sup> The class-centered Power Resource literature, on the other hand, has been attacked for focusing too narrowly on zero-sum class conflicts and neglecting cross-class coalitions.<sup>85</sup>

My paper demonstrates that approaches that focus exclusively on either efficiency or distribution are not just theoretically implausible – because most people care not about the size of the pie, nor about their share of the pie, but about the size of their slice - but also incapable of explaining observed preferences and cleavage patterns on policy issues that have both distributional and efficiency implications. Both proposed EU directives on worker participation and takeovers disadvantaged managers in class-level distributional terms by shifting control rights to either workers or shareholders, and both types of proposal were more compatible with some production strategies than others. Nevertheless, the cleavage patterns differed, featuring strong transnational cohesion in the case of worker participation and intra-class divisions along a production regime cleavage in the case of takeovers.

To remedy these defects, my paper provides an analytic framework that attends to the multidimensionality of actors’ preference-calculus. By distinguishing direct class-level effects, direct firm-level effects and “externality” effects, I disentangle competing considerations that are either confounded or ignored by standard one-dimensional approaches. Within this heuristic, I also advance a proposition on how the externality

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<sup>84</sup> Jonas Pontusson, “Varieties and Commonalities of Capitalism,” in *Varieties of Capitalism, Varieties of Approaches*, ed. David Coates (Houndmills: Palgrave, 2005), 165. Chris Howell, “Varieties of Capitalism- And then there was one?,” *Comparative Politics* 36, no. 3 (2003).

<sup>85</sup> Isabela Mares, *The Politics of Social Risk: Business and Welfare State Development* (Cambridge University Press, 2003). Peter Swenson, *Capitalists Against Markets: The Making of Labor Markets and Welfare States in the United States and Sweden* (Oxford: Oxford University Press, 2002).

effects of a policy proposal can determine whether class-level or firm-level considerations prevail in the preference formation process. Class cohesion is reinforced if the externality effect pulls in the same direction as the direct class-level effect and weakened if the two effects pull in opposite directions.

The framework should not be understood as a fool-proof means of mechanically predicting cleavage lines, but as a tool for structuring narratives by creating dimensions for cross-case comparison. To calculate how actors weigh competing considerations against each other, one would need to know not only the direction but also the magnitude of the firm-level, class-level and externality effects. Prior theory or abstract reasoning may generate ambiguous expectations regarding the direction of these effects, and relative magnitudes are impossible to measure without recourse to empirical data. To take an example from the research presented above, it is not obvious a priori that employers see the overall externality effects of mandatory worker participation as negative. In deciding whether they were better off or worse off if British employers were subjected to German style worker participation requirements, German employers had to weigh the advantage of leveling the playing field and imposing additional costs on their competitors against the disadvantage of limiting their own options for regime shopping. Intra-associational debates reveal that the latter – negative - externality effect was more important to them, and the overall policy stance of German employers shows that it was strong enough to trump any positive firm-level effects. A priori, one might have expected German employers to view the net externality effects of worker participation as positive rather than negative. The fact that reliable information regarding the relative magnitude of competing considerations is best obtained inductively limits the predictive capacity of the proposition. Nevertheless, while my framework does not dispense with the need for contextual knowledge and empirical research, it identifies important dimensions for comparison across cases.

As such, it could be applied to many other rules besides those pertaining to shareholder and worker participation. The observation that employers weigh class-level effects against firm-level effects is pertinent wherever both effects can plausibly be expected. Examples include not only many corporate governance rules, but also legislation on issues concerning the labor market, welfare or vocational training. The observation that EU legislation, unlike domestic legislation, has externality effects resulting from the imposition of the rule on actors in other EU member states is relevant to harmonization efforts across policy fields.