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## **A general overview of the pros and cons of the Codetermination Act and its applicability to the Syrian Arab Republic:**

Many scholars, legislators, economists, and legal critics have discussed the efficiency of the codetermination act and its impact upon the industrial process in Germany. In this paper I will explain some of the pros and cons of this act by giving a briefly overview of the historical aspects led to this act being issued and focus more on the latest codetermination acts which belong to 1951 and 1976.

There are three main views as to why codetermination primarily exists: to reduce management-labour conflict by improving and systematizing communication channels to increase bargaining power of workers at the expense of owners by means of legislation and to correct market failures by means of public policy. The evidence on efficiency is mixed.

The German model of codetermination is unique. Formulated at the end of World War II, it was applied first in the coal and steel industries of West Germany following the war and gradually expanded to other sectors.

One of the least-investigated, but by no means least-interesting, aspects of the years in Nazi-ruled Germany, is Nazi labor policy. the following section sketches out a few of its main points. soon after they came to power, the Nazis dissolved the unions and not long after forced all workers, by decree, to join the German Labor Front, (Deutsche Arbeitsfront, or DAF), The DAF was not a union; it was auxiliary formation of the Nazi party.

As the Nazi wiped the slate clean in May 1933 by dissolving the unions, the Allies in May 1945 wiped it clean again by disbanding the DAF. Along with all other German governmental power, Allied Military Government assumed the power of the Trustees of Labor and exercised them until a new labor movement got into bargaining relations with new employer association. Now a new cry arose. Allied doctrine held that unhealthy concentration of economic and political power in the hands of the "steel barons" helped to bring on the war. The Allies threatened to eradicate this power concentration.<sup>2</sup>

Firstly, codetermination means the employees have the right to supervise what the board of directors will decide, hence the high council of the management has no right to decide without the consent of the representatives of employees in the supervisory board. <sup>3</sup>

Social codetermination can be traced back in history o the end of 19th century because of the advent of industrialization. After the First World War the works council act issued in 1920 stipulated that each company which has more than 5 people allows the employees the right to establish a work council. The =company cannot prevent this The council enabled access to the labor court and that was something which was unique at that time. <sup>4</sup> The works council act1920 was amended two years later and stipulated that every supervisory board should have more than three members two of which must be from the employees and in all other corporations at least one seat to the employees.

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<sup>2</sup> Edwin F. Beal, ILR Review, Sage Publications, Inc, Vol. 8, No. 4 (Jul., 1955), pp. 483-498

<sup>3</sup> Gorton, G and Frank, A Schmid 2004,' CAPITAL, LABOR, AND FIRM: A STUDY OF GERMAN CODETERMINATION', *Journal of the European Economic Association*, vol.zwu0171, no.43, pp.863\_905.

<sup>4</sup> Müller-Jentsch, W 2008, 'Industrial democracy: Historical development and current challenges', *Management Revue*, Vol. 19, no. 4, pp. 260-273

This was a groundbreaking achievement at that time. The supervisory board is the very highest organ of the German corporations, but unfortunately, this act was abolished in 1934.

It is important to mention at this point that, the spokesperson committee which is responsible for the management and directors introduced in 1989 (several years after the act of 1920) a doctrine which preserves the right of the employees. This is significant as the German doctrine of protecting the rights of the employees dates back in their history and it was only later the tide shifted to the protection of directors as well. This is a very positive way of thinking and approach if an international industry wants to develop their productivity. <sup>5</sup>After the Second World War under pressure from the victor's nations a new act was introduced in 1951. The Deutsche Gewerkschaftsbund (DGB) and the reasoning for this new Act was to prevent Germany's mining, iron and steel industry to produce arms and weapons and start a new war. The classification of this act was as follows:

1. stated capital up to 10 million Euro must have 11 members 5 represent the shareholders and 5 represent the employees and 1 seat to the neutral chairperson.
2. stated capital between 10 \_ 25 million is possible to have 15 members 7 represent shareholders and 7 represent the employees and 1 seat neutral chairperson.

stated capital more than 25 million is possible to have 21 members 10 to represent the shareholders and 10 to represent employees and 1 seat is neutral chairperson. <sup>6</sup>In analyzing the structure of this act, it can be seen that it considers as parity codetermination act because it gives equal power between the employees and the shareholders. In order to constitute a council from 15 to 21 members this then considered to be a big body inside the corporation and this might create some problems for decision-making by this council.

Furthermore, to elect the representatives of the employees of this council it is not an easy process because most of the time they came from different parties with different interests which might create some contrast to the decision-making inside these councils.

Moreover, the codetermination act introduced in 1976 applied to those types of corporations which have more than 2000 employees. The act also stipulated that half of the supervisory board must have a chairman which represents the employees and the other half must be represented by shareholders. The representative for the shareholders will also be chosen by a casting vote, from the shareholders too, but the question here, is it really codetermination? <sup>7</sup>

There is much criticism of this act because it restricts private ownership. Irrespective of whether these restraints are considered to be unconstitutional or constitutional The conclusion of this debate is that this act is constitutional. The evidence of this can be seen in the profits and advantages to the German industry. The statistics in 2003 said more than 700 German companies applied this act and more than 5000 seats are for the employee's delegates.

The third type of codetermination is the so-called 1/3 codetermination. This version establishes that the works council constitution act should apply only to certain types of enterprises which have

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<sup>5</sup> Erich, S and Hans-Joachim, M 1979, 'THE GERMAN CODETERMINATION ACT OF 1976?' *Journal of Comparative Corporate Law and Securities Regulations*, no.14, pp.75\_88.

<sup>6</sup> Chicago 7th ed.

Benjamin A. III Streeter, "Co-Determination in West Germany - Through the Best (and Worst) of Times," *Chicago-Kent Law Review* 58, no. 4 (1982): 981-1002

<sup>7</sup> Economic Effects of Codetermination

Author(s): Felix R. FitzRoy and Kornelius Kraft, *The Scandinavian Journal of Economics*, Vol. 95, No. 3 (Sep., 1993), pp. 365-375, *Wiley on behalf of The Scandinavian Journal of Economics*

Stable URL: <https://www.jstor.org/stable/3440362>, 14-12-2019 04:18 UTC

more than 500 employees. In 2004 the works council constitution act was replaced by the 1/3 participation act with similar features but simplified rules. 8

In conclusion these three different forms, of codetermination depend upon the legal form of the enterprise's stated share capital and the number of the employees.

The scope of this act relates to the supervisory board which has significant important functions, which include the appointing and removal of the members of board of management. The supervisory body are also responsible for representing the company in and out of the courts in matters which concern the members of the board of management. Additionally, the supervisory body also oversees the management of the company. The supervisory body has an overview and insight into the company's books and cash as well as approving the company's financial statements and also reporting to the shareholder's meeting. 9

Obviously, the supervisory board plays an important role as the highest organ inside the company and the representatives of the employees have an important position inside this board. This is considered to be a very good solution because the employees have a closer eye on the daily issues of the company and they know what the best interest of the company might be.

However, the corporate governance code includes provisions ( all members of the supervisory board are bound by the enterprise's best interest ) and this theory is good but in practice it is very hard to determine whether the supervisory board is acting neutrally or from a biased position because the representatives of the employees and the shareholders have conflicting interests which might create some conflict inside the supervisory board. 10

Generally, the perspective of codetermination act varies from time to time, from the beginning it faced was with skepticism, doubts and dismissed. It has been argued that the codetermination act is violates certain fundamental human rights guaranteed by the constitution. However, it has recently been viewed positively as a source of pride and valuable contribution to labour law because it promotes the common wealth of larger German companies, furthermore, not only in conformity with the constitution but also necessary for the promotion of the common good.

Currently, some scholars debate the defects of the codetermination act focusing on several points, for instance, supervisory board interests matter more than the employees interest in the business aspect, actually, this is not true because the corporate governance binds the supervisory board to act in the enterprise's best interest. 11

Another controversial point is that the supervisory board is too large and this might be true because it is a council composed of more than 20 members.

Another point of contention, is that sometimes the board of management informs the supervisory board very late which may cause obstacles with the completion of its tasks, but this is not a

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8 Rebecca (2011) : Co-determination in Germany - a beginners' guide.

5. überarbeitete Auflage, Arbeitspapier, No. 33, Hans-Böckler-Stiftung, Düsseldorf,

2004 Amendment New "Third Part Act" (Drittelbeteiligungsgesetz)

• Modernisation of the §§ of the 1952 Works Constitution Act referring Supervisory-Board Membership

9 Paul, L Davies, 7-8 December 2003,' THE BOARD OF THE DIRECTORS: COMPOSITION, STRUCTURE, DUTIES, AND power', *Organisation For Economic Co-operation and Development*, no. 28, page, 7.

10 Jeffrey D. Sachs and Katharine P, 1997, *The Rule of Law and Economic Reform in Russia*, Westview Press, NEW YORK

11 Charles M. Elson,\* Craig K. Ferrere† and Nicholas J. Goossen, November 25. 2015, THE BUG AT VOLKSWAGEN:

LESSONS IN CO-DETERMINATION, OWNERSHIP AND BOARD STRUCTURE, no.116, page.14.

significant problem because it can be easily avoided if certain regulations are added to the by-laws of the company. 12

Nevertheless, it is considered to be very costly for the company in respect of the salaries to those boards. However, the trade unions are bound by the representatives of the employees to keep their original salary and deliver the extra amount to the trade union. A This is considered to be an excessive behavior because at least they have to keep a small percentage like 10 or 15 % of this extra salary as a bonus because of the risks they take by their tasks.

Rumors are that embezzlements are spreading among the supervisory boards. This fact should not be taken into consideration as a shortcoming of the codetermination act as corruption exists everywhere and it is up to society to determine how they will react to this behavior. 13

It has been argued that several local corporations in Germany have withdrawn from the German markets in attempt to avoid the codetermination act. They shift their investments abroad. This is not entirely accurate because German companies move their business abroad for different reasons not because of the codetermination act. For instance, German companies seeking markets where the tax and labor salaries are lower than in Germany, is not avoiding the codetermination act.

Other criticisms point, to the codetermination act being given a bad reputation because the investment process leads to foreign investors not being interested in investing in Germany. However, despite this criticism this perspective faded and the current perspective now is that the codetermination act assures the benefits and profits for the foreign companies inside Germany. 14

**To explain the pros and cons in general we must highlight certain points.**

### **Different types of codetermination:**

It is not surprising that the codetermination act of 1951 created a coherent body consisting of owner-directors and labor-directors and each party meets well in advance and discusses and negotiates in order to achieve a good compromise for both parties. This is particularly true of the coal and steel industry. There is no real conflict because both parties pay attention to the fact that they might be defeated by the neutral vote, so both parties attempt to make best efforts through consultations and negotiations to reach some compromise and this approach is guaranteed by the parity codetermination and many decisions finally made by unanimous vote. 15

In contrast, the companies who subject to the quasi-parity codetermination act there is little negotiations and pursuits for compromise as a chairman of the supervisory board might cast his decisive vote, furthermore, many companies attempted to reduce the tasks of the supervisory board to the legal admissible minimum which it considered to be anti-labor and anti-union behavior. 16

### **Shallow bargaining power:**

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12 Gerhard Cromme,' Corporate Governance in Germany and the German Corporate Governance Code', *Blackwell Publishing Ltd* 2005, vol.13, num.3, May 2005.

13 Ulrich Jürgens ,Katrin Naumann & Joachim Rupp (2000) Shareholder value in an adverse environment: the German case, *Economy and Society*, 29:1, 54-79, DOI: 10.1080/030851400360569.

14 Gregory Jackson,'Stakeholders under Pressure: corporate governance and labour management in

Germany and Japan', *Blackwell Publishing Ltd* 2005, Vol.13, Num.3, May 2005

15 Hans F. Sennholz 1982, Co-determination In West Germany, *FEE*, 5. Dec. 2019, <https://fee.org/articles/co-determination-in-west-germany/>

16 Archibald Cox, 'Some Aspects of the Labor Management Relations Act, 1947', *The Harvard Law Review Association*, Vol. 61, No. 1 (Nov., 1947), pp. 1-49.

It is not surprising that the codetermination act changed the concept of collective bargaining because the traditional way is both parties meet and negotiate in order to come to agreement between the employers and the labors via trade union. The concept is different now because the trade unions have representatives inside the companies which can apply pressure to the employers in order to comply with the employee's demands.

However, the codetermination act does not maintain the peace all of the time in the labor markets. For instance, the steel industry strike from November 1978 to January 1979. Here the issue was that the union demanded a 35 hour work week=. Eventually the strike settled when a compromise was reached. This is an example of how the codetermination act is unable to solve each problem which arise because of the labor unions.<sup>17</sup>

### **Is the codetermination act a new legal type of expropriation?**

The Codetermination act brings up a significant question concerning the private property order because it grants parity rights of ownership to individuals who did not provide it. If the labor unions or their representatives have Parity rights of management they are equal partners in the ownership. If this power is seized by political force from the owners and given to labor unions, this will lead inevitably to consequences such as withdrawal by the investors from the markets because no one would find it acceptable to invest his capital in a project where someone else has equal rights to his investment No one is likely to risk his capital in economic production if he bears all the risks and someone else has equal rights not only to the profits but to the capital too. <sup>18</sup>

### **Hidden caveats:**

Obviously, the employees in the corporations with the codetermination act may have the benefits from less work and higher payments, and they might exploit the management to render the capital and the returns to serve their interests. However when the industries and the investors begin to stagnate or evasion in this circumstances the codetermination benefits give away to codetermination losses as enterprises and corporations shut down permanently and unemployment rises, it will be difficult to discover a new method to fix the investment process. <sup>19</sup>

### **The alternative market order:**

Labor-directors who are not guided by profits and losses are unaffected by the consequences of their actions. They either intentionally or instinctively are hampering or thwarting the adjustment process by sabotaging the market process in order to preserve or expand their own economic power and ultimately to replace the market order with a political command system. <sup>20</sup>

### **Is the codetermination act a good model for Syria?**

In order to be able to answer this question we have must first of all have an overall understanding of the historical and the current political system in Syria. This is important because there have been three different constitutions during the modern state and that occurred in 1950,1973 and 2012. Each constitution stipulated explicitly the word socialist and that means the socialism was the main

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17 Pontusson. J and Soskice. D 2000, Unions, Employers, and Central Banks. Macroeconomic Coordination and Institutional Change in Social Market Economies, First Edition, *PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE*, UNITED KINGDOM.

18 Bluebook 20th ed. Giulio Echia, Martin Gelter & Piero Pasotti, Corporate Governance, Corporate and Employment Law, and the Costs of Expropriation, 8 Rev. L & Econ. 457 (2012).

19 John T. Addison, Claus Schnabel, and Joachim Wagner, 2001, Works councils in Germany: their effects on establishment performance, *Oxford Economic Papers* 53 (2001), 659–694

20 Paster, T. (2012). The Role of Business in the Development of the Welfare State and Labor Markets in Germany. London: Routledge, <https://doi.org/10.4324/9780203142301>

principle of the political system in Syria but the praxis of this principle was varying from time to time.

During the constitution of 1950 the socialism was applied because the state at that time nationalized the factories and prevented private ownership and expropriated the agricultural territories and distributed it to the farmers. These movements were not successful because the communist principles were also spreading at the same time and neither the state nor the society accepted these concepts. 21 The constitution was abolished and new one was issued in 1973 under the so-called corrective movement, under that constitution the private ownership was allowed. Around this time the concept of nationalization was waning and big companies, in particular the corporations especially for textile industry started to emerge. This type of manufacturing required very high capital and private investors also played a significant role in this industry and this continued until the beginning of the 21st century. 22 In the 21<sup>st</sup> Century Syria was interesting in joining the WTO so the government started some economic reforms and they privatized big public sectors, for instance, public transportation. 23 It can be argued that the government moved from socialist policy to a market economy policy. In 2012 a new constitution issued under the pressure of the opposition raised the demands for more freedom and social justice but this new constitution was not sufficient. Instantly the armed conflict begun and till now Syria is still suffering from the consequences of this conflict.

In conclusion, the last 50 years, there were no explicit governmental policies even during socialism the labor power did not make a real contribution in the decision making. As a result of this our country lacks innovations and creativity. If we were to introduce a codetermination act especially at this time it would be quite useful for different reasons. 24

Firstly, the current armed conflict will end sooner or later. At some point international investors will be interested in investing in Syria for various reasons, for instance, low tax and the tax exemptions on significant enterprises. Additionally the low labor salaries are considered extremely low compared with those of other regional countries like Turkey or Lebanon. In addition to these features the codetermination act will guarantee the foreign investor with stability in their investments because of the labor contribution of the industrial process and in this case the labors will prevent the governments from any steps against the foreign investors,. In this way the situation will be more or less similar to the German model when the victor nations imposed upon the German government to establish the codetermination act to prevent the German government from introducing arms and weapons. It was a successful strategy. Syria is also in a similar situation because issuing the codetermination act will grant employees a very powerful role and

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21 Section.21, Chapter.2, of The Syrian Constitution (1950), *'No one is allowed to use private property contrary to the public interest', 'Expropriation may be made for the purpose of public benefit and it is based on a law that includes giving just compensation'*.

22 Section.1, chapter.1, the main principle of The Syrian Constitution (1973), *'The Syrian Arab Republic is a sovereign, popular, socialist, and democratic state. No part of its territory may be ceded and it is a member of the Union of Arab Republics'*.

23 Jonathan Lynn, GENEVA, May 4, WTO Members agree Membership Talks With Syria, 10.Dec.2019, [https://mobile-reuters-com.cdn.ampproject.org/v/s/mobile.reuters.com/article/amp/idAFLDE64329C20100504?amp\\_js\\_v=a2&amp\\_gsa=1&usqp=mq331AQCKAE%3D#aoh=15763488221770&amp\\_ct=1576348933361&referrer=https%3A%2F%2Fwww.google.com&amp\\_tf=From%20%251%24s&ampshare=https%3A%2F%2Fwww.reuters.com%2Farticle%2Ftrade-wto-syria-idAFLDE64329C20100504](https://mobile-reuters-com.cdn.ampproject.org/v/s/mobile.reuters.com/article/amp/idAFLDE64329C20100504?amp_js_v=a2&amp_gsa=1&usqp=mq331AQCKAE%3D#aoh=15763488221770&amp_ct=1576348933361&referrer=https%3A%2F%2Fwww.google.com&amp_tf=From%20%251%24s&ampshare=https%3A%2F%2Fwww.reuters.com%2Farticle%2Ftrade-wto-syria-idAFLDE64329C20100504).

24 Youssef Courbage, Fertility Transition in Syria: From Implicit Population Policy to Explicit Economic Crisis, Guttmacher Institute, Planning Perspectives, Vol. 20, No. 4 (Dec., 1994), pp. 142-146

the capability to lead the governmental policy and prevent the government from taking any risky steps. 25

Secondly, it was obvious that the removal of labor from the political scene has had a bad impact on the social aspect. Additionally, the Syrian constitutions stipulated that 50 % of the parliament's members should be made up of workers and farmers but this political participation was only theoretical because all the leaders of trade unions and agricultural unions were appointed by the highest authority, and that authority is the leading party. This resulted in the trade unions' leaders complying with the political orders. This structure led to the situation whereby the social pyramid was leading from the top of the society which implemented a system which was not favorable to the management and leadership of the society. 26

In contrast, if Syria issued the codetermination act the political and economical process will improve and develop. In this way the social pyramid will be from the grassroots level. Society will then dictate its own interests because the labors will be the generator of any society, so it is quite important to give the laborers the chance to contribute to the corporate governance. In this way we would quickly see the results emerging.

Thirdly, during the modern state of Syria, all the significant sectors of the economy were governed by the state whether these sectors were profitable or provide public services. This monopoly applied to all levels whether it was public health care, educational system, defense operations, and economic process and because of this the state-dominated every single aspect of life. In this situation the state does not have any rivals from the private sector. By the time the private sector lost its ability to compete with the state at any level, and the private sector stand useless in front of these circumstances. Consequentially, all the labor was interested in was becoming a state employee with constant position and to avoid the private sector even if the salaries in the private sector are higher. Even if the individual would like to be employed by a private company or corporation it meant that they would have no job security which were provided by the private sector.

Unless , Syria applies the codetermination act all the rules will change and the circumstances will go in reverse, so in this case, the laborers will contribute in the decision making and apply the pressure upon the employers via codetermination act to improve the laborers situation and increase their security. D This would include for instance, retirement, work injuries, arbitrary dismissal and so on. With these new trends, the private sector will be more attractive to the labor power more than the public sector, hence the private sector will start to grow once again and in time will recover the ability to compete with the public sector. The private sector might even be more efficient than the public sector, because after all these years of performance the public sector lost its flexibility to follow the changes. In this way the codetermination act will help the private sector to hold this role and lead the society to significant and efficient changes and the laborers will be the generator of this peaceful and beneficial revelation. 27

In conclusion, I tried to clarify the importance of applying the codetermination act in Syria by shedding light on the characterizations and the aspects of the Syrian situation. I set out in this essay the pros and cons of the practical application of the codetermination act which may apply to any country and not only to the Syrian state.

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25 Export Entreprises SA, December 2019, Expanding Markets and Facilitating Compliance, Mauritius Trade Easy, 10.Dec.2019, <http://www.mauritiustrade.mu/en/market-survey/syria/investing>.

26 International Labour Conference, Seventy-ninth Session, GENEVA 1992, *Record of Proceedings*, GENEVA 1993.

27 Johna Speakman, 'MOBILISATION OF SYRIAN INVESTORS AND THE PRIVATE SECTOR', chapter.13, no.14, pp. 268-291.

So in summary, yes the codetermination act is a good model to be applied in Syria in order to promote the economic reality and develop the investment process.

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