從德國經驗看公正轉型的制度架構－以員工代表會與企業監事會為主

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國立陽明交通大學科技法律學院於 2025 年 10 月 9 日下午在台北國際會議中心 (IEAT) 舉辦以「公正轉型 (Just Transition)」為主題的專題講座，邀請德國學者 Krause 教授蒞臨分享，由邱羽凡副教授擔任主持人，全國產業總工會戴國榮理事長、高雄市產業總工會林順基理事長、雲林縣產業總工會林志玩理事長為與談人，共同探討氣候變遷下勞動與公正轉型的法制與實務經驗。

Krause 教授以一句經典名言 “There are no jobs on a dead planet.” 作為引言，點出環境保護與勞工權益之間密不可分的關係。他提醒，氣候變遷若導致產業基礎崩壞，勢必對就業與社會穩定造成衝擊，因此公正轉型不僅是環境政策的課題，更涉及社會公正、就業保障與受影響勞工的照顧。教授進一步強調，氣候變遷的因應不僅是國家的責任，也需要企業與勞工共同參與，勞工代表在此過程中應具備發聲與協力推動的空間。Krause教授首先引用國際工會聯合會 (ITUC) 與政府間氣候變遷專門委員會 (IPCC) 的討論，歸納出公正轉型的兩大核心精神：「公正結果」(just outcomes) 與「公正程序」(just processes)，體現「不遺落任何人」的核心理念。在德國，公正轉型制度由三個層次來理解：首先，在全球層級，包括聯合國永續發展目標SDG 13及《巴黎協定》等國際法框架；其次，在歐盟層級，則有《歐洲綠色新政》(European Green Deal) 與《歐洲氣候法》(European Climate Law)；最後聚焦至德國國內，透過《氣候行動計畫》(Climate Action Plan) 與《聯邦氣候保護法》(Federal Climate Protection Act) 落實具體政策。Krause 教授指出，這些法規並非僅具宣示性，而是實際納入減碳目標的政策體系，具有明確的法效力。

員工代表會在氣候轉型中監督機制

實務上，德國勞工除了經由工會來推動公正轉型，而德國工會在策略面上，可以區分為四種類型──對抗性 (oppositional)：明顯反對轉型而力求維持現狀；反應性 (reactive)：認為接受轉型不可避免，但並不主導或迎向轉型，而是以「損害最小化」為策略主軸；肯定性 (affirmative)：接受轉型，但限於現有制度內，推動綠色成長、強調參與治理。及轉化性 (transformative)：主張結構性變革，不僅制度內改良，而是認為轉型需重構生產模式、產業關係、甚至經濟社會組織。

以上分別呈現了不同工會的應對方式。企業中的勞方代表，則不是如同台灣有企業工會或廠場工會，而是經由法律訂立「員工代表會」的制度，以及與公司監事會中的勞方代表 (Supervisory Board Representatives)，各自參與並監督企業決策的方式，促進綠色轉型的落實，而員工代表會的重要性最高。

德國的工代表會的法源依據為「員工代表會法」（有譯為「企業組織法」，(Betriebsverfassungsgesetz, BetrVG)，這部法律要求一個具有五名以上的員工的廠場，員工須選舉出員工代表。員工代表會法賦予員工代表一定的參與權限，在企業內部就經濟與勞動條件的議題上發揮勞資共治[1]的功能。員工代表會依法不得發動罷工，而是以強制性法制支持勞工代表推動綠色轉型的能力。

德國目前已經將環境保護正式納入員工代表的法定職權之中—包含推動職場環境保護、界定企業內環保範圍等。不過，Krause 教授特別強調，員工代表會法的立法目的，並非使員工代表會變成國家環保機關的延伸，因此並無強制企業採行環保措施的權力，不過，員工代表會有資訊取得權、訓練與教育權，以及締結自願性廠場協議的能力。

值得注意的是，儘管氣候保護目前尚未列為共同決定事項，但德國總工會 (DGB) 已提出修法建議，主張凡涉及環境與氣候保護的措施，應納入共同決定範圍，顯示該議題正持續受到關注。

企業監事會代表在氣候轉型中監督權

德國企業監事會中的勞方代表，是由《公司法》(Aktiengesetz, AktG) 所明訂。在大型企業中，依員工人數配置一定比例的勞方席次，使勞工得以透過監事會參與企業決策、監督董事會的策略與合法性，並觀察企業是否遵守環境與氣候相關法規。隨著《企業永續報告指令》(CSRD) 與《企業盡職調查義務指令》(CSDDD) 陸續推動，監事會在監督企業永續報告與氣候轉型計畫上將扮演更加關鍵的角色。整體而言，這些制度安排共同構成企業綠色治理的重要核心，直接影響氣候與環境政策的制定與執行。

結語

Krause 教授的報告重點可歸納為兩項核心觀察。首先，綠色轉型對勞工代表而言不僅是環境議題，更攸關工會的社會角色與制度發展。其次，德國《企業組織法》(BetrVG) 與《公司法》(AktG) 賦予員工代表會與勞方代表充分的制度性權限，若能積極運用，將有助於強化綠色轉型的社會基礎與公正性，為勞動參與與環境永續之間的橋樑奠下堅實基礎。

[1] 有關五名以上的員工的計算方式，請參德國員工代表會法第 1 條之規定。

Institutional Framework of Just Transition in Germany: Focusing on Works Councils and Supervisory Board Representation

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On 9 October 2025, the School of Law for Science and Technology at National Yang Ming Chiao Tung University hosted a seminar on the pressing global issue of *Just Transition* at the IEAT Conference Center, featuring Professor Krause from Germany as keynote speaker.

The discussion began with an inquiry into why the notion of *Just Transition* is not frequently employed in German legal or policy discourse. Associate Professor Yu-Fan Chiu, serving as moderator, suggested that the reason may lie in Germany's already comprehensive institutional framework. Professor Krause further observed that the divergence could also stem from terminological and disciplinary differences in professional vocabulary. Before commencing his formal presentation, Krause invoked the renowned dictum,*"There are no jobs on a dead planet,"* emphasizing the inextricable linkage between environmental protection and workers' rights. He argued that climate change, which threatens industrial foundations, must be addressed through social justice, employment security, and the inclusion of affected workers—core values embedded in the concept of a just transition. Climate action, he stressed, is not the sole responsibility of states; enterprises must participate, and workers and their representatives must have an institutional voice within this process.

I. Three Main Themes: From International Frameworks to Institutional Roles

Professor Krause structured his lecture around three analytical dimensions.

(1) Overall Background

First, the *general legal and policy framework* was presented across three normative levels: the global level (e.g., SDG 13; the Paris Agreement 2015), the EU level (e.g., the *European Green Deal 2019*; the *European Climate Law 2021*), and the German national level (e.g., the *Climate Action Plan 2016*; the *Federal Climate Protection Act 2019*). These instruments, he noted, are not merely declaratory but form part of a legally binding decarbonisation regime.

(2) Conceptual and Strategic Aspects

Second, the *conceptual and strategic dimension* traced the evolution of the "Just Transition" doctrine within the international trade union activities, as articulated by the International Trade Union Confederation (ITUC) and the Intergovernmental Panel on Climate Change (IPCC). It is grounded in two normative pillars—*just outcomes* and *just processes*—which operationalise the inclusive principle of "leaving no one behind."Professor Krause distinguished four types of trade union strategies: oppositional, reactive, affirmative, and transformative.

(3) Structural Roles in Participatory Action

Third, the *institutional structures of worker participation* were analysed, particularly the roles of *Works Councils* (*Betriebsräte*) under the *Betriebsverfassungsgesetz* (BetrVG) and employee representatives on *Supervisory Boards* (*Aufsichtsräte*) under the AktG.

II. Institutional Practices: Works Councils and Labor Oversight Mechanisms

Under the *BetrVG*, Works Councils possess institutionalised participatory rights within the enterprise, enabling them to engage in decision-making on environmental and occupational matters. Since the 2001 amendment, environmental protection has been explicitly recognised as a statutory duty under § 80(1) No. 9 BetrVG and defined in § 89(3) BetrVG as encompassing all personnel, organisational, and technical measures within the undertaking aimed at environmental protection. While Works Councils act as instruments of internal corporate governance, they lack the right to strike and cannot compel employers to adopt specific environmental policies, as the legislature did not intend them to function as auxiliary state environmental authorities. Their institutional competencies include rights to information (§ 80(2) BetrVG), training (§ 37(7) BetrVG), and the conclusion of voluntary *works agreements* (§ 88 No. 1a BetrVG). Although climate protection is not yet codified as a matter of statutory co-determination (§ 87 BetrVG), the German Trade Union Confederation (DGB) has proposed an amendment to extend co-determination to "measures relating to environmental and climate protection" (§ 87(1) No. 15 BetrVG, DGB-draft 2022).

As regards *Supervisory Board Representatives*, their legal foundation lies in German corporate and co-determination law—namely, the *Drittelbeteiligungsgesetz* (DrittelbG) and the *Mitbestimmungsgesetz* (MitbestG)—which grant employee representatives one-third of supervisory board seats in companies with over 500 employees and parity representation (one-half) in those with over 2,000. Pursuant to § 111(1) Aktiengesetz (AktG), supervisory boards are mandated to monitor the management board's legality and strategic direction, including compliance with environmental and climate protection regulations. With the implementation of the *Corporate Sustainability Reporting Directive* (CSRD, EU 2022/2464) and the forthcoming *Corporate Sustainability Due Diligence Directive* (CSDDD), supervisory boards are increasingly required to oversee sustainability reporting and corporate climate transition plans. Many large German corporations have already established sustainability or ESG committees within their supervisory boards, allowing employee representatives to exert tangible influence on the integration of environmental and climate considerations into corporate governance.

III. Conclusion

Professor Krause's lecture vividly demonstrated two key insights:

(1) The green transition fundamentally redefines the role and significance of worker representation; and (2) Germany's *BetrVG* and AktG provide Works Councils and employee representatives with robust institutional rights, which—if exercised proactively—could substantially strengthen the social legitimacy and distributive justice of the green transition.