

Greifenstein, Ralph; Kißler, Leo

**Working Paper**

## Co-determination in the focus of social reseach: 1952-2010. Asynthesis

Arbeitspapier, No. 250

**Provided in Cooperation with:**

The Hans Böckler Foundation

*Suggested Citation:* Greifenstein, Ralph; Kißler, Leo (2012) : Co-determination in the focus of social reseach: 1952-2010. Asynthesis, Arbeitspapier, No. 250, Hans-Böckler-Stiftung, Düsseldorf

This Version is available at:

<https://hdl.handle.net/10419/116708>

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**250**

Ralph Greifenstein | Leo Kißler  
**Co-determination  
in the Focus of  
Social Research – 1952-2010**

**Arbeitspapier 250**

Ralph Greifenstein | Leo Kißler

**Co-determination in the Focus  
of Social Research – 1952-2010**

**A synthesis**

**Ralph Greifenstein**, born in 1957, a self-employed social scientist in Meschede. Working main focuses are scientific consultation of foundations and associations, researches to industrial relations, to co-determination and for modernization of the public sector.

**Leo Kißler**, is Professor for Sociology at the Philipps University Marburg. Member of scientific council of the Hans Boeckler Foundation Hans-Böckler (2002 – 2010). Main research fields: Industrial relations, co-determination and modernization of the public sector.

## **Impressum**

Herausgeber: Hans-Böckler-Stiftung  
Mitbestimmungs-, Forschungs- und Studienförderungswerk des DGB  
Hans-Böckler-Straße 39  
40476 Düsseldorf  
Telefon (02 11) 77 78-175  
Fax (02 11) 77 78-283  
E-Mail: [Stefan-Luecking@boeckler.de](mailto:Stefan-Luecking@boeckler.de)  
Redaktion: Dr. Stefan Lücking, Leiter des Referats 2  
der Abteilung Forschungsförderung  
Produktion: Setzkasten GmbH, Düsseldorf

Düsseldorf, Januar 2012

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## Introduction

Co-determination is one of the great socio-political projects of modern-day Germany, and one of the mainstays of its economic and social structure. Since its inception six decades ago, it has been under constant scientific scrutiny. Thus, the scientific study of co-determination does have a long tradition in this country. Scientists have been studying how its role in everyday life has changed – often caused by innovation to the legal environment, but more often than not by technological and organisational upheaval, economic structural change and the globalisation of business. This attempt at a synthesis of such research undertaken so far is based on empirical projects carried out in companies and on shopfloors from the beginnings (1952) to the first decade of the new millennium (2010). The stocktaking is based on two sets of data: On the one hand, the overview of empirical co-determination research undertaken between 1952 and 1989 (published: Kissler 1992, p. 101-161). The overview of research undertaken since Germany's reunification (1990-2010), on the other hand, is based on data gathered for a manual on German co-determination, a project supported by the Hans Böckler Foundation (published: Kissler et al. 2011, p. 211-282). Insights into the topography of the research landscape presented herein are based on 238 field research projects, most of which (165) were carried out since the 1990s<sup>1</sup>.

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<sup>1</sup> More details on all projects in: Ralph Greifenstein / Leo Kissler (2010): *Mitbestimmung im Spiegel der Forschung. Eine Bilanz der empirischen Untersuchungen 1952-2010*. Berlin: edition Sigma. This paper summarises essential results from that work.

## 1 Continuity and change: research profiles

With society and economy undergoing massive structural changes, studying co-determination has become a veritable interdisciplinary task. Scientists from many fields have been called upon in the endeavour: from law and from the economic and organisational sciences and, in particular, from industrial sociology. And, across the various eras of co-determination and its study, we perceive similarities as well as differences.

### Fields and methods of study

Most studies do not focus on specific industries. However, most of the work has been and still is carried out in the industrial sectors. The metal industry seems to be a preferred target. The tertiary sector, on the other hand, has been a neglected field. Less than one out of four projects have focused on services. This phenomenon becomes even more pronounced with the neglect of the public sector. Only very few studies exist in that regard. More ‚backlog‘ must be reported with a view to employee relations and representation in enterprises pursuing a particular (political etc.) purpose, especially religious organisations.

At the same time, there is a certain reorientation going on. Modern researchers no longer focus exclusively on the analysis of co-determination in major corporations. With time, they have come to ‚discover‘ the SMEs as well. More innovation may be found in methodology. Depending on the problem and project design, researchers use a mix of well-established methods, e.g. expert discussions, qualitative, structured interviews and (partly) standardised surveys. Or they use a combination of quantitative and qualitative methods. Nearly a quarter of all projects relies on a pluri-methodic approach (method mix). The proportion of studies that are either only quantitative or only qualitative is on the decline. So we perceive a development leading from a predominantly quantitative research (1950/60s) to a more qualitative research during the 1970s and 80s to pluri-methodic project designs combining in-depth analyses from case studies with representative surveys. The latest trend are econometric approaches. They now constitute a lively branch of their own, examining the impact of co-determination on the economic performance of companies and other corporate parameters against the backdrop of global competition.

### Organisation and funding

In the past, projects were typically carried out at universities. Researchers usually acted on their own initiative, and projects were financed from university funds (at least in part). Outside the universities, research has been and still is funded by organisations close to the trade unions (Hans Böckler Foundation and its predecessor), by government

departments, and by foundations close to industry (third-party funded research). Today, most of the research is still carried out at universities or institutes close to them. However, a significant number of non-university institutes active are in this field now, and there is more research by other organisations, which usually stand close to the trade unions. Other research institutes stand closer to the employers (e.g. Institut der Deutschen Wirtschaft). Since the boom of the 1990s, the Hans Böckler Foundation has become the major promoter of research in the field of co-determination in Germany. A number of studies have been co-funded by other parties (e.g. Bertelsmann Foundation, Otto Brenner Foundation etc.). More sources of funding are government departments and other organisations, like e.g. DFG, trade unions, Otto Brenner Foundation, Bertelsmann Foundation, VW Foundation.

### Changing trends

Those who study co-determination have been and still are – not surprisingly – prone to the influence of their time and environment. What people want to know has changed significantly over the past 60 years. Early researchers were mostly interested in the effect of co-determination on a West-German society characterised by its firm integration with the Western political hemisphere. The approach was a socio-political one. The 1970s saw researchers who were more interested in the practical workings of entities and bodies prescribed and influenced by co-determination (supervisory board, works council). The focus was on the development of the institutions. The next period (1980s) focused on the practical effect of co-determination. Now, the buzzword was “industrial relations research“. Finally, starting in the early 1990s, the focus shifted again, now to comprise the impact of co-determination on the economic performance of companies, i.e. the economic benefits (or drawbacks) for Germany as a whole. What had started as social science (focusing on questions of democracy and power) was now complemented with economic questions and a corresponding rationality; questions of microeconomic efficiency started to play a role (cf. Keller 2010, p. 2).

As of late, we observe a new trend. With the increasing Europeanisation and globalisation of economic relations, co-determination *per se* is coming under pressure to modernise. Researchers start to examine the consequences and perspectives of the new framework conditions for the “German model“.



## 2 Co-determination at corporate, operational and workplace levels

Various and variant research trends have brought us varied and nuanced results. This synthesis cannot reflect each and every ramification, but may at least try to follow the mainstream of essential findings within the various historical and topical problem settings and the results of the research undertaken.

### 2.1 Law governing co-determination at the corporate level

Before we look at research on co-determination at the corporate (supervisory board) level, we must distinguish between the three corporate co-determination models based on and characterised by the three Acts that instituted them and were passed in Germany at very different points in history: the Coal & Steel Co-determination Act of 1951, the Co-determination Act of 1976 and the 1st Tier Participation Act of 2004.

During its phase of constitution & consolidation, early co-determination research focused on the legal and organisational situation created by the Act of ,51 (in Germany usually referred to as *Montanmitbestimmung*). In the 1950s, researchers described striking qualification deficits among the representatives who lacked training in business, economy, socio-politics and engineering, which set limits to their ability to act and contribute to the decision-making process (Blumenthal 1960, Potthoff et al. 1962). At the same time, they found significant differences in the means and facilities available to different “labour directors“ (= HR manager, but selected from the ranks of representatives). Another limitation to efficient action (Pirker et al. 1955).

However, once the initial start-up problems had been solved, further research would highlight a result that was and still is quite significant for this type of co-determination (cf. Mitbestimmungskommission 1970, Brinkmann-Herz 1972). The coal & steel industry (solely affected by the Act of ,51) developed a relatively good cooperation with only few conflicts between the representatives of shareholders and employees because disagreements between members of the supervisory board / between the supervisory and the managing board can be cleared beforehand, in an informal manner. The focus of the supervisory board’s work is on a form of cooperative monitoring of the management by advising executives in an early phase of the decision-making process. In this context, co-determination may wield influence e.g. in the assertion of employee-friendly solutions for corporate investment and/or concentration strategies. However, the Coal & Steel Co-determination Act of 1951 has lost most of its significance due to the economic structural change. Today, only 31 German companies are left that are subject to this Act (and this type of co-determination). However, the few studies carried out since the 1990s do confirm the findings of that earlier research, highlighting the beneficial effects

of *Montanmitbestimmung* in the efficient modernisation of companies, but also in the event of shutdowns that can be implemented in a socially acceptable manner (Götzen 2002). With that in mind, this form of co-determination has indeed helped to facilitate the restructuring of the steel industry (Lompe et al. 2003) – and, thus, of major industrial regions (as in the *Ruhr*, the old industrial heartland of Germany).

As in the case of the Act of '51, early research focusing on the Co-determination Act of 1976 (in German: *1976er-Mitbestimmung*) highlighted mostly the problems in a first phase. Right after the adoption of the Act, labour representatives on supervisory boards tended to have only limited influence on corporate policies (Bamberg et al. 1984). The most recent research shows, however, that this has changed (Jürgens et al. 2008, Gerum 2007). It points to a professionalisation of the protagonists and a strengthening of the political role of the supervisory board within the corporation. It is evolving into a forward-looking 'body of advice' where members with strategic knowledge and planning & action skills co-design creative strategies for the company and with respect to financial markets and the industry. Still, some problems persist, impeding the functional transformation. We're dealing with information / communication / decision-making barriers here, for instance due to a lack of information on strategic planning, inadequate quality of matters subject to approval or deficient organisation of supervisory board committees. Against this background, some of the works concluded that the catalogue of matters subject to approval needs an update, for instance with respect to decisions concerning corporate control and strategy or the principles of HR policy. Unequal voting rights in supervisory board committees constitute yet another obstacle to proper participation by the representatives. What is more, the functional transformation solidifies their 'identity problem' as members of the supervisory board. On the one hand, they are supposed to represent the interests of the workforce. But not just that. They are also supposed to consider the interests of the shareholders. They are basically supposed to represent the best interest of ALL stakeholders. As citizens, they champion civic rights and sustainability (e.g. with a view to the environment). As members of the supervisory board, they are confronted with secrecy and confidentiality obligations which limit their insight into decision-making processes. The informal communication channels that may exist between representatives and managers & executives may be, in fact, rather ambivalent as well. Informal arrangements lack transparency, thus eluding control by the workforce and by the public. That's the price to pay for 'informal management' within the framework of co-determination in supervisory boards.

With respect to the 1st Tier Participation Act of 2004 (in German: *Drittelbeteiligung*), modern researchers find a very specific implementation problem that should not be underrated: the so-called "supervisory board gap". A significant number of German companies does not have a supervisory board according to the Act of '04 although they exceed the legal threshold. Less than half of limited-liability companies (GmbH) in the West German service sector, employing 500 to 2,000 employees, have set up a supervisory board according to the Act of '04. In the manufacturing industry, the number is

about 40 per cent (Boneberg 2009, Troch 2009). Conclusion: a sizable number of companies fail to implement applicable law. Despite pertinent legislation to this effect, there is a gap where co-determination does not happen. The multifarious reasons for this gap, however, are still largely unresearched (with the possible exception of the size and structure of the main shareholder). An important task for the future, when research may, hopefully, help to overcome evasion of the 1st Tier Participation Act of 2004.

## 2.2 Co-determination at the operational level – works councils, staff councils

According to the statistics, the works council has definitely been the main focus of co-determination research so far. For many years now, countless studies have focused on their everyday work against changing backgrounds of economic conditions, corporate policies and legal reform. As far as contents are concerned, we can distinguish two different approaches. On the one hand, we find research trying to classify different types of works councils, how they act and function. On the other hand, we find research examining the work of councils against new and changing challenges due to the continuous structural change of the economy and society. Over the years, they all have created an impressive data base of research and findings.

One of the important findings of classification attempts has been that there is not just one ‚typical works council‘. That means the functioning of co-determination at the plant or office level does not depend solely on the quality of participation rights given to the people. Attempts to typecast works councils according to their ‚characters‘ became a research topic very early on. Two works turned out to be particularly important in that respect (Kotthoff 1981 and 1994). The first typology distinguished between “ignored representatives“, “isolated representatives“ and “representatives as management agents“ who take on management, controlling, enforcement, disciplinary, administrative and consultative tasks for the benefit of the employer. These types of representatives were predominantly found in SMEs. Larger corporations, on the other hand, often featured either “well respected but ambivalent representatives“ trying to balance all interests as best as they could, or “respected and steadfast representatives“ who saw themselves as delegates of the workforce without ambiguity and argued out conflicts with the management frankly and openly. The study was repeated with the same companies more than ten years later. Compared to the 1980s, the study of 1994 found a significant increase in the number of operations with more effective representation and participation structures. More and more operations had works councils of the types “steadfast“, “consolidated authority“, “cooperative counterforce“ – and a whole new type, the “aggressive counterforce“ (Kotthoff 1994).

Just as important was another work, typecasting works councils with a view to their results and success in times of corporate restructuring (Müller-Jentsch et al. 1998). This study disclosed four types: the “conventional representatives“, limiting themselves to traditional co-determination tasks, the “dedicated representatives“ whose influence was limited to the conclusion of internal agreements, the “ambitious representatives“ who managed to really influence change processes in the company, and the “representatives as co-managers“ who were proactive and significantly impacted restructuring processes in the company. Since that study was published, scientists and practitioners have been particularly interested in the “co-manager“ type of representative. More in-depth studies have shown how professional this modern co-manager is, actually going beyond the limits of German industrial relations law and taking creative influence on corporate decision-making and communication processes (Minssen/Riese 2007).

In the meantime, this line of research has been updated in the light of new and changing questions. Other works classified, for instance, the work of group works councils against a backdrop of changing company structures (Nagel et al. 1994), compared the types of representation & participation in the old and new parts of the country after reunification (Bosch et al. 1999 and Artus et al. 2001), examined distinctive features of female representatives (Stöger 2008), determined the special role of representatives in corporate innovation processes (e.g. Nerdinger/Stracke 2008) or specified new policies of representatives as stakeholders of local social groups (Candeias et al. 2012).

Other studies, focusing on the everyday work of individual works councils and the consequences of changes to German industrial relations law, complement the findings, generating an overall picture that shows the range of practical co-determination work at the operational level and the changes that works councils have undergone. The history of findings bears witness to a steady professionalisation of co-determination work at the operational level, yet does not conceal deficits that still exist in companies of various sizes and in various industries.

Early research highlighted the reality of co-determination at the operational level, i.e. in plants, offices etc. – that seemed to work best when it came to social issues (Blume 1964). Co-determination in human resources, however, proved to be a two-edged sword. When it comes to termination and dismissals, managements like to involve representatives in order to mitigate conflicts. On the other hand, works councils are usually not given much say in matters of HR planning (Rumpf 1965). By the end of the 1980s, the appearance of new technologies opened up yet another field of questions that research had to address. This time, the policies of works councils were judged to be too defensive (Altmann et al. 1982). Possible reasons that were frequently invoked focused on qualification and capacity deficits of the representatives, which diminished their opportunities for action with a view to new technologies (Bartölke/Ridder 1988). At that time, the “co-manager“ type of representative was still a thing of the future. Against a backdrop of economic change, yet another line of research focused on correlations between company

structures and co-determination opportunities (cf. Rancke 1982). According to those findings, German industrial relations law did not sufficiently account for new types of companies, because de-centralisation and the creation of multiple branches and sites was no longer consistent with old legal terms and structures. The traditional legal term of “operation“, i.e. the individual plant, office etc. (German: *Betrieb*) became more and more eroded, making co-determination work more and more complicated (Wassermann 1999).

Research of the 1990s was, not surprisingly, very much focused on the establishment of co-determination structures in the new part of the country (former East Germany). All research seemed to indicate that the transfer of institutions ensued relatively quickly, with increasing recognition, consolidation and normalisation of works council work. Action patterns of representatives in the East aligned more and more with those in the West (Martens 1992 and Martens 1995).

But what is more significant for us today is the fact that representatives became more and more professional and extended their tasks and labour-political strategies. With the effect that the new type of representative, the “co-manager“, gained more and more ground in the arena of industrial negotiations. This was triggered by the enormous new pressures the representatives of the workforce had to face. Those pressures resulted from fast-changing technological innovations, more flexible organisations, ongoing restructuring and outplacements, the increasing undermining of collective agreements and the shift of competences away from collective bargaining and towards company agreements, and the increasing segmentation of the workforce due to the growing number of agency workers.

All these developments and the revision of German industrial relations law in 2001 (the latter being a response to the former) have become important topics of current research. Findings show that a new generation of representatives is entering the stage (Rudolph/Wassermann 1996 and Rudolph/Wassermann 1998). Their method is characterised by process and development-oriented thinking, economic expertise, high social competence and self-confidence. Some researchers have described the new representative as a “knowledge manager“ who develops creative options and strategic alternatives (Deiss/Heidling 2001). It seems to be not uncommon that representatives are actually the drivers of innovation and focus more on a sustainable development of the company than many a manager (Sacher/Rudolph 2002). What is more, after the revision of German industrial relations law in 2001, studies of the legal situation seem to indicate predominantly beneficial consequences, e.g. due to the restructuring of the works councils and their adaptation to changing corporate structures, facilitation of the establishment of new works councils thanks to simplified voting procedures and the participation of agency workers in elections (for a more detailed overview of perspectives, see Wassermann/Rudolph 2004, Bunk 2006).

However, there remains one area of issues that legal reform could not eliminate. As with the “supervisory board gap“ in co-determination at the corporate level, there remain ,co-determination gaps‘ or ,blank spots‘ at the operational level as well. Scientists now distinguish two types of operations: the ones that are well integrated into the system of industrial relations – and those that are not (Rudolph/Wassermann 2002). For instance, according to a survey presented by IAB, only about 45 per cent of private enterprises in the Western part of Germany have a works council, and even less in the new part of the country. This ,gap‘ is most pronounced among SMEs. Whether or not a works council comes into being and participation rights come into their own depends essentially on the size of the company. This is an old truism of co-determination research (Wagner 1960), and not much seems to have changed. Even the most recent counts indicate that only one tenth of all German SMEs that could have a works council actually have one (Schlömer et al. 2007).

Last but not least: Co-determination research seems to be focusing too much on the private sector and hardly notices works and staff councils in the public sector, although downsizing, questions of work organisation and the modernisation of administration have evolved into important problem areas of co-determination work there (Keller/Schnell 2003). At the same time, modernisation of the public sector seems to be mostly following the same cooperative policy that is so typical of the “German model“. Staff council members have become “co-managers“ with new portfolios, e.g. in the field of administrative reform. Another topic at “Municipality Inc.“ these days: members of (detached) staff councils and works councils are on the lookout for forms of cooperation in order to embrace their proactive and protective duties together. They do come up with solutions, but their ,group works councils‘ usually have only a weak legal standing (Schneider et al. 2001, Killian 2007). In conclusion: co-determination research in the public sector is surely no fallow ground, but does offer room for improvement.

### 2.3 Co-determination at the workplace level; alternative participation models

Scientists have never focused exclusively on ,official‘ co-determination at the corporate level and at the works-council level. Deviating types of individual, collective and/or alternative participation models and various types of group work constitute their very own field of research.

The historical point of departure for this type of ,participation research‘ were early works in “work humanisation“ and “social technology design“.<sup>2</sup> But all political initiatives and programmes never lead to an embedding of direct participation into the com-

2 This refers to one initiative (1974) by the German government entitled “Forschung Humanisierung des Arbeitslebens“ (HdA) and one initiative (1985) by the state government of Northrhine-Westphalia entitled “Mensch und Technik. Sozialverträgliche Technikgestaltung“ (SoTech).

pany in the form of structures and institutions. That means it was, again, new production concepts integrating direct participation into the organisation of work and production that provided the starting point for yet another line of empirical participation research in the late 1980s and early 1990s. Group work research, in particular, started to look at a very broad spectrum of work forms, ranging from teamwork to largely self-regulating and partly autonomous group work. As a basic principle, industrial sociology distinguished between work-oriented and efficiency-oriented participation paradigms (see Dörre 1996), and between structural-innovative and structural-conservative forms of group work (cf. Gerst et al. 1995). Structural-innovative forms seemed to offer at least a chance to extend co-determination to the actual work station. Early in the 1990s, researchers were focusing on the introduction of quality circles, demonstrating that this form of direct worker participation was not, in fact, 'co-determination at the workplace' (Greifenstein et al. 1993).

More important insight in this context came from studies examining industrial relations in the so-called "New Economy". Researchers described individual forms of participation representing the predominant operational regulation pattern of the "digital economy" (Baukrowitz/Boes 2002, Pries et al. 2006). The initial growth and later crises of that industry brought more substantial insight. Over the course of changing market and employment conditions and the corresponding adjustments, co-determination based on works councils took on more and more significance. It is true that the strife for self-determination remained the basic pattern of all attempts at coordinating interests, but setting up a works council became more and more the *ultima ratio* in all events where the relationship with the management was substantially disturbed (Lange et al. 2005). Finally, the end of the 'hype' led to an increase in the importance of participation in the form of works councils and, thus, a new orientation of employment relations in that industry, too (Martens 2005). Defending individual interests and safeguarding collective interests was no longer perceived as a contradiction. With the works council, the employees were looking for efficient methods to articulate their common interests (Boes/Trinks 2006).

The most recent research is looking into alternative types of interest representation. The background: A study presented by the Institut der deutschen Wirtschaft stated that absence of a works council "does not mean there is no co-determination at all" (Stettes 2008). Other research focusing on "coordination of interests beyond co-determination" would prove that companies without works councils were not necessarily hostile to any form of participation, although, it is true, such direct and/or alternative forms of employee participation were usually introduced by the management (Artus et al. 2009).

In the meantime, there is in-depth research (Hauser-Ditz et al. 2008) on the consequences of participation outside industrial relations legislation. The study reports a significant propagation of "alternative representation bodies". According to the study, they all share a common trait that sets them apart from 'standard' co-determination: When it comes to

,hard' topics, e.g. remuneration, working hours, dismissals etc., their chances for success are inadequate as compared to the works council model. Alternative bodies never reach the negotiation skills and bargaining power of works councils.

So, what does all this research concerning direct participation and alternative representation tell us? Any hope that this would take co-determination right to the workplace (quasi automatically) is disproved. The participation rights thus granted to the employees are simply not sufficient. However, there is other research that does give an indication how project groups with binding rules can complement the work of work councils in the framework of participation-oriented restructuring processes (Wannöffel 2001), and how this could implement and safeguard co-determination at the workplace: by tying them in into the ,official' industrial relations system, not the opposite, and as a complement to operational co-determination and works councils, not as their replacement.



### 3 German co-determination and global economic relations

The globalisation of economic relations and European law take co-determination research to the next level. Such research is highlighting the contours of the risks existing for co-determination at the European level. In Germany, it is gaining in importance. Outside its home country, German co-determination encounters, on the one hand, very heterogeneous employee participation systems and, on the other hand, European directives concerning participation & representation that constitute, it is true, only minimum standards, but which also stipulate the procedure how employees should 'co-determine' in companies operating across Europe. Against this backdrop, it is the work of European works councils (EWC) and the Europeanisation of corporate law that outline two major topics of co-determination research. Another field of research are the economic benefits and drawbacks of co-determination. It shines a light on German co-determination as a factor in the competitiveness of Germany in attracting international business.

#### 3.1 Economisation of co-determination research in times of locational competition

Economic studies examine the consequences of co-determination (on productivity, innovation, employment trends, salary levels etc.) in order to better understand e.g. competitive edges and/or economic drawbacks for companies who embrace it (or not). The agenda comprises the repercussions of German industrial relations legislation (the majority of studies) or co-determination at the corporate level (supervisory boards). Focus changes have occurred over time. Early research focused more on the negative effects of co-determination, supplying arguments for the critics of the German co-determination model. More recent studies, however, featuring improved econometric methodology, tend to revise that somewhat distorted picture and come to more positive conclusions. Still, all results remain controversial because nothing is unequivocal – or nonpartisan, a trait shared with most research. The following overview wants to illustrate this.

Concerning productivity, a number of scientists using various methodological approaches issue rather favourable statements on corporate co-determination, but by no means all of them. Participation in supervisory boards seems to neither slow down decision-making processes nor does it seem to lower the company's innovation activities (Kraft/Stank 2004). Nor seem there to be any economic reasons that speak against the presence of union representatives on a supervisory board (Vitols 2009). The economic effects of corporate co-determination seem to be rather neutral in total (Vitols 2006) and seem not to lower the market value of the company (Frick 2005). In fact, co-determination at the supervisory-board level may actually correlate in positive ways with productivity and profits (Renaud 2008). Research carried out by sources closer to industry, on the other hand, come to very different conclusions. They state that corporate co-determination

does, indeed, restrict the companies' scope of action in international capital markets. And supervisory boards and other bodies – bloated due to equal voting right regulations – delay decision-making processes (Stettes 2007). The presence of union officials on supervisory boards could be an obstacle to employment (Werner/Zimmermann 2005).

Concerning the economic consequences of co-determination, some studies find a supporting effect of works councils when it comes to the introduction of modern forms of work which may then lead to an increase in productivity (Zwick 2000). Productivity increases due to the existence of works councils may have been also found in connection with restructuring and further training (Hübler 2003). Works councils, set up in increasing numbers during times of crisis, seem to positively influence the employment situation under such critical conditions and seem to reduce the probability of a shutdown (Jirjahn 2008). Criticism, on the other hand, is focusing e.g. on the increased implementation costs of co-determination after the revision of the industrial relations law (in 2001) (Niedenhoff 2004). There have been various suggestions to improve its cost efficiency, e.g. by cutting back on employee meetings (Niedenhoff 2007).

So, what is the bottom line of this field of research? Firstly, there do not seem to be any locational disadvantages of co-determination at corporate and operational levels. Secondly, the economisation or ‚market-isation‘ of the analysis of industrial relations seems to be an expression of a paradigm shift in the evaluation of a participation & representation institution the roots of which were derived – it has to be remembered – from democracy theory (Keller 2010, p. 2). So, if co-determination does not seem to have any economic drawbacks: which are the risks that the globalisation of economic relations may harbour for the “German model“?

### 3.2 The risks of Europeanisation for co-determination

Since the 1990s, co-determination research has been observing the development of the European works council (EWC). The first studies focused on various implementation issues: the insufficient quality of data supplied by managements, difficulties in building up confidence, expertise and structures, language barriers which must not be underestimated and the interlinkage with national lobbies and trade unions. In many cases, the acceptance of EWC strategies was vague and uncertain with many national representation bodies, trade unions and managements (Eberwein et al. 2000). A more recent study standing in that tradition focuses on reasons why German companies with subsidiaries in other EU states have not implemented the EWC directive (Lücking et al. 2008). The study uncovers a number of issues of that directive, e.g. a lack of stipulations that deal with the event of company restructurings, inconsistent EWC structures within the same group of companies and extremely intransparent company structures.

As with the study of German works councils, classifications of EWCs have been developed allowing to differentiate between various qualities of players and/or representation. For instance, one such typology distinguishes “symbolic“, “service-providing“, “project-oriented“ and “participation-oriented“ EWCs, with the latter exhibiting the highest degree of Europeanisation of industrial relations (Lecher et al. 1998 and Lecher et al. 2001). Based on studies carried out in 12 corporations, Koffhoff (2006) distinguished five types of EWCs: The EWC as a “co-managing work body“ is a functional and continuous representation body maintaining a sustainable dialogue and concluding agreements with the management. Here, the German model is only one manifestation of participation among several. The “advocate of the diaspora“, on the other hand, is a dominant German EWC chairperson who doubles as chairperson of the German group works council and member of the supervisory board. This type of representative experienced their socialisation within the German co-determination culture. Their advocacy is seen as effective representation but dependent upon concrete persons. The EWC of the type “information analyst“ is not yet a co-manager, but stands more for a social partnership / cooperative pattern of representation (a manifestation typical of France). In the dialogue with the management, these representatives are convincing thanks to their professional knowledge and information. The weaker EWC types, on the other hand, are less successful in their relations and interactions with the management: Here, we encounter EWCs “in idle mode“, the “toothless tiger“ and the “false start“ EWC that has been marginalised.

Let us look at a couple of trends that co-determination research focusing on EWCs has uncovered (cf. Altmeyer 2008). A typical trait is that transitions between information, consultation, participation and co-determination are fluent. However, many EWCs are now evolving into effective negotiation bodies, establish sustainable representation policies and react efficiently and in strategic ways to occurrences like restructuring programmes presented by the management.

The most recent trend in research is to ask questions about the effects of a Europeanised corporate-level co-determination. A Europeanised variant of German co-determination at the corporate (supervisory board) level can be found in the newly devised European Company (SE). In Germany, the corresponding EU directive supplementing the Statute for a European company with regard to the involvement of employees was implemented in national law in 2004. During the founding process of an SE, the social partners negotiate the actual make-up and structure of co-determination in the new company, i.e. the participatory rights are brokered between the management and a special negotiating body made up of employee representatives. In the event that negotiations should fail, a legal ‘default solution‘ will enter into effect. It stipulates that the new SE will adopt the most stringent form of co-determination already existing in the national companies participating in the foundation process. The result is that co-determination at the corporate level varies from SE to SE.

This is the situation that is under scientific scrutiny at present. According to the polls (September 2010), the number of operational SEs (companies having actual business activities and employees) is: in Germany: 78 regular SEs (EU: 157) against an overall total of 622 SEs throughout the EU (Köstler 2010). Contrary to initial fears, it would seem that SEs do not misuse this ‚new legal loophole‘ to escape out of German co-determination, or at least not in significant numbers. For instance, only nine companies that changed their legal form had had more than 2,000 employees and had been subject to the German Co-determination Act of 1976. 21 companies had been subject to the 1st Tier Participation Act of 2004, i.e. already the weakest form of co-determination at the corporate level existing in Germany. So it would seem that it's not so much the escape out of co-determination that poses a risk to the German model, but rather ‚pre-emptive escapism‘ to avoid it altogether. What can be proven, though, is that various companies have adopted the European company structure shortly before they would cross any of the thresholds that would bring them in reach of either the Act of ‚04 or the Act of ‚76. What is more, there is also a risk to the quality of co-determination. European companies (SEs) that have negotiated and brokered a form of co-determination may actually ‚freeze‘ the *status quo* – even if the company should grow and/or hire more employees in the future. Thresholds for follow-up negotiations do not exist.

In addition to these ‚hard facts‘, there have been studies that highlighted more risks for the established participation rights of employees. For instance, one such study examined the transformation process of a company that had been subject to German law before. Against the backdrop of their tradition and former rights, the German representatives considered the result of their negotiations to be, at least in tendency, a qualitative deterioration of their co-determination rights. Unclear role definitions and communication issues plus national particular interests made the participation & representation work even more difficult (Biehler/Hahn 2007). What is more, other research (based on an empirical census among all registered SEs) seems to indicate the existence of some rather ‚hostile‘ strategies among managements: In some (German) cases, employers seem to use the SE to check out to what extent German co-determination can be undermined (Keller/Frank 2007).

Another risk to co-determination may be found at the level of European jurisdiction. According to a ruling by the ECJ passed in the context of the right of establishment, the applicable corporate law for a company is the law of the country where it was founded. That means, German companies may actually undergo a transformation and/or relocate their registered seat to another country so that even their German subsidiaries, branches and offices are no longer subject to German co-determination. Empirical research has been focusing on this development since 2006, finding a growing number of companies with more than 500 employees that – under the old situation – would have been subject to German co-determination laws (Sick 2010 and Sick/Pütz 2011). According to that research, the number of cases, where employees experienced a diminished degree of co-determination due to a different legal status of the company, increased from 17 in 2006

to 43 in 2010. So, European jurisdiction seems to be, indeed, a gateway for companies to circumvent German co-determination.

Conclusion: Europeanisation and new European forms of company law do, indeed, exert some pressure on the German model of co-determination.

#### 4 The perspectives of German co-determination: what research can teach us

Co-determination research enlightens about the influence that megatrends in the economy, engineering, structural policies and collective bargaining have had and have on the everyday reality of co-determination. The aggregate of research undertaken between 1952 and 2010 reveals a multi-faceted picture of participation & representation of employees at their work stations, in the plant, in the company as a whole and throughout the European Economic Area. It reveals not only the pressure of modernisation that was and still is on the co-determination system and its institutions. It enlightens about the *modus operandi* and the limits of co-determination in Germany. What do we learn?

(1) Europeanised co-determination – from its beginnings to the present day – has always been a complicated balancing act between the various co-determination regimes existing in the European countries. Economic globalisation has been and still is one of the – if not the – most pronounced development risk for the system of German co-determination. Against a backdrop of dissolving industrial boundaries and growing European legislation within the European Economic & Social Area, German co-determination gets under more and more modernisation pressure. There is no doubt that Europeanisation could, indeed, ‚dilute‘ national participation systems, and in particular the German system of co-determination at the corporate level (supervisory board). But then, although it is true that Europeanisation of employee participation does harbour certain risks for the German model (avoidance of co-determination, reduction of co-determination quality), it also inspires a controversy of whether or not German managements and workforces should negotiate co-determination in the future, just as it happens in other European countries.

(2) Research into German co-determination at the corporate level has shown two things. When it comes to the economic effect, there are no indications pointing to a negative effect of the German model. Co-determination in supervisory boards and control of managements can help to restrain short-sighted, profit-oriented thinking and to promote longer term growth and employment strategies, even in the face of global competition. From a more institutional perspective, research has presented substantial findings suggesting a further development of co-determination at the corporate level, especially an improvement of supervisory board work, i.e. its controlling, advisory and creative functions. All speaks in favour of ending the political standstill and reform deadlock that has befallen corporate-level co-determination in Germany (cf. Greifenstein 2011). That part of co-determination research that has always embraced the benefits of the Act of 51 (*Montanmitbestimmung*) may now provide argumentation aid for transferring core elements of that model (true equality on supervisory boards, labour directors as an institution of representation) to the co-determination model based on the Act of 76 (*1976er-Mitbestimmung*).

(3) Research focusing on co-determination at the operational level and the everyday work of works councils has identified various types of representatives, based on their style of work. Those typologies sharpen our understanding of modern-day works council work, as is vividly displayed by the example (or benchmark) of the “co-manager“. Research approaches focusing more on the institutional aspects examine the actual diffusion and the re-structuring of participation & representation institutions across changing company structures. The research carried out has revealed increasing knowledge requirements on the side of the representatives, an extension of their activities and decision-making responsibilities beyond the boundaries of their operations and a professionalisation of co-determination work at the operational level. In a modern company structure, a works council is an indispensable protagonist of strategic company management when it comes to social, HR and economic matters. A synthesis of decades of research shows that the historical evolution of the works council within the system of industrial relations in Germany has been, indeed, a success story.

(4) Studies focusing on employee participation in a more general sense have observed how employees have been offered various direct and alternative forms of participation & representation. However, those are usually suggestions by the management and – unlike legal forms of co-determination – they can be withdrawn by the management. What is more, they never actually reach the quality of legal co-determination when it comes to properly asserting the interests of the workforce. No answer has been found, yet, to the question of how the existing system of a representative co-determination could be complemented with a more direct form of participation, approaching the concept of ‘co-determination at the workplace‘, and being legally guaranteed.

(5) Research has revealed co-determination blank spots where participation and/or representation of the workforce do not exist. They must be eliminated. This project may begin with direct participation at the workplace that is legally guaranteed. However, this constitutes a more general problem of co-determination at the operational level, especially with a view to SMEs that do not have works councils. A general obligation to set up works councils is politically not viable. Nevertheless, it is important to continue the search for strategies to promote the establishment of new works councils and to increase their propagation throughout the country. Co-determination at the corporate level is touched upon where legal intention and reality do no longer match and where the Act of ,04 has simply not been implemented in many companies. This constitutes yet another ‘blank spot‘ that must be tackled.

(6) One last discipline deserves heightened attention against a backdrop of new company structures and changed work conditions and employment relations: representation & participation in the public sector. Important topics would be, for instance, how – under the conditions of new arrangements between public and private suppliers & providers – representation & participation structures evolve, especially the practical implementation of co-determination in everyday life. What is more, any lack of research in the public

sector has political consequences as well. It is an obstacle to the development of new perspectives for the reform and further development of representation & participation of staff in federal and state authorities.

Which conclusions can we derive from that historical panorama of research? How can German co-determination be made fit for the future? The socio-political challenge of the future would be more, not less co-determination, and its further development at the operational and corporate levels. The expansion of co-determination must be perceived as a chance for society. The social dialogue on how German co-determination should proceed against a backdrop of changing realities must continue. Co-determination research has made and is still making important contributions to that purpose as this overview of its development from 1952 to 2010 has shown.



## Abbreviations

DFG	Deutsche Forschungsgemeinschaft
ECJ	European Court of Justice
EU	European Union
EWC	European works council
IAB	Institut für Arbeitsmarkt- und Berufsforschung (der Bundesagentur für Arbeit)
SE	<i>Societas Europaea</i> (= European company)
SME	Small and medium-sized enterprise

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### **Hans-Böckler-Stiftung**

Hans-Böckler-Straße 39  
40476 Düsseldorf

Telefon: 02 11/77 78-0  
Telefax: 02 11/77 78-225