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Worker Participation in German Enterprises

by Albrecht Iwersen, Hamburg *

Worker participation is to be introduced by law in all major German enterprises in 1975 according to Federal Government plans. The new legislation which is to put the principle of the effective equality of labour and capital into practice has encountered fierce criticism, among employers in particular.

Worker participation in German enterprises is generally understood to mean a social order in the enterprises, founded on law, which ensures that decision-making is no longer the prerogative of the owners of the capital (the partners or shareholders) and those put in charge by them, but that representatives of the labour force should have a share in the process. The right to worker participation is, thus, to guarantee that labour as a production factor receives appropriate consideration. Through participation on the board level the employees are to be assured of *influence* on personal and social as well as economic changes in their enterprise.

Worker Participation in the Coal and Steel Industries

Worker participation was introduced in the Federal Republic in 1951 for one sector of the economy. The law of May 21, 1951, on the representation of employees on the supervisory and management boards of enterprises in the mining and iron and steel producing industries and the supplementary law of 1956 for holding companies in the coal and steel industries provided for *parity* of representation on the boards of the capital companies.

The employees' representatives occupy as many seats on the supervisory boards of these coal and steel enterprises as those of the capital owners. Both are elected by the electoral body appointed according to the law, articles of association or partnership agreement (the general shareholders' or partners' meeting). The electoral body however is under an obligation to adopt as employees' representatives the candidates nominated by the employees. To the eleven-member supervisory boards of the production companies, for instance, two representatives of the works councils are nominated in agreement with the trade unions and two others by the trade unions' central organ-

isation. A fifth member is likewise nominated by the central trade union organisation, but he must have no close links either with the enterprise or with a trade union. The eleventh member of the supervisory board is elected by the electoral body on nomination by the ten previously elected board members. There are special provisions for the supervisory boards of holding companies: the distribution of seats on these however also conforms to the principle of parity between capital and labour.

Besides, the coal and steel enterprises must appoint a labour director who possesses the same rights as the other members of the management board. He is charged especially with the task of safeguarding and promoting the social interests and concerns of the labour force. Like all members of this representative organ he is appointed and discharged by the supervisory board which however cannot act against a majority of the votes of the employees' representatives. The position of the labour director has been a particularly contentious subject ever since the provisions for worker participation were put into effect in the coal and steel industries because he is constantly faced with the dilemma of having, on the one hand, to look after the workers' interests by virtue of his specific tasks and his origin and, on the other, to safeguard capital interests as a member of the management.

Impact of Structural Changes

The criteria qualifying production and holding companies as coal and steel enterprises have been clearly defined in the laws. It has happened several times in the past that coal and steel enterprises with worker participation underwent changes in regard to their production range or the proportion of turnover represented by their coal and steel interests which placed them outside the purview of the qualifying laws.

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In order to maintain as far as possible the status quo in this sector of industry pending the, now envisaged, fundamental reorganisation of worker participation, the laws concerned have been amended twice — the last time in 1971 — with the aim of making it more difficult for companies to cut loose from the equal representation in the coal and steel industries. This legislation however only applies for a transitory period due to expire on December 31, 1975. By that date the Government hopes to have achieved a new comprehensive settlement of the issue of worker participation for all industries.

Law on the Constitution of Enterprises

The participation rights of employees in regard to the directive bodies of enterprises have hitherto been much less definite than the *rights of the works council* under the Law on the Constitution of Enterprises: LCE (Betriebsverfassungsgesetz). The keynote of the LCE is that the employer and the works council — which is elected by the employees — are held to "work together in mutual trust for the benefit of the employees and the enterprise" with due respect for the wages agreements and in cooperation with the trade unions and employers' federations¹.

The LCE of 1952 already provided for worker participation. Articles 76 ff. made the delegation of so-called employees' representatives to the supervisory boards of joint-stock companies, partnerships with shareholders with limited liability, co-operative and certain insurance societies, and similar enterprises mandatory if they employed more than 500 persons. The supervisory boards of all such enterprises must consist as to *one-third* of staff representatives elected directly by their employees. The employees' representatives need not all be members of the enterprise, but most of them are also serving on its works council. On the supervisory boards the employees' representatives have the same legal status as the representatives of the capital side.

There arose however a great problem — which still exists — namely, the confinement of qualified participation to one industrial sector was bound to look more and more like a special law for the coal and steel industries the longer it lasted. That the legislator concentrated on these industries in 1951 is understandable in view of the tradition and the prevailing political-psychological circumstances². It was probably not realised at the time that

the basic materials sector would not retain its former importance for the whole economy of the Federal Republic of Germany. In the course of time this sector of industry has been overtaken by the typical growth industries. Besides, a concentration process has taken place in the Federal Republic which involved all sectors of the economy. In view of these developments the impending solution of the participation problem will have to bring a clarification of the situation: qualified participation will have to be introduced for *all* enterprises above a certain size, in whatever particular economic activities they may engage.

Intense Discussions on Reform

There has been a very lively public discussion about the extension of worker participation on the boards of enterprises, especially since the Commission of Independent Experts rendered its report on participation in 1970³ and the Federal Government indicated its attitude⁴. The Commission on Worker Participation — known as "Biedenkopf Commission", as Prof. Biedenkopf acted as its chairman — came out in favour of extending worker participation beyond the coal and steel industries. Although it is the Commission's view that worker participation on terms of parity has proved its value and been found not to impede the decision-making process in the enterprises, the Commission has proposed a model of its own — in order to rid participation of some "blemishes". Its model allows the shareholders a small majority on the supervisory boards in order to facilitate the discharge of decisions required for the conduct of the enterprise. To prevent the workers' representatives being regularly outvoted on decisions concerning personnel and social policies, such issues are to be cleared up in advance by a supervisory board committee on which the two sides have parity of representation. The model of the Commission provides that the staff representatives are, as a matter of principle, to be elected by the employees. Worker participation is to be limited to capital companies which employ more than 1,000 or 2,000 persons; partnerships are to be exempt. Many different views have been expressed about the model of the Commission; some critics tend to regard it as faulty⁵.

In the meantime there has been an intense discussion of issues bearing on worker participation in the Federal Republic, and a number of new models

¹ Betriebsverfassungsgesetz (Law on the Constitution of Enterprises) of 1952 and of January 15, 1972 (BGBl. I [Federal Law Gazette], p. 13); cf. Article 2.

² Cf. Bruno Mölltor, "Zwang zum Erfolg" (Forced to be successful). In: WIRTSCHAFTSDIENST, 53rd year (1973), No. 10, p. 498.

³ „Die Mitbestimmung in Unternehmen, Bericht der Sachverständigenkommission zur Auswertung der bisherigen Forderungen bei der Mitbestimmung (Mitbestimmungskommission)", (Participation in Enterprises, Report of the Expert Commission for the Evaluation of Demands to Date for Participation: Participation Commission), Bochum 1970, Deutscher Bundestag — 6. Wahlperiode, Drucksache VI/334.

⁴ Bundestag-Drucksache VI/1551.

⁵ Cf. Otto G. Mayer, „Biedenkopfs verfehlter Ansatz" (Biedenkopf's mistaken approach). In: WIRTSCHAFTSDIENST, 50th year (1970), p. 115 f.

have been presented by the various political parties and by other organisations. Professor Biedenkopf, for instance, has in his capacity as secretary general of the main opposition party, the Christian Democratic Union (CDU), designed a model which may be said to be rather favourable to the employers: it provides for parity on the supervisory boards, combined with recognition of senior management as a "third factor", but envisages qualitative superiority for the shareholders to whom decisive special rights are to be conceded on the supervisory boards.

The attitude of the trade unions is unequivocal and has always been so: they demand parity of representation in each case – qualitatively and quantitatively. In a fundamental speech on worker participation Heinz O. Vetter, the chairman of the German Trade Union Federation (DGB), rejected any compromise on worker participation. The DGB refuses to accept a special status for senior management under company or workshop rules unless such senior staff are for purpose of parity counted as representatives of the capital side⁶.

The New Government Bill

Against the background of this discussion the Government coalition has now agreed on a bill on worker participation in large enterprises⁷. The bill which was adopted by the Federal Government on February 20, 1974, is to give the employees of capital companies participation on terms of quantitative and qualitative equality. The provisions are to come into force on January 1, 1975, and may be summed up as follows:

☐ Participation will apply to enterprises with a separate legal identity and a labour force of more than 2,000 persons. It also applies to combines and sections of combines with a total labour force of at least 2,000. That the payroll is used as the criterion indicates that worker participation is conceived chiefly under social aspects – the workers are to have a share in motivation and decision-making in the enterprise.

☐ Worker participation will be retained in the coal and steel industries where it has stood the test of time, and so will be the one-third participation for smaller enterprises under the LCE of 1952.

☐ The supervisory boards will be composed of equal numbers of representatives of the shareholders and the employees.

☐ The trade unions will have appropriate representation on the supervisory boards, especially so

that consideration can be given to wider employees' interests.

☐ All employees' representatives on the supervisory boards will be elected by representatives (electors) of the employees of the enterprise.

☐ A member of senior management will sit on the supervisory board. He will not however be delegated to the board by the members of the senior management, but also requires election by a majority of the representatives.

☐ The internal order of the supervisory board, especially in regard to decisions taken by vote, is to be such as to leave the principle of the quantitative and qualitative equality of "labour" and "capital" unaffected.

☐ The arrangement for the appointment of members of the management board is that if three ballots have failed to produce a majority for a candidate for the management board, the final decision will lie with the *general meeting*.

Criticism by Trade Unions and Employers

The government bill on worker participation has so far encountered nothing but criticism and opposition from all the groups affected by the proposed legislation. The trade unions feel, by and large, disappointed at the coalition compromise because they think that the parity participation in the coal and steel industries has proved itself in this industrial sector and the new bill makes unwarranted concessions to the side of capital. Their main criticism concerns the "rule of ultimate decision" for the appointment of management board members and the provision for inclusion of a member of senior management. They argue that he would, though *de jure* an employees' representative, *de facto*, side with the employer.

The reaction from the employers' side has been much more hostile; they emphasized once more that they are altogether opposed to participation on terms of parity. The employers' organisations characterise parity participation as contrary to the market economy, a danger for competition, syndicalistic, and apt to disrupt the economic order⁸. The criticism from the employers focuses on three points in particular: parity impairs the efficiency of an enterprise because it has a paralysing effect on decision-making; the provisions for the appointment of the management board are inadequate and impracticable; and there are objections on constitutional grounds because the bill curtails the autonomy of wage negotiations and the guaranteed property rights.

⁶ Handelsblatt, No. 174 (1973), September 10, 1973.

⁷ Presse- und Informationsamt der Bundesregierung, Bulletin No. 26, February 23, 1974, p. 241 ff.; Walter Arendt, "Durchbruch und Chance" (Break-through and Chance). In: WIRTSCHAFTSDIENST, 54th year (1974), No. 4, p. 171 ff.

⁸ "Ein scharfes Nein zur paritätischen Mitbestimmung" (A strict No to parity participation). In: Süddeutsche Zeitung, No. 73 (1974), March 27, 1974, p. 21.