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**Research Report**

## ACID TEST ECJ [European Court of Justice]: The EU Commission's opinion on the TUI case - A critical commentary

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# REPORT

No. 23 Co-Determination-Report

## ACID TEST ECJ [European Court of Justice]

### The EU Commission's opinion on the TUI Case – A critical commentary

Rüdiger Krause

#### AT A GLANCE

- The so-called “TUI Case” is currently pending at the European Court of Justice. The complaint relates to the incompatibility of regulations governing supervisory board elections in the German Co-Determination Act [Mitbestimmungsgesetz, MitbestG] with European law. The EU Commission's opinion does not include any new arguments, and its conclusions are not convincing.
- Due to speculative considerations, the German Co-Determination Act is both exposed and compelled to having to justify itself before European law.
- The freedom of movement for workers in Europe is not questioned by missing voting rights for foreign workforces to the German supervisory board.
- The EU Commission's conjecture that the German Co-Determination Act includes a “refusal of voting rights” for foreign workforces, is unpersuasive.

## GERMAN CO-DETERMINATION AND EUROPEAN LAW - INFRINGEMENT OR CONFORMITY?

### Assessment by the Hans-Böckler Stiftung on the opinion of the European Commission from the point of view of co-determination

On October 16, 2015, the Kammergericht Berlin (Germany) referred a complaint by a shareholder of TUI to the ECJ and requested a preliminary ruling: Does the German Co-Determination Act of 1976 contradict European law when it comes to voting rights to elect employee representatives to supervisory boards? Does this mean that employees' freedom of movement is then violated by national law?

The actual question to the ECJ was: *"Is it compatible with Article 18 TFEU (prohibition of discrimination) and Article 45 TFEU (freedom of movement for workers) for a Member State to grant the right to vote and stand as a candidate for the employees' representatives in the supervisory body of a company only to those workers who are employed in establishments of the company or in affiliated companies within the domestic territory?"*

Ultimately, the outcome would not only relate to the inadmissibility of German co-determination. If the applicant suit were to prevail, the entire existence of national employee rights would be questioned as there is always the protective right in an EU Member State that disadvantages the employees in another EU Member State where no such national law exists. The consequences for society, economy and companies in Europe would be enormous, incalculable and definitely undesirable from the employees' point of view.

Now the legal assessment of the EU Commission on this ECJ procedure has become public. The legal services of the EU Commission in their assessment - in our opinion hardly convincing - arrive at the following conclusion:

*"It is not compatible with Article 45 TFEU for a Member State to grant the right to vote and stand as a candidate for the employees' representatives in the supervisory board of a company only to those workers who are employed in establishments of the company or in affiliated companies within the domestic territory if the Member State structures the co-determination right in such a way that it includes legal situations which, when viewed objectively, could be present both in the same Member State as well as also in another Member State."*<sup>1</sup>

After reading the above, anybody who expected a careful examination in terms of legislation and European policy herein, has to be seriously disappointed.

The EU Commission has not only expressed its opinion. It has taken a stand. It does not see any

special regulations justifiable under European law at the level of the individual EU Member State or any room to manoeuvre in this particular field. On the contrary, it carries out a predisposition which leads the discussion on a precipitous path. Rhetorically clever, it lays out the yardstick of what is desirable from a European point of view and passes the buck to the national legislator to adapt national law to the European benchmark. Whether intentional or unintentional, the innuendo is that ultimately decisions have to be made at European level as to whether and to what extent co-determination rights for employees are envisaged under European (social) law.

In the case at hand, the line of argument goes completely astray. Accordingly, the German Co-Determination Act would – impermissibly – “refuse” to grant other employees of a transnational company outside Germany the “voting right” to or for the co-determined supervisory board. At first this sounds extremely democratic, European. But it is a blow below the belt. As there is no law in Germany relating to co-determination that provides for any person being refused a voting right. Quite the contrary, the laws on co-determination are precisely what constitute the employees' right to elect their representatives to the supervisory board. Their wording is neutral and the fact that they do not apply to workforces abroad is due to their national scope of application.

If there is reason to complain about the shortcoming from a European point of view that the employee representatives' side in supervisory boards of transnational companies in the European internal market does not appropriately take into account the respective European workforce, then this is a nut which would have to be cracked legislatively at European level. Only recently, the European Trade Union Confederation (ETUC) made a unanimous proposal to regularly and mandatorily set minimum standards for information, consultation and board-level representation<sup>2</sup>.

Over many years already, the European Parliament has repeatedly requested the EU Commission to present its proposal on the subject. However, despite the appeal, it has notoriously remained inactive. Now, against the backdrop of the ECJ proceedings, it would really be high time for the EU Commission to assume its responsibility and become constructive. Instead, it acts as if in this case the German legislator also has to justify itself for the “refusal of voting rights” in the German co-determination law and why have they not adapted this to the wishes of the EU Commission a long time ago. Theatre of the Absurd and a didactic play for the current (BREXIT) situation, as to just how

<sup>1</sup> Translation of German version of quotes

<sup>2</sup> ETUC position paper - Orientation for a new EU framework on information, consultation and board-level representation right 09.06.2016 <https://www.etuc.org/sites/www.etuc.org/files/document/files/en-position-wblr.pdf>

the European policy puts the last remainder of its reputation to the test: Instead of combining “good corporate governance” for an economic, social and ecologically successful Europe with co-determination at top management, the better components of employee participation in Europe are now also being questioned. Europeanisation by weakening co-determination at national level is not what leads to a strengthening of co-determination at European level. European co-determination needs a strong national reference. The idea is to protect and not to dismantle it.

What is being suggested is a national special way of German co-determination. What is being ignored is that the right of representation in supervisory or administrative boards of companies exists in additional 17 EU Member States besides Germany. What is suggested is the European significance of a theoretical case of possible discrimination of employees in their freedom to choose the place of work in Europe. What is being ignored is the obvious efficiency of strong institutions of employee involvement for economies and for companies<sup>3</sup>.

The genuine diversity of systems of representative organs and co-determination does not become a uniform system by increasing legal uncertainty for all. And that is exactly what would happen if the plaintiff were to prevail before the ECJ. The complicated legal electoral regulations to the supervisory board in Germany cannot be similarly adapted within any other EU Member State. The legislator beyond Germany’s borders is not under any obligation to transfer the electoral regulations from another country into their own national legislation. The consequence could be: A properly executed election to the supervisory board according to German law abroad cannot be guaranteed. Legal uncertainty for companies is therefore increased. There would be the danger of uncertainty regarding the legitimate composition of its supervisory committees and consequently their resolutions. Furthermore, there would be a danger that a company, in its own interests, would bypass such a possibly contestable supervisory board as far as legally possible. The two-tier system of management board and supervisory board would suffer.

Was the European Commission actually aware of this far-reaching, political implication on Corporate Governance Systems in Germany and, consequently in Europe, when it published its legal assessment?

Has the European Commission weighed up the consequences an EJC judicial decision based on their assessment may have in terms of employees’

trust in the European Union as it, eyes wide open, accepts the abolition or at least the weakening of employee rights in Europe?

Even if, as yet, there is no European Co-Determination Act but only the constitutional right to information and to consultation as anchored in the EU Charter of Fundamental Rights which, as we know, form a part of the European Lisbon Treaty, the German co-determination law as well as those rights in further 17 EU Member States represent a fundamental part of the European social model.

If this were merely a legal dispute, we could be quite optimistic with regard to the outcome of the EJC proceedings in light of the not very sustainable arguments raised in the EU Commission’s opinion. In the following publication, the arguments it submits are more precisely analysed and evaluated by the well-known labour lawyer Professor Rüdiger Krause.

However, we also have to look at the fact that the question of an active and passive voting right for all employees in a transnational European company to its top management bodies has been on the political agenda for a long time. Most recently, in Germany the issue was raised in the concluding report of the so-called Biedenkopf II government commission to modernize co-determination in 2005. Even trade union commentators then requested the legislator to prepare a corresponding regulation. Moreover, trade unions have meanwhile gained experience with the international composition of supervisory and administrative boards elsewhere, not only in Germany. This kind of thing is already possible in terms of valid law. The use of the legal form of a European Company (Societas Europea, SE) by large co-determined companies such as Allianz or BASF has led to an on-going daily practice of collaboration of employee representatives from various countries in the co-determined SE supervisory board.

In the current proceedings, the German Confederation of Trade Unions (DGB - Deutscher Gewerkschaftsbund) and the Confederation of German Employers’ Associations (BDA - Bundesvereinigung der deutschen Arbeitgeberverbände) mutually rate the German co-determination as being in conformity with European law. They jointly indicated this to the German Federal Government. We know that the latter has made a comment to this effect during the EJC proceedings.

Political support also comes from the incumbent President of the EU Commission himself. Jean-Claude Juncker is in favour of expanding the principle of co-determination in Europe.<sup>4</sup>

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3 For example, please refer to the results of the competition ranking of the World Economic Forums where countries with particularly well-established employee rights are more successful. <http://reports.weforum.org/global-competitiveness-report-2015-2016/>

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4 Interview with the magazine Co-Determination, Issue 05/2014, [http://www.boeckler.de/47139\\_47162.htm](http://www.boeckler.de/47139_47162.htm)



Junker: (...) “And that is why we also have to further democratize our economy and our companies. One way to do this is more co-determination on the part of the employees in Europe’s companies. Hereby, Germany and its trade unions definitely provide a role model function for Europe.

Co-determination has proven itself particularly during the current crisis which was neither caused by Europe nor by European employees. As, especially in times of stormy conditions, mutiny is the last thing anybody wants. Co-determination prevents mutiny. And, we can only steer the European ship on course if we move as one. (...)

I want to further promote the co-determination of employees, as this not only brings us forward socially, but also economically. Nothing is more beneficial to a company than motivated employees. That is why we need both a new entrepreneur and a new employee spirit. And we need companies that people can believe in again. Here too, politics and economy have a lot in common. As today, people want to be convinced. Authority-based thinking finally belongs to the relics of social history. And those of EU history too.”<sup>5</sup>

We should make use of the forthcoming oral hearing of the TUI case before the EJC, which will probably take place in autumn 2016, to clarify this issue in advance and bring about a change of heart at the EU Commission.

Norbert Kluge

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The German employers formulated their “Reform Agenda” for the “Modernisation of Co-Determination” in their joint commission of BDA and BDI (Federation of German Industry, Bundesverband der Deutschen Industrie). With the explicit substantiation relationship to Europe, the key issues are: reducing the size of supervisory boards, one-third participation without trade union representatives on the supervisory board and contractually agreed co-determination for transnational companies<sup>6</sup>. Since then, and despite the constructive discussions on the part of employees within the scope of the Biedenkopf Commission II (2005/2006), this agenda was not taken back. On the contrary, it was recently presented again during the 40th anniversary of the Co-Determination Act 76 by the acting BDA President, Ingo Kramer.

The small shareholder from TUI who filed a suit against the incorrect composition of the TUI supervisory board does not want to Europeanise or improve co-determination. His intention behind the action is to ensure that it is abolished. This is something one has to be politically aware of.

Has the EU Commission possibly also appropriated this blueprint of dilution, questioning the legal foundation for co-determination and ultimately its abolition in today’s form?

<sup>5</sup> Translation of German version of quotes

<sup>6</sup> BDA and BDI (2005), Modernize Co-Codetermination Report by the Co-Determination Commission, [http://www.arbeitgeber.de/www/arbeitgeber.nsf/res/Bericht\\_der\\_Kommission\\_Mitbestimmung.pdf/\\$file/Bericht\\_der\\_Kommission\\_Mitbestimmung.pdf](http://www.arbeitgeber.de/www/arbeitgeber.nsf/res/Bericht_der_Kommission_Mitbestimmung.pdf/$file/Bericht_der_Kommission_Mitbestimmung.pdf)

## COMMENTARY ON THE OPINION OF THE EUROPEAN COMMISSION IN THE PROCEEDINGS ERZBERGER/TUI DISPUTE C-566/15

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In its procedural document dated February 9, 2016, the European Commission gave its opinion on the proceedings for a request for preliminary ruling by the Kammergericht Berlin<sup>7</sup> (Germany) regarding the question of the incompatibility with European law of the restriction of active and passive voting rights for employee representatives to the supervisory bodies of a company to domestic employees. This opinion is comparatively brief and does not include any new arguments which have so far not already been raised. Rather, numerous arguments are simply ignored which were presented for such incompatibility – in particular, however, also those against incompatibility of German co-determination with European law.

### German co-determination law is not under any obligation to justify itself

At the beginning of its explanations, the EU Commission generously points out that the national legislator is free to create regulations governing employee co-determination which, in terms of their content and purpose, only apply domestically. However, as far as a Member State decides to design its co-determination right in such a way that it includes facts which, “when viewed objectively” could be present both in the same Member State as well as in other Member States, such Member State would have to justify why employees from other Member States were excluded from the co-determination (margin note 9). With this approach, the Commission forces the Member States’ legal system from the outset - not entirely a bad idea in terms of argumentation strategy - into the role of somebody who has to justify himself. As a result, as it were a priori and without any substantiation, the hypothesis is created that the current structure of the German co-determination law in general already needs a justification before the forum with regard to an as yet unspecified European law. On the other hand, the very opposite would have to be substantiated: why does a Member State’s regulation possibly infringe on European law as this initially presupposes that the regulation falls in its

scope of application in the first place? When looking closer, this first sentence itself, which prejudices the Commission’s line of thought to a certain extent, has several weak points. And so it is already hard to say that the German legislator has “structured” the co-determination law to “include” facts which “could be present” in various Member States.

What is this actually about? In the Co-Determination Act, the German legislator regulated the following: On reaching a certain threshold the employees in all establishments of a company or affiliated companies within German territory are entitled to the right of co-determination, whereby the nationality of the employees (naturally) does not play a role. A “structure” – of any kind whatsoever – of legal situations existing abroad, is not carried out by the German co-determination right. Rather, the German legislator abstains from any regulation regarding the questions whether employees in another Member State are entitled to participation rights and what kinds of participation rights they should be granted. These employees are therefore just as little “excluded” by a normative provision attributable to the legislator than the employees in the French subsidiary of a German group are “excluded” from applying the German employment protection law. The Commission arrives at a contradictory point of view in that it calls on an “objective contemplation” which naturally in itself is not a substantiation but rather an empty phrase. At this point one should have given considerably more thought to the question as to whether transnational effects – which (for foreign establishments), are solely based on a contractual employment link to a domestic company or (for foreign establishments) are solely conveyed under company law – could be blamed on the German legislator if the latter grants those employees working domestically a certain influence on the destinies of the company or the group. In addition, it is not based on a decision by the German legislator as to whether a company that has so far only been active domestically, and for which - even in the opinion of the Commission - a system of employee co-determination could be established without further ado, decides to establish or acquire an establishment or a subsidiary abroad with the consequence of creating a situation which, “objectively viewed”, could then exist in several Member States.

### Freedom of movement of employees in Europe is not challenged

In a second approach, the Commission turns to the exact standard of view of European law (margin note 12-17). In this regard, the Kammergericht Berlin (Germany) listed both Article 18 TFEU as well as Article 45 TFEU as a possible infringement.

<sup>7</sup> KG d. 16.10.2015 – 14 W 89/15, ZIP 2015, 2172.

The Commission, quite accurately, points out that Article 45 TFEU in its scope of application is more specific and excludes recourse to Article 18 TFEU. What is correct and anchored in the judicature of the ECJ is also that the prohibition of discrimination in terms of the law governing freedom of movement of employees, and the associated corresponding entitlement to equal treatment, also include the voting right to employee representations. The decisive issue is, however, whether there is actually a legal situation relevant to the freedom of movement of employees, and whether this is actually about employees who in any manner have made use of their freedom of movement while purely domestic facts are not recognised. Here, the Commission initially alleges that the freedom of movement of employees should also then apply if the employee has not left his homeland. To substantiate this, reference is made to the decision of the EJC in the legal matter Boukhalfa. This, however, was based on an incident where a Belgian national was employed by the German Embassy in Algiers as a local staff member and was treated worse than local staff members of German nationality<sup>8</sup>. In its decision, the EJC considered the prohibition of discrimination to be applicable as reference was made to German law for many sub-questions relating to the employment relationship, and the legal relationship showed a sufficiently close link to the law of a Member State. It is unclear why this case should serve as a reference for the structure at hand in that, for example, an employee working in a French subsidiary of a German group is exclusively subject to French labour law and not also additionally included in the German co-determination in supervisory boards.

The Commission, however, completely suppresses this obvious thought and instead deduces a transnational element solely on the basis that the regulation in question has an effect on employees in Germany who want to continue working for the same company abroad. These employees would then lose their voting right as well as possibly their supervisory board mandate. Why the Commission has chosen precisely these points of reference remains a mystery. After all, the consequence of such an approach would be that the transnational element could always be “substantiated” by implying that an employee has the never-to-be-excluded possibility to transfer to another Member State and this circumstance would lead to a change of the employee’s contractual statute pursuant to European international labour law (Article 8 paragraph 2 Regulation (EC) No. 593/2008). This, however, would mean that all employment relationships in Europe automatically reflect a transnational element which is obviously misguided. But even if one - as the Commission obviously has in

<sup>8</sup> ECJ dated April, 30, 1996 – C-214/94, Boukhalfa, Collection. 1996, I-2253.

mind - restricts oneself to the case that the employee wants to continue working in the same group abroad, there is still the consideration that with this approach all protective labour law regulations of Member States are subject to a suspicion of discrimination and would have to be “justified” as they, on principle, only apply if the employment relationship is subject to the relevant applicable national labour law, and consequently not to a permanent employment in the foreign subsidiary. In addition, the alternatively submitted comment in this paragraph that the general prohibition of discrimination of Article 18 TFEU should apply to a Member State regulation for co-determination in supervisory boards only because the Union has made use of its own competence to regulate co-determination legal provisions in terms of Article 153 paragraph 1 (f) TFEU is unsettling. Also in this regard, it is not clear why there should be a connection between one and the other question, why therefore the German co-determination should specifically be measured on the basis of Article 18 TFEU, as the Union has issued regulations governing co-determination in the SE or governing the co-determination for a cross-boarder merger.

### **No selective “denial of voting rights” by the German co-determination law**

Based on its initial position, the Commission predictably feels there is an indirect discrimination as the non-inclusion of an employee working in another Member State typically affects the nationals of that Member State. Also, in this regard, once again the dubious phrase of a “denial of voting rights” can be found (margin note 19), although this is merely about the German legislator having adopted a socio-political fundamental decision that not only the shareholders should have a say in the large stock corporations but also those employees working in Germany should be entitled to certain decisions that affect their professional destiny. How, in a situation in which a corresponding regulation simply does not exist, one can speak of a “denial of voting right”, which implies a conscious rule-setting process, is somewhat difficult to follow.

In actual fact, neither the Kammergericht Berlin (Germany), nor currently the European Commission, can name a concrete German regulation that infringes on European Union law. Furthermore, at this time, suddenly nationals of other Member States enter the scenario despite the fact that the Commission just recently expressly left it open whether this group of persons should also be taken into account so as to determine the transnational element required to apply Article 45 TFEU (margin note 16). Instead, in a further substantiation, there is a clear swing back to those workers employed domestically for whom the questioned regu-

lations allegedly make the exercise of the right to freedom of movement through a permanent move abroad less attractive as they would consequently forfeit the right to vote and stand as a candidate to the supervisory board or lose their supervisory board mandate. However, beyond the mere allegation of such an interdependency not even the slightest consideration is given as to whether these possible legal consequences would actually influence an employee's decision to consider such a move. Also the question would have to be asked whether the extreme special case - which has never occurred in the last decades and consequently represents a highly speculative character - of the loss of a supervisory board mandate justifies putting the voting rights in toto under constant pressure to justify.

In this regard, it must be reiterated that the European secondary law with regard to the question as to what law is applicable for transnational situations assumes the workplace principle to be the default rule (Article 8 paragraph 2 Regulation (EC) No. 593/2008). This means that the permanent move to another Member State also leads to a change in the law governing the employment contract if the employee stays within the same company or group. The current proposal by the Commission to revise the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services even provides, in the event of an envisaged or actual deployment period of over 24 months, that the accepting Member State is to be considered the normal workplace and it therefore, subject to a choice of law, automatically brings about a change in the applicable law<sup>9</sup>. Even if a deployment and a voluntary move to another Member State are not one and the same thing, it is not convincing to interpret European law on the one hand to allege that the loss of legal positions based on the change of the applicable labour law is a measure designed to make the exercise of the freedom of movement of employees "less attractive", requiring a justification whilst on the other hand, precisely this particular change is prescribed elsewhere in European law. Consequently, demands must be made that the interpretation of European law orientates itself on the principle of coherence.

When it comes to justification, the Commission - in its starting point - is deluding itself. So, "at first glance" there should simply be "no obvious justification" as to why employees working abroad should be "excluded" from their voting right to the supervisory board because these employees are equally subject to the management and organisational authority of the parent company as domestic employees (margin note 23). After all, two reasons of justification, which are conceivable from the Commission's point of view, are subsequent-

ly examined and rejected. On the one hand there is the territorial principle and the associated train of thought that the German legislator is not able to comprehensively regulate foreign issues. The Commission counters this argument with the reflection that it is only about imposing the obligation on those companies residing in Germany and founded on its law to ensure the implementation of the German co-determination law in foreign subsidiaries (margin note 25). In this way the Commission ignores all difficulties which arise if elections for employee representatives to the supervisory board are to be held abroad that meet the high requirements necessary for such elections for democratic and constitutional reasons. And so, just to name a single example, there is no possibility for the German legislator to influence the termination of an employee, where notice was given by the management of a foreign group subsidiary, with the objective to influence the election, and have this declared bindingly ineffective at a foreign court. The Commission obviously assumes that it does not matter at all whether the rights of employees are protected by valid law or "somehow" by an influence exerted by the parent company if it feels in principle that the integrity of supervisory board elections is not in any case more or less irrelevant.

As a second potential reason for justification, the Commission mentions the applicability of the co-determination regulations of another Member State (margin note 26). If one therefore concentrates on the foreign co-determination right as such, this reason can actually easily be refuted. Naturally, the mere circumstance that there are different co-determination regimes in Europe does in itself not justify the discriminatory design of one of these regimes.

Also other Member States may not prevent a parent company situated in Germany, and formed under German law, to occupy its management bodies in accordance with German law. In all this, the Commission consistently argued - and totally missed the point, which is: can a partial aspect be picked out and isolated in such a way from the entirety of the industrial relationships in a Member State, which consists of numerous elements (in particular co-determination at company and board level, collective bargaining law and industrial dispute) so as to be classified as being discriminating and unjustifiable merely because a group operates in several Member States, and is inevitably subject to various labour law and social cultures?

Last but not least it is incomprehensible that the Commission calls on several decisions of the EJC dealing with the application to elections of employee representative bodies of the non-discrimination principal regarding the freedom of movement (margin note 14) and does not even bother to mention that these decisions were always about the exclusion of employees working in the same count-

<sup>9</sup> cf. Article 2a and the recital 8 of the Commission's proposal, COM (2016) 128 final dated March 8, 2016.



ry, that is to say in the accepting Member State<sup>10</sup>, based on their nationality. Meanwhile, the case at hand is completely different: namely the non-inclusion of employees working permanently in another country. The fact that the Commission finally deliberately suppresses the relevant freedom of movement provision which, in Article 8 paragraph 1 Regulation (EC) No. 492/2011, guarantees the active and passive voting right explicitly only to such employees who are nationals of a Member State and are employed in the sovereign territory of another Member State rounds out the impression that the line of argumentation of its opinion is by no means exhaustive.

## ABSTRACT

Professor Dr Rüdiger Krause, a renowned jurist from Göttingen, has serious doubts as to whether the EU Commission's legal position on the pending so-called 'TUI Case' is tenable at the ECJ. In his opinion, he does not see any legal reasons for an EU Member State to restrict certain voting rights in the context of co-determination to its national territory.

## Conclusion

The European Commission bases its opinion on dubious and hardly expedient interpretations ("denial of voting right"). But in particular it does not exhaust the legal argumentation by a long chalk and does not consider important normative aspects. Therefore, overall, the Commission's remarks do not present a reason to modify the already thoroughly substantiated position<sup>11</sup> that the German co-determination regulations do not infringe on European law.

Were the ECJ to pursue this argumentation, this would not only endanger employee participation in supervisory or administrative boards of companies in Germany but also in many other EU Member States. The legal uncertainty for companies as well as for employees would increase.

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10 cf. 2 ECJ dated July 4, 1991 – C-213/90, ASTI, Collection. 1991, I-3507; ECJ dated May 18, 1994 – C-118/92, Commission/Luxembourg, Collection. 1994, I-1891; ECJ dated May 8, 2003 – C-171/91, Wählergruppe Gemeinsam, Collection 2003, I-4301; ECJ dated September 16, 2004 – C-465/01, Commission/Austria, Collection 2004, I-8291.

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11 Krause, AG 2012 485 et seq. published in: Pütz/Sick, 2015, Nagelprobe EuGH - Mitbestimmung untergraben oder festigen? [Acid Test EJC - undermine or strengthen co-determination?] Series: Co-determination Report, Nr. 17, Düsseldorf, <http://www.boeckler.de/51937.htm?produkt=HBS-006217&chunk=1&jahr>

## IMPRINT

### Issue

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