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Co-determination in Germany - A Beginner's Guide

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Co-determination in Germany – A Beginner's Guide

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Inhalt

Introduction

The word "co-determination", or *"Mitbestimmung"* in German, is commonly heard outside of Germany but it's actual meaning is often unclear. What it actually refers to, is a concept for employee consultation and participation (in certain cases) in company decisions at both establishment and company/group level within private sector companies in Germany. This co-determination concept has a long history – dating back originally to the 1920s – and is today regulated by a number of detailed laws.

This collection of texts (some written especially, others translated or adapted from other sources) aims to provide a basic explanation of what co-determination is all about, how it functions in practice and what it means to the Germans and to Germany as whole. This collection has been put together with non-German speakers in mind and does not go into the subject in great depth. For this reason, it is best seen as an introduction to the subject.

The first text is a brief summary of the chequered history of co-determination which details the legislative development of the dual level co-determination system. Following this there are two short translated texts from the German Ministry of Employment and Social Order which illustrate the philosophy behind co-determination and give a general overview of what it entails. Co-determination basically takes place on two levels: establishment level, through the works council *(Betriebsrat)* and at company/group level through the supervisory board *(Aufsichtsrat)*. The legislation governing both of these systems is described in some detail, followed by some practical examples and problems as well as possible improvements. These texts have been written especially by people involved in supporting the co-determination actors.

The next two texts outline the services and support provided by the Hans Böckler Foundation, the co-determination, research and study support institution of the German Trade Union Confederation (DGB) for those involved in the co-determination process, as well as two projects investigating co-determination practice (The Co-determination Commission and the Forum for Co-determination and Companies). The relationship between the German co-determination system and developments within Europe are also considered in a text on the future of the German system in the light of existing and proposed European Union Directives on employee participation in Europe. The final section is a list of sources for further information available in English.

As a "foreigner" myself, I hope that this collection of information will go some way to dispelling what the Co-determination Commission (see page 27) termed the frequent underestimation and "mistaken view of co-determination prevailing abroad".

Rebecca Page (Hannover), October 2000

Remarks about the new 5th edition

Since the first publication of this booklet the development at the European level went rapidly: We have the European Company since 2004, the European Cooperative, the directive about cross-border merger already trans-posed into national law and an ongoing debate about a European Private Company. Quite a lot of the "normal" SE are based in Germany, we have board members there from various countries. So the need for cooperation of the employees and their unions is much stronger.

The financial Crisis in the last years and the situation in Germany's economic afterwards have proved that our model works good. Works Councils, unions collective bargaining, both having seats in the boards of bigger companies and the special aid by the State (f.e. Short time compensation) together were the reasons for success.

To inform about the specific situation in Germany was and is the purpose of this booklet, now at the level of summer 2011.

Hans-Böckler-Foundation
June 2011

In 2019 we are going to publish a new booklet to provide a basic explanation of what co-determination is all about, how it functions in practice and what it means to the Germans and to Germany as whole.

Hans-Böckler-Foundation
November 2018

1 The History of Co-determination in Germany

1848 Constituent National Assembly, Pauluskirche, Frankfurt
– Demands for the establishment of factory committees with participation rights – Attempt failed
– Limited voluntary creation of such committees took place
– Participation in creation of improved working and living conditions
– Success hampered by employers fearing an erosion of their power of decision

1916 (1st World War) "Act on Civilian War-Work Service" (Gesetz über den Väterlandischen Hilfsdienst)
– Workers' committees & salaried employees' committees in establishments vital to the war effort & supply with 50+ employees
– Consultation in social matters – no co-determination
– Legal solution or conciliation committee used to settle disagreements

1919 Weimar Constitution Art. 165
– "Workers and staff are appointed to participate with equal rights together with the company in the regulation of wages and working conditions, as well as in the complete economic development of the producing powers".
– Impetus for laws on co-determination

1920 "Works Council Act" (Betriebsrätegesetz)
– Basis for the Works Constitution as it is known today
– Works councils for all companies with 20+ workers
– Full co-determination rights in the creation of work regulations
– Participation rights in various personnel & finance matters
– Prepared the way for worker representation on supervisory boards

1922 "Act on the Representation of Works Council Members in the Supervisory Boards"
– Introduced worker representation to supervisory boards
– 2 works council representatives in joint stock companies
– 1 works council representative in smaller companies
– Full voting rights

1934 Nazi Regime – "Act to Regulate National Work" (Gesetz zur Ordnung der nationalen Arbeit)
– Law repealed the "Works Council Act" of 1920
– Provision for works councils & worker participation on the supervisory board removed

1945 Allied Occupation
– General support for industrial democracy amongst the new trade unions, political parties and churches

1946 "Allied Control Council Act No 22" (Das Kontrollratsgesetz Nr. 22)
– Based on Works Council Act of 1920
– Standardised rules on the establishment & activities of works councils
– Trade unions (also with support of employers) demand worker representation on the board and supervisory board of companies taken over by the Allies

1947 Agreement between the Trust Administration of the iron and steel companies in the British Sector and the trade unions on parity co-determination on supervisory boards.
– In newly formed Hüttenwerke Hagen-Haspe AG: supervisory board with parity co-determination and a labour director on the main board.
– Other companies followed this example

1951 "Act on the Co-determination of Employees in the Supervisory & Management Boards of Companies in the Coal, Iron & Steel Industry" (Gesetz über die Mitbestimmung der Arbeitnehmer in den Aufsichtsräten & Vor-ständen der Unternehmen des Bergbaus und der Eisen und Stahl erzeugenden Industrie (Montan-Mitbestimmungsgesetz))
– Established supervisory boards with parity co-determination in companies in coal, iron & steel industry
– Decision to appoint of Labour Director cannot go against wishes of employee representatives on supervisory board

1952 "Works Constitution Act" (Betriebsverfassungsgesetz)
– Private sector companies
– Established co-determination at establishment level through the works council
– 1/3 representation of employees on supervisory boards of large & medium sized companies

1956 "Supplementary Co-determination Act" (Mitbestimmungs-ergänzungsgesetz)
– Extended scope of 1951 Act to include companies exercising control over undertakings covered by 1951 Act

1965 "Federal Staff Representation Act" & "Land Staff Representation Acts" (Personalvertretungsgesetz (Bund/Länder))
– Public sector
– Co-determination at establishment level

1972 "Works Constitution Act" (Betriebsverfassungsgesetz)
– Repeals Works Constitution Act of 1952 except for §§ 76 et seq.
– (super-visory boards)
– Expanded co-determination at establishment level

1974 "Federal Staff Representation Act" (Personalvertretungsgesetz)
– Revised act of 1965
– Expanded co-determination at establishment level in public sector

1976 "Co-determination Act" (Mitbestimmungsgesetz)
– Co-determination at company or group level where there are as a rule 2000+ employees
– Inclusion of managerial employees – 1 employees seat in Supervisory Board

1988 "Executives' Committee Act" (Sprecherausschussgesetz)
– Legal basis for representation of executives' interests at establishment level

2001 Amendment of the "Works Constitution Act"

2004 Amendment New "Third Part Act" (Drittelbeteiligungsgesetz)
– Modernisation of the §§ of the 1952 Works Constitution Act referring Supervisory-Board Membership
– Law of the European Company (SE) amending the regulation and directive of the European Company of the EU

2006 European Cooperative
– Transposed into German law

2006/2007 Cross border merger
– The transposition of the 10. Directive into German law

2 Why Co-determination?

A modern economy needs a climate in which conflicts are settled through dialogue and not by force. Co-determination is a pre-requisite for this.

Objectives of Co-Determination

1) Equality of Capital and Work

Behind this objective lies the legal claim to co-determination at establishment level (§ 2 Works Constitution Act), which, as opposed to the occasional obligingness of the employer, is inalienable and requires companies not only to consider the interests of the shareholders but also those of the employees.

2) Democracy in the Economy

It is not just about transferring parliamentary forms of democracy but more importantly it's about the principle of democracy and the resolving of conflicts not by force but through dialogue and co-decision.

3) Social Development

Through a better consideration of employees' interests when making establishment and company decisions, co-determination contributes to the improvement of working people's living and working conditions.

4) Control of Economic Power

Where economic power masses together, control is an important instrument in avoiding its misuse. Whether participating in company decisions or contributing on company matters, the principle is the same in every case: co-determination means co-responsibility. In works councils and supervisory boards the employees, just like the employer, need to keep an eye on the long term development of the company. This is why all of the laws on co-determination are directed towards enabling fruitful co-operation between both sides and creating a productive balance of interests. When seen this way, co-determination is an important factor in the stabilisation of our economic and social order.

(Source: Federal Ministry for Employment & Social Order: "Mitbestimmung. Unternehmensmitbestimmung & Betriebsmitbestimmung", Jan 1995. Pages 5 – 8. Translation)

3 An Overview of Co-determination

The co-determination laws guarantee employees participation in the regulation of working conditions as well as in economic planning and decision making.

1) Employee Involvement

Employee involvement takes place on two levels: the establishment as a place, following objectives based on techniques of working (production, sales, administration, services) and the company as a legally responsible, organised unit following economic or non-material aims.

2) Employee Representation through the Works Council

Co-determination and participation in the establishment involves above all the exertion of influence by the works council (§ 87 Works Constitution Act) in all matters which raise questions for employees about their place of work. They may involve the introduction of short-time working or overtime, the establishment of pay principles, piece rates or premium payments, the introduction of new technologies or methods of working or the creation of a social compensation plan where plant closures or organisational changes are planned. In these situations employee interests are represented by the works council.

3) Economic Planning

Participation rights in company-wide questions are directed towards economic planning and decision making. Company level co-determination takes place in supervisory boards (§ 6 Co-determination Law). Whilst establishment level co-determination is basically applicable in all Federal German companies founded on the basis of private civil law, the right of co-determination in company matters exists only in larger firms which are legally run as joint stock companies (§ 1 Co-determination Law). The limitation of company level co-determination to joint stock companies has its roots in that in partnerships at least some of the entrepreneurs share personal liability for the company and often take part in its management. It is also related to the fact that the organisation of joint stock companies with their supervisory boards presents itself as a suitable starting point for employee involvement.

(Source: Federal Ministry for Employment & Social Order: "Mitbestimmung. Unternehmensmitbestimmung & Betriebsmitbestimmung", Jan 1995. Pages 9 – 12. Translation)

4 The Co-determination Legislation

Co-determination in Germany takes place on two levels: establishment level and company and group level. Different laws govern the various structures on the two levels:

Establishment Level

Co-determination through the works council *(Betriebsrat)*

Governed by:
– Works Constitution Act (1972)

Company & Group Level

Co-determination through the supervisory board *(Aufsichtsrat)*

Governed by (depending on industry, company form, number of employees):
– Co-determination Act in the Coal, Iron & Steel Industry (1951)
– Supplementary Co-determination Act (1956)
– Third Part Act of 2004 (former Works Constitution Act (1952)
– Co-determination Act (1976) Co-determination in European Legal Entities such as SE or SCE.

5 Establishment Level Co-determination

Introduction

The conflict of interests between employer and employees has its most direct effect at the level of the establishment. The individual employee is not usually in a position to defend his/her interests at an equal level with the employer. For this reason a body is required to represent the interests of those working in the establishment. Under German law (Works Constitution Act, 1972) these interests are represented by the works council (WC). According to this Act the works council and the employer should work with each other in a "spirit of mutual trust" (§ 2 (1) WCA), discussing the matters at issue "with an earnest desire to reach an agreement" (§ 74 (1) WCA).

The WC is independent of both employer and trade unions. Trade un-ions do however play an important role and WC members in the course of their duties co-operate with the trade union represented in the establishment. Depending on the sector, between 80 – 95 % of WC members are members of trade unions affiliated to the German Trade Union Confederation (Deutscher Gewerkschaftsbund). The trade unions are there fore not represented in their own right on the WCs but instead indirectly through their members who serve on them.

Establishment of the Works Council

WCs may be elected in establishments with more than 5 employees. The initiative for setting one up lies with the employees of the establishment, although they may be supported by a trade union. An electoral committee, consisting of employees who are eligible to vote is responsible for the organisation of the secret ballot of all employees over the age of 18. Employees who have been employed at the establishment for more than 6 months may stand for election. The term of office for WC members is 4 years.

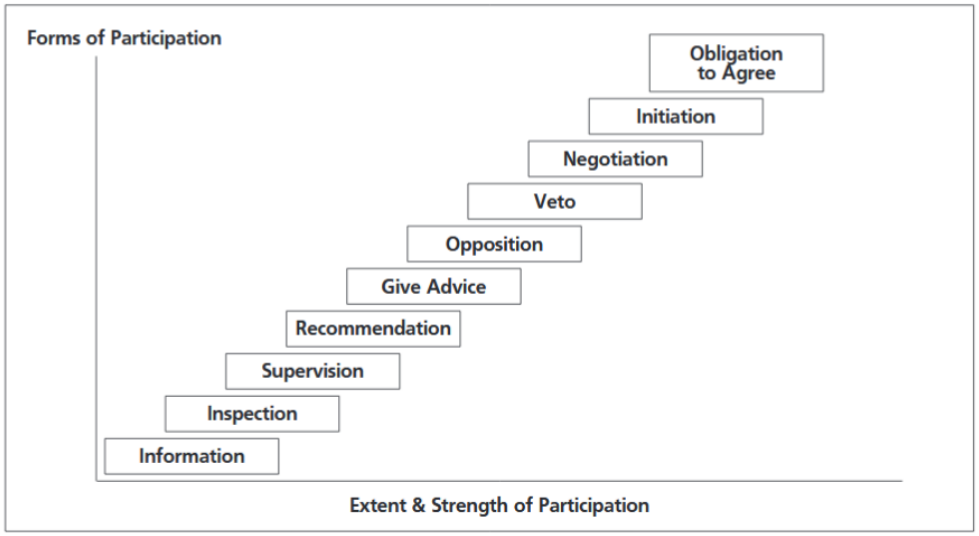
If the establishment employs both wage-earners and salaried employees, which is usually the case, both groups must vote separately even though they may vote on the same day. They may however decide in a separate voting procedure that the works council should be elected jointly by all the employees of the establishment. Each of the two groups of employees must be represented on the WC in proportion to its share of the total workforce. If this share is under a certain level then the group is protected by a minority protection clause guaranteeing representation on the WC. Managerial employees, that is employees who perform typical entrepreneurial functions with scope for decision making, are exempt from the provisions of the Works Constitution Act and are therefore not eligible to vote.

Organisation of the Works Council

The WC elects a chairperson and vice-chairperson from amongst its number. One of them must be a wage earner and the other a salaried employee. The WC may adopt rules of procedure and if the body consists of more than 9 members a works committee must be formed from within its ranks. The works committee should consist of wage-earners and salaried employees in the same ratio as the works council. The function of the works committee is to deal with the day-to-day business of the WC, such as preparing meetings with the employer, but it may also take on other tasks.

Works council meetings normally take place during working hours. The employer may only attend if specifically invited. If a quarter of the works council members agree then delegates from the trade union represented in the establishment can be invited to attend but in an advisory capacity only. Members of the works council are paid their normal remuneration for time spent undertaking WC business. They may not be discriminated against or privileged on account of their status as WC members.

Figure 1: Works Council Rights



Right to Information

– The employer and the WC should meet together at least once a month to discuss current issues (§ 74 (1) WCA)
– The employer must supply the WC with comprehensive information in good time to enable it to carry out its duties (§ 80 (2) WCA) for example information on:
  - Construction of works, working procedures & operations (§ 90 (1) WCA)
  - Manpower planning (§ 92 (1) WCA)

- Recruitment, re-grading & transfers (§ 99 (1) WCA)

Right to Inspect Documents

– The WC, if it so requests, must be given access at any time to documentation it may require to carry out its duties
– The WC is also entitled to inspect the payroll of the establishment including the gross wages & salaries of the employees

Right of Supervision

– The WC must ensure that the employer observes and complies with the following:
  - Legal and equitable treatment of all employees (§ 75 (1) WCA)
  - Acts & ordinances (§ 80 (1) WCA)
  - Safety regulations
  - Collective agreements
  - Works agreements

Right to Make Recommendations

– It is the duty of the WC to make recommendations to the employer for action benefiting the establishment and its staff (§ 80 (2) WCA) for example:
  - Smoking ban
  - Canteen
  - Information & communication
  - Health promotion etc.

Right to be Consulted

– The WC must be consulted before every dismissal and the employer should inform the WC of the reasons for the dismissal (§ 102 (1) WCA)
– Any dismissal carried out without consulting the WC is null and void
– The employer must consult the WC before every new employment (§ 99 (1) WCA)

Right to Advise (for example in manpower planning § 92)

– The employer shall inform the WC in full and in good time on:
  - Present and future manpower needs
  - Vocational training measures
  - Resulting staff movements
– The WC may make recommendations to the employer related to the introduction and implementation of manpower planning

Right of Opposition (for example on dismissal)

– The WC must be consulted before every dismissal and informed about who is to be dismissed, why it should take place and when. The

employer must also inform the WC on the social matters related to the dismissal which have been taken into consideration
– The WC may object to routine and exceptional dismissals if it believes that:
  · Insufficient regard for social aspects has be made
  · Selection guidelines have not been observed
  · Job transfer within the company is possible
  · Re-training or further training is possible
  · A contractual change with the agreement of the employee could be made (§ 102 (3) WCA)
– When objecting to a routine dismissal the WC must lodge its written objection with the employer within 1 week. If the dismissal is an exception-al one, then the WC has 3 days to inform the employer.

Right of Veto (for example in personnel measures)

– The employer must notify the WC of the intended measure, submit the appropriate documents and seek the consent of the WC
– The WC discusses the proposal and passes a resolution
– The WC notifies the employer in writing within 1 week of its refusal or consent (if the WC fails to inform the employer, then the WC is seen to have consented to the proposal). The WC may only refuse consent in certain circumstances:
  · A breach any Act, ordinance, safety regulation or collective agreement would result
  · A non-observance of selection guidelines would result
  · The proposal would lead to the dismissal of or prejudice to the employee concerned or employees in the establishment not warranted by operational or personal reasons
  · The vacancy has not been notified within the establishment (§ 99 (2) 1 – 6 WCA)
– The employer may apply to the Labour Court for a decision in lieu of WC consent

Right to Negotiate (for example in social matters)

– The WC has the right of co-determination in the following matters (in so far as they are not regulated by legislation or collective agreement:
  · Order and operation of the establishment and employee conduct
  · Working time, breaks and distribution of working hours
  · Temporary reductions or extensions to the regular working hours
  · Time, place and payment form of remuneration
  · Principles of leave arrangements and schedules
  · The introduction and use of technical devices to monitor the behaviour or performance of employees
  · Protection of health and accident prevention
  · The form, structure and administration of company social services
  · The assignment and notice to vacate company accommodation
  · The fixing of job and bonus rates and comparable performance related remuneration

  - Principles for suggestion schemes (§ 87 WCA)
- The employer is only entitled to impose binding rules on the above matters after an agreement with the WC has been made. The employer and WC may after negotiation sign a works agreement which has a direct and binding effect on all employees
- If no agreement can be reached then the conciliation committee decides the matter. The decision of the conciliation committee has the same binding effect as a works agreement.

Right to Initiate Measures

- In establishments with more than 1000 employees, the WC may request the drawing up of guidelines on the technical, personal and social criteria to be applied by the employer in the planning of employee recruitment, transfer, re-grading and dismissal measures
- If no agreement can be reached on the guidelines or their content, then the conciliation committee shall decide

Obligation to Agree (for example regarding company change)

- The employer must inform the WC of the following company changes
  - The reduction of operations or the closure of the whole or important departments of the establishment
  - The transfer of the whole or important departments
  - The amalgamation with other establishments or divisions
  - Important changes in the organisation, purpose or plant
  - The introduction of entirely new work methods and production processes (§ 111 (1 – 5) WCA)
- WC and employer negotiate to reconcile their interests in connection with the proposed change and draw up a Social Compensation Plan (financial and/or social benefits for employees disadvantaged by the proposed change). A written agreement is made and signed by both parties (§ 112 WCA)
- If there is a failure to agree, the parties may agree to mediation by the Land labour office. If this fails or no application for mediation is made, the employer or WC may submit the case to the conciliation committee for a decision.
- If there is a failure to agree, the parties may agree to mediation by the Land labour office. If this fails or no application for mediation is made, the employer or WC may submit the case to the conciliation committee for a decision.

Conciliation Committee *(Einigungsstelle)*

The purpose of the conciliation committee is to settle differences of opinion between the WC and the employer. The conciliation committee is composed of assessors appointed in equal numbers by the WC and the employer and of an independent chairperson accepted by both sides. If a chairperson cannot be agreed upon, then the Labour Court will appoint someone.

The conciliation committee should seek a voluntary agreement by discussing the matter in hand. Decisions are adopted by a majority vote which on the first round of voting excludes the chairperson. If the vote results in a tie, the discussion is resumed before a further vote, including the chairperson, is held. Conciliation committee decisions must be in writing and are binding for both parties.

Finance Committee (Wirtschaftsausschuss)

A finance committee may be set up in establishments with more than 100 permanent employees. It consists of between 3 and 7 members who are appointed and removed by the WC. The committee meets monthly with the employer and has the right to access relevant documents and to consult experts.

The employer must inform the committee in due time and in sufficient detail on:
– The economic and financial situation of the company
– The production and sales situation
– The production and investment programme
– Rationalisation projects
– Methods of fabrication and work (especially the introduction of new methods)
– The discontinuation of operations or closure of establishments
– The amalgamation with other establishments
– Changes in the organisation, purpose or plant of the establishment
– Other events or proposed changes which may involve substantial disadvantages for employees (§ 106 (3) WCA)

It is the job of the finance committee to inform the WC on these matters.

Works Council Structure

– Works Coucil

in the plant itself

– Company Works Council *(Gesamtbetriebsrat)*

If an undertaking comprises of more than one establishment, a central works council (CWC), comprising of members of the individual works councils, must be formed. Each member of the CWC has as many votes as there are employees entitled to vote in the groups he/she represents in the establishment.

The CWC is only competent to deal with matters affecting several establishments and which the individual WCs are unable to settle within their establishments. A WC may refer a matter to the CWC by a majority vote.

– Group Works Council *(Konzernbetriebsrat)*

In a group of companies (combine) a group works council (GWC) may be established by resolutions of the individual WCs. The GWC is competent only to deal with matters affecting the group as a whole or two or more of its subsidiaries. A GWC should not be seen as a higher organ than the individual WCs. It may however have a matter referred to it by the CWC.

6 Practical Examples of Establishment Level Co-determination

By Heinrich Ortmann, Former Head of Works Councils Department, IG BCE

Co-determination in works councils basically consists of seeking to balance the opposing interests of the company on one hand and the employees represented by the works council on the other by following a set procedure. The actual co-determination process is also supplemented by a number of information and participation rights granted to the works council.

In companies with more than 100 employees, employee representatives are informed about important company data and statistics, company plans and their effect on employees. Along side this are a number of cases where special information rights exist. Changes in the organisation of work, the introduction of new working methods, break up, merger, location changes or cut backs to establishments are for example implied here. When such measures could lead to disadvantages for a number of employees then the employer must negotiate, and where possible agree a solution with the works council about the implementation of the intended measure. The employer is also required to agree to special expenditure for unavoidable disadvantages within the framework of a so called "social compensation plan". This co-determination right held by the works council means that in all companies where a works council exists, employees cannot not be dismissed or employed in another capacity without an agreement which reduces the consequences for them.

In many cases the question of whether and how many employees may be dismissed as well as whether the employer must make investments to safeguard the remaining jobs is laid down in a so-called "settlement of differences" procedure. If job losses are unavoidable then negotiations between the employer and works council on the financial and/or other benefits that the company must pay in the case of dismissals for operational reasons are regulated by the co-determination framework.

Trade unions have, for the past few years, been trying to use this right of co-determination to combine the benefits which have to be provided by employer with state-run special programmes in order to open up new employment opportunities to the affected employees through specially aimed training measures. These programmes which rely entirely on the co-determination rights of the works council, are so successful that sometimes up to 50% of employees, depending on the industrial sector and the qualifications they hold, who would otherwise lose their jobs, find employment elsewhere.

The works council does also have a number of other co-determination rights, such as the regulation of working time in individual establishments. Within the framework of the collectively bargained maximum working time,

employer and works council agree the working time within the establishment for individual employees. In so-called "works agreements" the start and end of the working day and breaks are regulated. It can involve rigid working hours, shift systems or flexi-time. If the employer requires longer hours to be worked, due to the level of orders on the books, then the consent of the works council must first be sought within the framework of co-determination,

Apart from these examples of co-determination exercised by works councils, there are a number of questions in which the works council may, in the execution of its co-determination rights, take part in the structuring of employees' working conditions.

7 Amendment to the German Works Council Constitution Act

By Christine Zumbeck, Former Head of the Labour Law Section in the Code-termination Department of the Hans-Boeckler-Foundation

Since its coming into force in the year 1952, the Works Council Constitution Act saw two far-reaching reforms. The first amendment in the year 1972 enhanced the works councillors' rights of codetermination in social and human resources matters; the second amendment in the year 2001 mainly aimed at an easier formation of works councils and the improvement of their working conditions.

The changes in the year 2001 had become necessary as the number of works councils in Germany decreased due to reorganisation measures in the companies. Company carve-outs and outsourcing measures in particular frequently resulted in smaller units that were not equipped with works councils. The legislator thus took the following measures:

– simplification of the election procedures in smaller companies,
– simplification of collective bargaining solutions for the formation of cross-plant and cross-company works councils,
– legal clarification as to when several companies must be combined into one for works council reasons,
– integration of special groups of employees such as temporary staff.

These structural changes seem to be successful. The possibility to establish cross-plant and cross-company works councils seems to be very popular indeed. 31% of the employee representations with more than 20 employees use the opportunity to set up divisional or branch works councils.

Another highly appreciated option is the possibility to go for shorter election processes. The new election process was successfully applied in the first round in 2002. It was even used in companies where employers and election committees had to agree on the election process first (50%). In these cases, economic reasons probably supported the decision in favour of the simplified election process.

It had also become apparent that a simplification of the works councils' work was necessary as they had been given more and more complicated tasks in the past. Here, the legislator responded with increasing the number of works council members and with easier rules on how works council member were to be released from their original tasks. The amendment makes sure that the works councillors are now in a position to conduct their everyday business successfully. Still, there is not sufficient time for all their tasks and especially for future-oriented projects. This, however, does not prevent the employers from calling for a return to the status quo of the 70ies. This request was not yet heard by the new Christian Democratic /

Social Democratic government of Germany. The coalition agreement does not provide for reductions of codetermination at a company level in spite of far-reaching suggestions made by the Christian Democratic Union (CDU) in the election campaign.

The amendment has shown some first results. The newly introduced gender quota to enhance the number of women in the works councils was complied with by approx. 70% of the companies. And works councillors now have the official right to generally access both PC equipment and the Internet, an issue that had caused a number of lawsuits before the amendment. The new possibilities to involve employees who are not works council members as experts, however, have seen little application so far.

8 Company & Group Level Co-determination

Corporate Legal Structures

(according to the Stock Corporation Act *(Aktiengesetz)*)

Management Board *(Vorstand)*

– Manages the company, plans, co-ordinates and supervises the company's activities

The General Meeting of Shareholders *(Hauptversammlung)*

– Elects representatives of the shareholders' side to sit on the supervisory board
– Formally approves the actions of the management board & the supervisory board
– Makes decisions on the Articles of Incorporation and disposal of profits

Supervisory Board *(Aufsichtsrat)*

– Approves the appointment of management board members
  The supervisory board appoints the members of the management board for a fixed period of time and is also responsible for their employment contracts (salary). Every management board member is appointed on the basis of a majority decision. Special rules apply to the appointment of the labour director in the iron, coal & steel industries – see below).

– Monitors the management board's management of the company's business operations
  The supervisory board has the task of monitoring the management board. It is obliged to inform the supervisory board on business policy and other basic aspects of corporate planning once a year and to provide information on business operations on a regular (at least quarterly) basis. The supervisory board and individual members can request further information required for monitoring and discussion.

– Co-determines in business operations requiring supervisory board approval
  The supervisory board can decide that certain important business operations require its approval. If the supervisory board withholds its approval, the shareholders' meeting can, if requested by management, reverse this decision but only with a 75 % majority. It is however not permitted for management activities to be handed over to the supervisory board.

– Scrutiny of annual accounts
  The supervisory board scrutinises the annual accounts, the annual report and the proposals for the disposal of profits and has to provide a

written report to the shareholders' meeting. The supervisory board commissions an auditor who draws up a final report on its behalf to the supervisory board. In its report the supervisory board also has to inform the shareholders' meeting about the manner and extent to which to it has scrutinised the management of the company's business operations during the business year.

– Duty of care and confidentiality
  The supervisory board and its members are bound by the duty of care of any properly authorised scrutineer. Due to the nature of the differing origins of supervisory board members, in practice disagreements on this issue do occur. Confidentiality has to be maintained on matters related to company secrets. Properly interpreted this provision is intended to protect the company from its competitors and not to insulate the employee representatives on the supervisory board.

– Employee representatives on the supervisory board
  They should not be perceived as isolated representatives – they work in close collaboration with the members of the works councils and trade unions represented within the company or group. They can also communicate the problems related to their work to the workforce in general in a way which does not conflict with their duty of confidentiality.

Figure 2: The Supervisory Board, Composition according to coal and steel, co-determination law of 1951 (Montanmitbestimmungsgesetz)

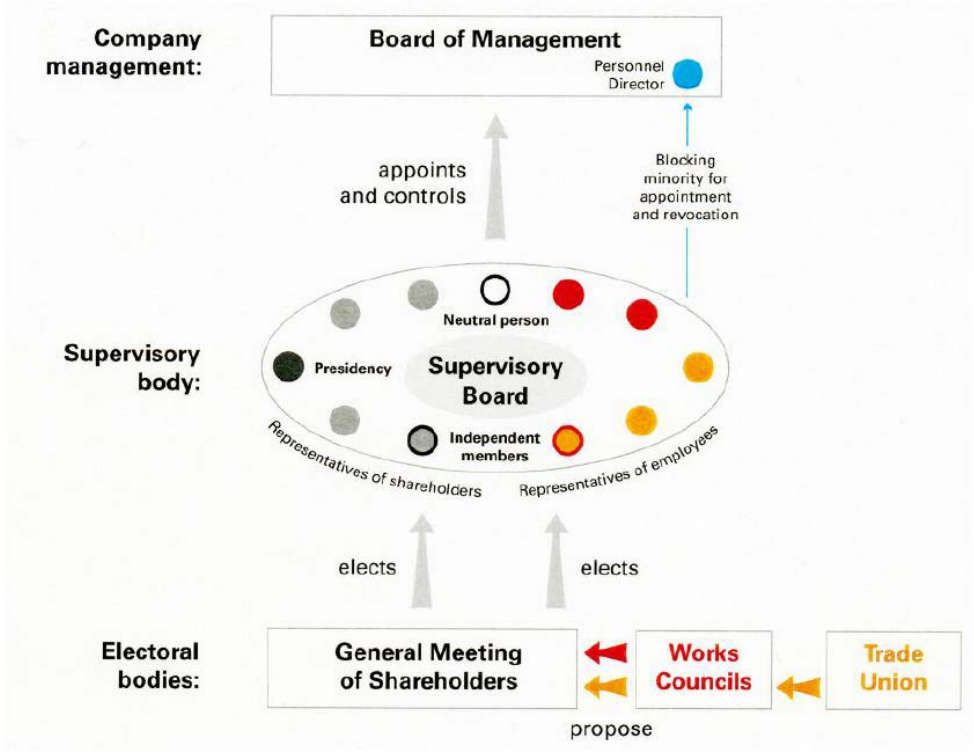


Figure 3: The Supervisory Board, Composition according to the Third Part Act of 2004

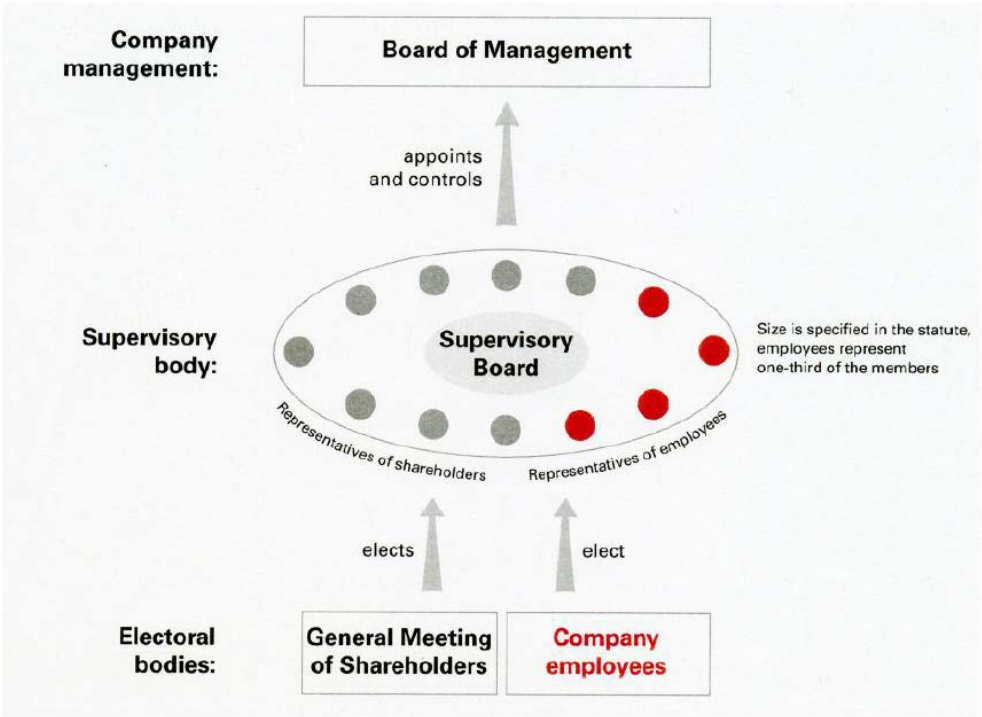


Figure 4: The Supervisory Board, Composition according to 1976 law on co-determination

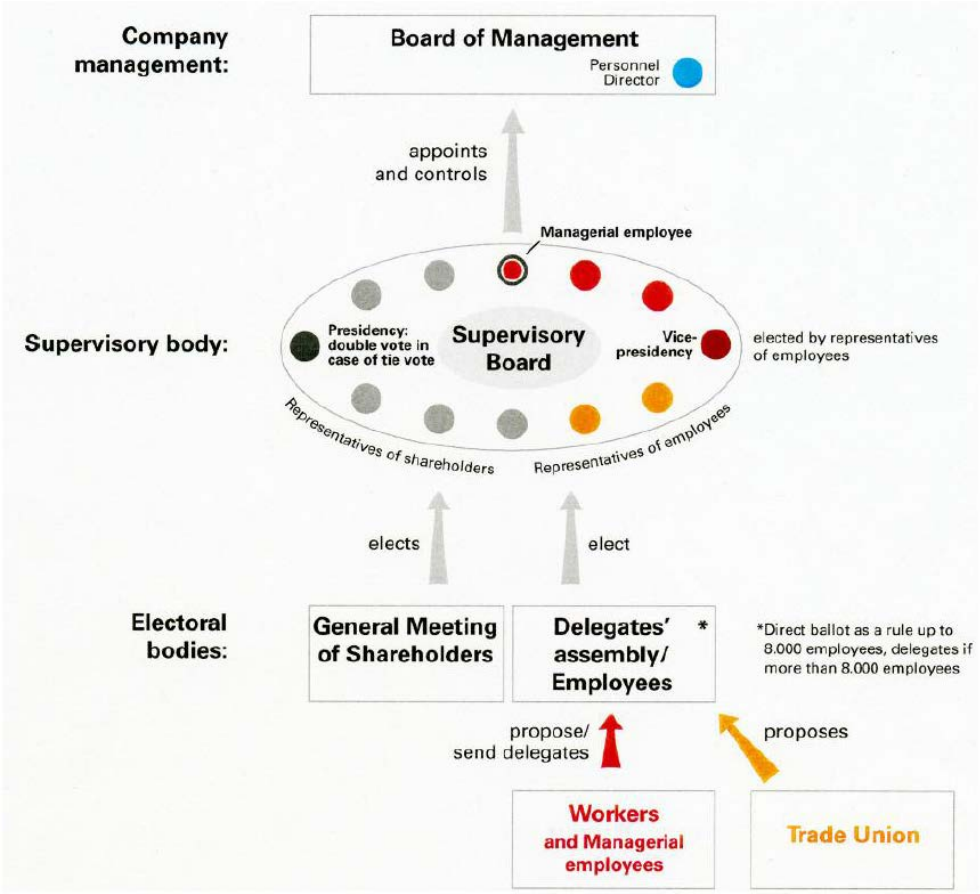


Table 1: Matrix Scope of the Coal, Iron and Steel Industry Co-determination Act, the Co-determination Act 0f 1976 and the Third Part Act of 2004

1) Undertakings under private law (except, coal, iron and steel companies)

Object and/ or legal form	**Number of employees***			
	0-500	**501-1000**	**1001-2000**	**over 2000**
Ideological establishments (§ 1 (2) Nr. 2 Third Part Act; § 1 IV Co-determination Act)				
Individually owned firm				
OHG (general partnership)				
KG (limited partnership)				
GmbH & Co. KG				Co-determination Act of 1976 (§ 4**)
Mutual insurance society		Third Part Act (§ 1 (2) Nr. 4)		
Registered cooperatives		Third Part Act (§ 1 (2) Nr. 5)		Co-determination Act of 1976 (§ 1 I)
GmbH (limited liability company)		Third Part Act (§ 1 (2) Nr. 2)		
KGaA (partnership limited by shares)	No*** Co-determ.	Third Part Act (§ 1 (2) Nr. 1)		
AG (joint stock company)		Third Part Act (§ 1 (2) Nr. 1)		

2) Coal, iron and steel companies according to § 1 Coal, Iron and Steel Industry Co- determination Act

AG (joint stock company)	No*** Co-determ.	Third Part Act (§ 1 (2) Nr. 1)	Coal, Iron and Steel Industry Co-determ. Act (§ 1 II)	
GmbH (limited liability company)		Third Part Act (§ 1 (2) Nr. 3)		

*Possibly additions the respective relevant rules for groups

**Only the general partner (GmbH, AG) is liable to practice co-determination, whereby under § 4 of the Co-determination Act the employees of the limited partnership are numbered among those of the general partner

Table 2: Legislation on Company & Group Level, Co-determination

	Co-determination Act in the Coal, Iron & Steel Industry (1951)	**Third part Act 2004 (former Works Constitution Act (1952)**	**Co-determination Act (1976)**
Scope	· Joint stock companies, limited liability companies, incorporated cost book companies under mining law · Business objective: mining of hard or brown coal & iron ore or preparation, coking etc of such materials	· Family enterprises (all shares owned by a single person or family) with 500+ employees · Limited liability companies, joint stock companies & companies with limited partners holding shares with 500 – 2000 employees · Exception: companies with ideological or religious orientation	· Companies with as a rule 2000+ employees: · Joint stock companies · Companies with limited partners holding share capital · Limited liability companies · Cost book companies under mining law · Trade & industrial cooperatives · Exception: companies covered under 1951 Act & companies with ideological or religious orientation
Composition	· Depending on share capital 11, 15 or 21 members · E.g. 11 members: 4 shareholder reps + 1 additional member, 4 employee reps + 1 additional member and 1 neutral member	· Total members divisible by 3 and between 3 & 21 · Max/min size determined by amount of share capital · SB with 2+ employee members: 1 seat for salaried employee · SB with 9+ total members: external employee reps allowed	· Less than 10 000 employees: 6 shareholder & 6 employee reps · 10 001 – 20 000 employees: 8 shareholder & 8 employee reps · 20 001+ employees: 10 shareholder & 10 employee reps · Must include at least 1 wage earner, 1 salaried employee & 1 managerial employee

	Co-determination Act in the Coal, Iron & Steel Industry (1951)	**Third part Act 2004 (former Works Constitution Act (1952)**	**Co-determination Act (1976)**
Election Procedure (for employee reps)	· Workforce employee reps nominated by works council, confirmed by shareholders' meeting · External employee reps & additional member nominated by TU, elected by WC & confirmed by shareholders' meeting · Neutral member nominated for election by SB members at shareholders' meeting	· Members nominated by works council and/or workers & elected directly · Nominations by workers must be signed by 10 % or 100 employees eligible to vote	· 8000+ employees: employee reps elected by delegates · Less than 8000: employee reps directly elected · Wage earner & salaried employee reps nominated by the two groups · Managerial employee reps nominated by managerial employees · TU reps elected on basis of nominations by TU reps within the company
Casting Vote	· Uneven number (neutral member)	· Tie most unlikely due to uneven no. of SB members & numerical inferiority of employee reps	· If a tie takes place, vote is repeated · If second vote is a tie then chairperson has two votes (chairperson elected by SB by 2/3 majority)
Appointment of Management Board	· Appointed & dismissed by SB	· Members of management board in joint stock companies appointed & dismissed by SB	· Members of management appointed & dismissed with 2/3 majority by SB
Labour Director	· Appointed by the SB as full member of management board · Decision cannot go against the votes of the majority of employee reps	· No provision	· Labour Director appointed by SB as full member of management board on same terms as all other members

9 Practical Examples of Company Level Co-determination

By Dr. Roland Köstler, Hans Böckler Foundation

Who are the Supervisory Board Members?

In large companies falling under the Co-determination Act and the Coal and Steel Co-determination Act, works councillors are elected to supervisory boards, therefore making the level of trade union organisation very high. There are exceptions to this though, such as in sectors where trade union organisation is generally relatively low, but even so supervisory board members are for the most part works councillors and trade union members. This is however not the case for the seats reserved for executive staff *(leitende Angestellte)* under the Co-determination Act: at the most, they are active within their own company bodies, the executive committee *(Sprecherausschuss)* governed by the Executives' Committee Act *(Sprecherausschussgesetz)* of 1988. Within small companies where there are often only one or two seats on the supervisory board for employee representatives, they are mostly occupied by the chairperson of the works council, who is usually trade union organised.

Company Level Co-determination in Practice

A certain distinction should be made between the practical experiences gained with the three legal areas, for the simple reason that a purely legal analysis tends to exaggerate the differences.

The Coal and Steel Industry

The long tradition of this co-determination form shapes day to day business affairs; this is demonstrated for example by the fact that on 1990 this form of co-determination was introduced practically overnight into the coal and steel companies in the new Federal States following German Unification. In the West the system can be characterised as follows: high levels of trade union organisation resulting in a substructure of trade union shop stewards *(Vertrauensleute)* at establishment level and strong works councils composed accordingly. They also form the electorate for the election of employee representatives to the supervisory boards. Trade union influence is also demonstrated by the high number of seats held. In addition to this the Labour Director on the company board is appointed by the supervisory board but nor against the majority of employee representatives on the supervisory board. As employee representatives are, for the most part, trade union members, the Labour Director is in practice nominated by the trade union.

The supervisory board must be brought in to deal with important company matters. There is a catalogue of matters which require the agreement of the supervisory board and in addition to these, management often puts further

areas forward. Investment plans, the acquisition of share holdings in other companies or company restructuring measures, as well as mass dismissals must have the approval of the supervisory board.

It is also characteristic that plans are discussed in detail by the establishment level bodies before they are decided upon in the supervisory board. The works councils are hereby able to have an advanced influence, safe in the knowledge that the decision of the supervisory board is necessary and that its employee bench is strong. Of course in the event of a stalemate the so-called neutral member of the supervisory board is decisive but even here, it has been usual practice for many years for this person to try to come to an understanding with both sides.

Of course this is all much easier when the company is doing well, however even when there is a slump in sales or there are structural difficulties, this form of co-determination shows its strengths most of the time. The Social Compensation Plan is to a certain extent a product of the Coal and Steel Industry co-determination system. It was only later that it was introduced into in the Works Constitution Act. Difficulties, caused by extensive sectoral changes, do occur especially in the mining sector but also to a lesser extent in the iron and steel sectors. It is not always possible to halt the closure of a plant but as a rule dismissals on operational grounds can be avoided. Often the works councils and employee representatives themselves demand innovation and new products in order to secure jobs.

Co-determination Act 1976

Under the Co-Determination legislation of 1976 experience is much more varied.

There are certainly sectors in which very similar structures to those in the Coal and Steel Industry exist. This applies above all to the level of trade union organisation, the strength of the works councils and the resulting perceptible influence in the supervisory board. In the case of the Labour Director, a large number are appointed on the basis of employee representatives' influence.

Companies within coal and steel conglomerates as well as many state owned companies, for example in the energy and transport sectors, belong to this group. Here there is also a relatively extensive catalogue of matters requiring the agreement of the supervisory board; it would be unthinkable in practice for the supervisory board chairperson to hold the casting vote. The state owned companies have been put under pressure by privatisation and the deregulation of markets. A deterioration in income can only be headed off for a while. Due to the increasing number of company mergers, works councils and trade union representatives on supervisory boards in these sectors are involved at an early stage in order to avoid dismissals on operational grounds.

At the other extreme there are sectors where trade union organisation is low, such as the retail sector, banking and insurance; "New Economy" companies are not usually represented in this group as they are generally not yet large enough. The employee bench of the supervisory board is not a closed affair, instead there are members present who do not belong to a trade union and who so not sit on the works council. The link with the work of the works council is therefore made more difficult. Labour Directors with a trade union membership card are also not to be found.

In many cases the formal competency of the supervisory board is much narrower as it is sometimes not possible to lay down the matters on which the supervisory board must give its agreement, often such regulation is not even attempted. When situations occur where a supervisory board decision is necessary, the employee representatives certainly know what their chances of success are. This is particularly so as it is usually clear when the executive member *(leitende Angestellte)* does not support them. For this reason, conflicts in this area are not common place. When the boundaries are known then an attempt can be made in advance to reach a compromise. At least supervisory boards enjoy wide-ranging information rights and management's duty to report to the supervisory board of joint stock companies was strengthened in 1998 to even include questions on personnel planning.

Third Part Act (former law 1952)

It is in the nature of one third participation that employee representatives do not really stand much of a chance in votes. In most cases the supervisory board only meets twice a year.

In this area there are cases where only one or two employees sit on the supervisory boards. According to the law these must also be employed by the company and in practice most of them are also members of the works council. These employee representatives can at least use their contacts with the shareholders in the supervisory board to bring this or that about. They are however often reproached because certain matters are seen as topics for negotiation at establishment level and are not seen as belonging in the supervisory board. Even so the opinion remains that the supervisory board is an additional information source to assist everyday work in the establishment.

10 Current Problems with Company Level Co-determination

By Dr. Roland Köstler, Hans Böckler Foundation

"The supervision of management shall be undertaken by the supervisory board (Aufsichtsrat)", this applies to all supervisory boards with legal duties, i.e. all supervisory boards comprising also of employee representatives. During corporate crises however the public can be heard asking, "well, where is the supervisory board then?"

For this reason the trade unions have long been calling for the clarification of supervisory duties and for the introduction of minority rights so that a disinterested majority is not able to allow management free run to do as it pleases.

Above all, a minimum list of important matters on which the agreement of the supervisory board must be sought, needs to be laid down by law. Since 2002 we have at least written in the law the duty of the board to decide itself about a list. Furthermore management reporting duties need to be made more precise and it should be laid down that comprehensive documentation must be in writing and sent to all members in time. The role of the company auditors also needs to be improved. They should once again become a support institution to the supervisory board. In addition the differences between supervisory boards governed by different legal forms, which caused only by different historical developments should, along with size differences, be removed. The number of mandates an individual person can hold should also be further limited.

The first, if not yet completely satisfactory, reaction from the German legislator was the 1998 so-called "Law on the Improvement of the Supervision and Transparency of Companies" (Gesetz zur Verbesserung der Kontrolle und Transparenz im Unternehmensbereich") which concentrated too heavily on listed companies. It improves the reporting duties towards the supervisory board of public limited companies (intended business policy and other fundamental questions regarding company planning), introduces the duty of risk management for companies and lays down that henceforth the supervisory board is responsible for the appointment of the company auditors. The limit on the number of mandates is however limited only to the chair of the supervisory board (these mandates count twice). Above all a binding list of matters requiring the agreement of the supervisory board is still not included.

When these improvements were first introduced in practice, it soon became clear, for example through the case of Holzmann AG, how legitimate it is for the trade unions to hold on to their ideas.

In contrast, for some time now voices have been calling for increased supervision of companies by the capital markets i.e. Corporate

Governance. This should also serve to increase company publicity. Foreign institutional investors attempt to directly influence the company management or at least threaten to withdraw their capital. The financial crisis has shown that this would be the wrong way; shareholder value is a wood way.

Various groups (especially from business, stock market and investment fund circles) have therefore embraced (as was in the Anglo-Saxon countries the case) the idea of drawing up "Codes of Best Practice". Company management and supervision should be then brought into line with these Codes. The biggest problem with such Codes is the fact that they are relatively non-binding in comparison with legal regulation. Their sanctions are (from the idea) more capital market based or macro-economic (company breakups). A further question is of course the ability to improve the Codes according to practical needs; who should be responsible for this? The try of the EU-Commission to have one Code for Europe didn't succeed happily The Commission still gives several Recommendations and is disappointed when the national legislators or Code Commissions do not follow them.

During summer 2000 the German Federal Government appointed a Commission on "Corporate Governance, Company Management, Supervision and the Modernisation of Company Law" consisting of managers, academics, politicians and trade unionists. The task of the Commission is to investigate "in view of the changes in the economic, technological and legal framework, how an international showpiece "Corporate Governance System" can be guaranteed without fostering excessive legalisation and regulation".

The impression is that the Codes of Best Practice concept, with all the problems stated above, is limited. In Germany on the other hand the Code is renewed every year and the relation between the legislators and the "self regulators" in the Commission is quite unclear. We should prefer binding law; although from now on the companies will have to give reason why they don't follow the "recommendations" of the German CG Code. From a trade union point of view it must above all be about extending the standards of company management and supervision and making them equally binding for all companies with employee participation in the supervisory board, in other words all joint stock companies.

Since that, further amendments of the company law happened, and we had the transposition of the European Law concerning the European Company in the end of 2004.

The latter, decisions of the European Court about the freedom of settlement and political attacks against Board-Level-Representation, at least of union-officials , and with the aim to size down the proportion of the seats of employees led at the end of the Schröder-Government to a new Commission in 2005, the so-called Biedenkopf-Commission II (named after the chair). They had to "evaluate the current law and practise and to

consider whether there should be changes, especially whether there should be more ”flexibility in” it by negotiated agreements, as we have in the European Company. At the end of 2006 the commission ended with no common votes. There were only the recommendations of the three scientifical members and the votes of the employee-side and the employers-side.

Actual the attacks against the German system don't come to an end. Although the number of companies under the Act of 1976 (see Pages 22-24) moving into a SE is not so high and only some of them have used that change of the legal form to “downsize”, there are voices to open all German companies to the negotiation approach as we have it in the SE and by that to get rid of the union officials in the boards. At the same time the current crisis proves the importance of being in the boards with a relevant number of seats and with the backing of union officials.

Annex

Further Details

Company Co-Determination

1. Appointment of Management

The Supervisory Board appoints the members of the Board of Management for a fixed period of time and is also responsible for the employment contracts (salary) and the size of top management.

Every Board member is appointed on the basis of a majority decision. In the spheres covered by the Coal and Steel Industry Co-determination Act and the 1976 Act, a so-called Personnel Director has to be appointed. In the Coal and Steel Industry this cannot occur against the votes of a majority of the workforce representatives on the Supervisory Board, so in effect the trade union representatives on the Supervisory Board have a right of nomination in this respect. In the case of the Co-determination Act 1976, the first vote has to produce a two-thirds majority in the case of all managerial appointments. If this is not forthcoming, the matter goes to arbitration by a committee based on equal representation. In practice, therefore, decisions on such matters are again made on a consensual basis.

2. Monitoring of the Board's Management of the Company's Business Operations

The task of the Supervisory Board is to monitor the management. The latter is obliged to inform the Supervisory Board on business policy and other basic aspects of corporate planning at least once a year and to provide information on business operations on a regular – at least quarterly – basis. This should not only occur within the framework of meetings (minimum number of meetings varies from 2 to 4 – with a minority right to special meetings) but also in other contexts. The Supervisory Board and individual members (with the support of one other), can request further information required for the purposes of monitoring and discussion.

The Supervisory Board as a whole can also decide to launch investigations either by individual members or by experts.

3. Business Operations Requiring Supervisory Board Approval

The Supervisory Board has draw up a list of business operations that are important for the company and which it has therefore decided will require its approval. It is, however, not permitted for management activities to be transferred to the Supervisory Board. The Board of Management may not then undertake such activities without the approval of the Supervisory Board. It is thus possible, via discussion, to exert an influence on company

policy. This is one of the reasons why, in practice, disagreements can occur over such lists and the latter sometimes display inadequacies. If the Supervisory Board withholds approval, the meeting of shareholders can reverse this decision but only by a 75% majority vote.

4. Scrutiny of Annual Accounts

The Supervisory Board scrutinises the annual accounts, the annual report and the proposals for disposal of profits and has to provide a written report on these to the shareholders' meeting. To help it in this task it also commissions an auditor, who draws up a report for the members of the Supervisory Board and reports during the Supervisory Board meeting on the main results of his audit. The profitability of the company also has to be discussed at this meeting.

In its report, the Supervisory Board also has to inform the General Meeting of Shareholders about the manner and extent to which it has scrutinised the management of the company's business operations during the business year.

In public limited companies, the Board of Management and the Supervisory Board can jointly approve the annual accounts. This means that the accounts have then been certified and the Meeting of Shareholders can only make decisions regarding disposal of the net profit for the year.

5. Duty of Care and Confidentiality

The Supervisory Board and every member thereof is bound by the duty of care of any properly authorised scrutineer. By the nature of things, the different origins of the members of the Supervisory Board mean that in practice there can be disagreement on this. The same goes for the corporate goals pursued by management and their implementation within the company (especially with regard to human resources measures.)

Confidentiality has to be maintained on matters related to company secrets. Properly interpreted, this is provision intended to protect the company from its competitors and not to isolate the employee representatives on the Supervisory Board.

6. Workforce Representatives on the Supervisory Board

The individuals elected to represent the workforce on a body within an incorporated firm clearly have a special role allocated to them. But there is no such thing as „company interests" which have priority above all else – and that is why the interests of the employees are brought in here. In practice, the two principles of co-operation and the representation of diverse interests can be compatible, provided there is a proper and timely flow of information. This includes the workforce representatives on the Supervisory Board regarding themselves as part of the system of employee participation. Work on the Supervisory Board should be linked to the

activities of the Works Council members and carried out in collaboration with the trade un-ions represented within the company / group.

The employee representatives can and should elucidate the problems related to their work to the workforce in general. This can be done in such a way that it does not conflict with their duty of confidentiality.

The Hans Böckler Foundation: Supporting Co-determination

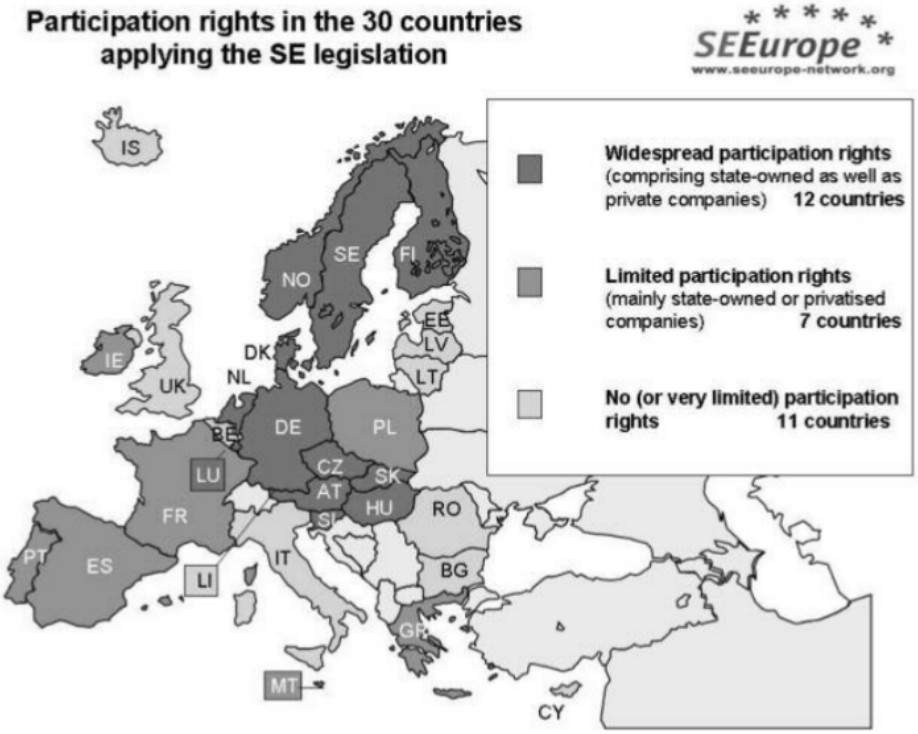
The Hans Böckler Foundation is the co-determination, research and study support institution of the German Trade Union Confederation (Deutscher Gewerkschaftsbund). It is financed basically by two sources. On one hand it receives financial contributions from employee representatives on supervisory boards who give a proportion of their supervisory board fees and donations from individuals and institutions who want to support its work. On the other hand the HBS also receives public money which is reserved for student grants.

The HBS supports the theory and practice of co-determination through the provision of advice and training for works councillors and employee representatives in supervisory boards principally. It also undertakes research and finances a wide variety of research projects which are in the interests of employees and sponsors the academic education of socially-aware students.

The Foundation's main function is in supporting the co-determination actors in the implementation of employee orientated concepts.

Worker participation in boardrooms throughout Europe

Employees in 18 of the 25 European member states and in Norway have the right to have their interests represented in their company's top administrative and management bodies. The only exceptions are the UK, Belgium and Italy amongst the old EU-15, plus the three new Baltic EU states and Cyprus. In practice, however, it is possible even in these countries to find examples of board-level employee involvement, despite their lacking any tradition of co-determination.



Compared with other EU member states, Germany has one of the most highly developed systems of board-level co-determination. It is the only country (apart from Slovenia) where employees have a right to 50% of the seats on a Supervisory Board. Nevertheless, other EU member states also have well-developed systems of co-determination. In a further 10 countries (with Norway, 11), employees' interests can be represented in the administrative bodies of private and state run companies in all sectors irrespective of the form of company administration involved – i.e. whether or not a single-tier board system is operated or a differentiation is made between the Board of Management and the Supervisory Board. In those countries we can assume employee participation at board level as sound element of the system of interest representation and of corporate governance.

In seven of the EU member states, employee representation in administrative bodies is only provided for in certain sectors (e.g. public savings banks in Spain) or in state owned and privatised companies (in France and Poland) or only in state owned companies (in Greece, Ireland, Malta and Portugal). Employee co-determination at this level therefore has little impact on industrial relations as a whole.

The system of board-level representation is widespread above all in Scandinavia, where employees can supply up to a third of board members and these elected representatives or their alternates can take part in all meetings of the board.

One characteristic of the co-determination system in Scandinavian countries is the fact that board-level representation is closely linked to other levels, right down to the individual workplace. Employee representation in companies is regarded as a system that should be as comprehensive as possible - covering allcompanies and all levels. This also explains the low threshold for co-determination to come into play: it applies to companies with a workforce of over 25 in Sweden, over 35 in Denmark, over 150 in Finland and over 200 in Norway.

It is worth noting that with the exception of Germany (500+), Slovenia (500+) and Luxembourg (1000+), all other countries operating a comprehensive system of co-determination have low thresholds: 50+ employees in public limited companies in the Slovak and the Czech Republics, 100+ in the Netherlands, 200+ in Hungary and 300+ in Austria (with no threshold whatsoever for public limited companies).

While it is true that only the German system of co-determination pro-vides for seats that are exclusively reserved for trade union representatives, elected representatives on the board with close trade union links are by no means unique to Germany. It is usual in the Nordic countries - not just in Sweden - for seats on the board to be held by individuals who simultaneously hold office in the company's trade union hierarchy. In these countries, the entire model of representation would be unthinkable without a system of labour relations based on strong trade unions and high levels of trade union membership (over 80%) amongst employees. In Sweden, co-determination can only take place where there are trade union members, but then it applies throughout the company from the workplace right up to the top.

To correctly assess the impact of board-level co-determination in European countries, one should always look at the system as a whole, at the way representation operates in practice, including the links between board representatives and the trade unions. A French comité d`entreprise, for example, is allowed to demand much more economic information and external ad-vice than a German Betriebsrat (works council). We know from experience in Germany that board-level co-determination is closely linked to the role of the Betriebsrat, although the two are covered by separate legislation. This is in contrast to Austria, where provisions for board-level

co-determination are contained in the Company Constitution Act (Arbeitsverfassungsgesetz). In the Nordic countries, which do not have works councils but only trade union representation at site and company level, the power of the trade unions to influence collective agreements plays a crucial role in matters related to co-determination.

This means it is not possible to draw simple conclusions as to the apparently unique strength of co-determination in Germany simply by looking at the formal statutory provisions. If one analyses the similar scope and impact offered through the interaction of the various levels, then the countries of Europe have more in common than might at first seem the case.

Another important point for employee participation is the place where you can take influence on management decisions and corporate control. In general we see two types of corporate structures in Europe – the single board system and the two-tier system which separates executive and administrative management of the company in two different bodies. In Europe, the two-tier management model with a management board and a supervisory board is by no means a thing of the past, whatever the prophets of doom, in particular in the financial markets, may say. Indeed, the two-tier system exists also in a number of new Member States. The law stipulates the two-tier system in nine Member States and the single-tier system in 13 EU countries, and allows companies to choose between the two models in the remaining five. In European Companies (SEs), where the legal structure is established voluntarily, it is generally possible to choose freely between the systems that exist in the country where the company is domiciled.

The tasks of employee representatives are very similar in both basic system types. They monitor day-to-day business operations, are involved in the appointment and dismissal of managing directors and influence investments of strategic significance for the company. Employee representatives on the Supervisory Board have equal status with the representatives of the share-holders, and employee representatives on the boards of single-tier companies have the same rights and obligations as the other directors. In neither system, however, can employee representatives outvote shareholder representatives.

Co-determination ultimately means that the interests of the employees are systematically taken into account in the company's running and man-agers are obliged to provide reasons for any decisions they make. This basic principle is common to all systems in Europe, whatever formal differences they may display. And this is not surprising, for co-determination is firmly rooted in European history, particularly the period since the end of the Second World War. However, diverging approaches and perceptions of the correct way to exercise democratic control of businesses meant that it was 30 years before a new chapter of common co-determination history was opened with the passing of the Directive on Worker Involvement in the European Company (SE=Societas Europaea) in October 2001. Nowadays

it is the demands of global investors for a high return on their capital that deter-mines the way companies are run, and this raises anew the question of their role and social obligations. The latest European initiatives on "corporate social responsibility", largely triggered by and directed at the financial markets and stock exchanges, demonstrate the relevance of this question.

Board-level co-determination in transnational companies can and will play a role in their social orientation and way they shape their success. For both economic and social policy reasons, co-determination as a democratic project has a chance of being relaunched at European level, and employee involvement in European Companies can play a pilot role in this respect.

The SE Directive could mean that one of the weak points in board-level co-determination will soon be removed: no longer will employee representatives elected at national level also have to represent the interests of their colleagues from other countries; now there can be fully legitimised, genuinely European representation of employees' interests to counterbalance the polyglot management of transnational companies.

The European trade unions have recognised this opportunity. With the ETUC action programme of May 2003 they have declared their explicit goal to be achieving as high a level of co-determination as possible in SEs and overcoming national borders through treating their co-determination activities as a "European mandate" (see Chapter 3 of the Action Programme; www.etuc.org). The ETUC reiterated its demands on strengthening the position of workers by worker participation in its Seville congress 2007 in a broader social context: "The ETUC wants to see a debate on setting up a fundamental European right to influence business decisions which concern workers combining representative, direct and trade union based interest representation." (see chapter 3.29 of the strategy and action plan "On the offensive"). Against the background of seeing increasingly employee representatives in SE boardrooms on its meeting of its executive on 15/16 of October 2008 the ETUC adopted unanimously a resolution to set up a "European Worker Participation Fund". For this purpose, the European Trade Un-ion Institute (ETUI) took initiative to realize the European Worker Participation Competence Centre (EWPCC), to be financially supported by the transfer of (part of) the remuneration of workers' representatives on the supervisory and administrative boards of European Companies (SEs).

In doing so the European trade unions can rely on a political consensus in Europe that employees should be given sufficient rights to be able to operate as "citizens within their companies". According to Art. II-87 of the European treaty (which still has to adopted by some of the EU member states, June 2009), employees have individual basic rights to information and consultation. Article 2 of the European Social Charter of 1961 also mentions the right to involvement. But it is above all the three European directives on European works councils (1994; 2009 recast), worker

involvement in the SE (2001) and standards of information and consultation of workers (2002) that express this political will in Europe most clearly.

According to all these documents, obligatory involvement of workers at site and company level is not an option to be accepted or rejected - it is a fact of life and a right that can be upheld by the courts if necessary. This can be underlined by the experiences which, meanwhile, have been gathered in ca. 25 out of ca. 100 European companies (SE) providing with board level representation in a European scale. By agreement, employees of Allianz SE, BASF SE or MAN SE operating in almost all EU member states are now provided with the right on information, consultation and participation at transnational level even they are not enjoying the right of participation at home. More than half a million of employee of SEs are in the scope of this far reaching involvement with reference to the European legal framework (find more on SEs in the SE fact sheets provided by the website of ETUI http://www.worker-participation.eu/European-Company/se-companies-news).

European employees, like companies, have started to realize that we all operate in a European Internal Market. Increasingly, they are discovering their means to take influence on social Europe. This discover the European workers This gives reason to believe that it would be possible in a mid term perspective to establish a framework in which social groups other than shareholders are able to organise and determine their interests in the company. Workers' participation will play a ground-breaking role in this. Highly developed industrial relations are regarded as one of the core mechanisms for realising the Lisbon strategy. Mandatory workers' participation at all levels, with the inclusion of trade unions, serves as a basis for correcting the notion that only share ownership can make a good citizen out of a Europe-an citizen. It is the legally guaranteed space for workers' participation that helps to strengthen both European democracy and the European economy, and that may give an answer to the crisis of 'unbridled' global capitalism.

Logging on to employee involvement: www.worker-participation.eu

The European Trade Union Institute's English-language website brings together information on employee involvement in Europe.

European industrial relations are like a jigsaw puzzle, where specific features of national industrial relations fit with cross-border European elements such as European Works Councils. The web service www.workerparticipation.eu aims to help users see the bigger picture by providing continuously updated empirical and theoretical information on industrial relations and employee involvement in Europe. It reflects the view that employee representation in Europe today is composed of several elements that link together.

The website also gives the concept of worker participation, as a specific European tool for combining economic with social goals, a home in the World Wide Web. It is aimed at employee representatives and unions, at both national and European level, as well as academics, political institutions and the general public.

Company management, employee representatives and unions are increasingly dealing with cross-border questions of worker participation at different levels. This website seeks to meet the increasing need for accurate and easily accessible information by giving its users access to what is happening across Europe in the field of employees' rights to information, consultation and board-level representation.

Information on the following topics is available on the site:
- European Works Councils (EWC)
- European Company (SE) / European Cooperative Society (SCE)
- European Information, Consultation & Participation Framework
- Corporate Governance & EU Company Law
- European Social Dialogue
- EU-27 Industrial Relations Backgrounds

Whereas the first five topics focus on European tools and developments, the last section provides key information on industrial relations at national level. It offers basic information on all EU member states in respect of trade unions, collective bargaining, workplace representation, health and safety, board-level representation and the selection procedures for EU-level bodies (European Works Councils, SE Works Councils). This section is available in English, German and soon in French.

The web service www.worker-participation.eu is provided by ETUI and was developed with the financial support of the Hans Böckler Foundation. It brings together a comprehensive range of information, and provides empirical evidence on how workers' participation anchors social Europe at workplace level and contributes to better economic performance and sound corporate governance. This approach differs from the currently dominant view that focuses solely on transparency, to the benefit of only one stakeholder group - the shareholders.

Further Information

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"The word "co-determination", or "Mitbestimmung" in German, is commonly heard outside of Germany but it's actual meaning is often unclear. This collection of texts aims to provide a basic explanation of what co-determination is all about, how it functions in practice and what it means to the Germans and to Germany as whole. The relationship between the German co-determination system and developments within Europe are also considered."

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