

## **Co-determination and economic democracy: Proposal for more democratic influence on big companies and the economy**

The core of this proposal:

In big companies the supervisory board (SB) that elects and controls the board of managers (BoM) is elected by 3 groups:

**shareholders, employees and the population.**

No group dominates the others.

Whether a company is big enough for this co-determination, depends not only on a minimum number of employees, but alternatively also on financial minimum values.

A part of the representatives of the employees can be elected also from employees who do not work in the respective company.

In "5.1 Europe" an introduction phase of this co-determination is shown, during which the shareholders are stronger.

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## 1. basic issues

### 1.1 democracy, power and property

The most comprehensive freedom of the greatest possible number of people (while considering the rights of minorities!) needs as a base a democratic structure of society. In order that democracy works well, the forming power of the democratic institutions must be much greater than the power of persons or small groups through property. This power through property is used especially by big companies. With economic democracy such power can be reduced.

*[About property see also appendix A.]*

### 1.2 from 2 groups to 3 groups

For this proposal I start from the **existing method in German companies that have more than 2000 employees**: In the SB (that elects and controls the BoM) half of the seats is elected by shareholders, the other half is elected by employees (this is correct superficially considered, but a problem is: SB-seat for executives). If a voting is undecided, then the chairperson of the SB has two votes in a repeated voting; this is very important, because the representatives of the shareholders can elect her/him alone and therefore can also make decisions alone (e.g. can elect the BoM alone).

*[More about it: see appendix B.]*

The proposal presented here has a **third group** that can elect members into the SB: the population. No group dominates the others.

## 2. consequences of this proposal

### 2.1 in a single company

- Because there are no clear majorities, one-sided positions can hardly be carried through. Whether it is about high profits for the shareholders or about high salaries for the employees: Both interest groups do not have the majority to make such decisions alone (because they do not have the majority to elect the BoM alone).
- The representatives of the group "population" can mediate in conflicts between shareholders and employees.
- If shareholders and employees agree, then the representatives of the group "population" can't carry through anything.
- The representatives of the group "population" are responsible to their voters. Therefore social interests now play a greater role in the decisions of the company.
- Through the personal contact with the representatives of the group "population" and through the lost of the majority, it is becoming more normal for the representatives of the shareholders, to deal with social issues, human rights and ecology.

### 2.2 stronger democratic influence on the economy regionally, nationally and internationally

- a) Some items that are both regionally/nationally and internationally important:
- Policymakers can no longer be set so easily under pressure by shareholders. For instance, to make pressure for lower corporate taxes, there can no longer be so easily threats of the relocation of plants, as it is enforced not only by shareholders.
  - By including financial values for the application of this co-determination, also companies are included, that have only few employees but big financial power. So this co-determination is applied to financially strong holdings, fund companies / investment

companies, banks, companies with big landownership and companies with highly automated factories, even when these companies have only few employees. Co-determination in accordance with financial minimums also makes sense for foundations.

- Lobbying: The interests behind the lobbying of a company are wider, and so more balanced. (Also: In the future we probably must distinguish between general business associations and business associations representing only shareholders.)
  - High-tech companies: When in such a company there are many employees,
    - who see themselves as elite that knows what is good for the rest of mankind,
    - or who do not care for most people,
 then there are as a corrective:
    - the population as 3rd group
    - and the part of the employees-representatives that is also elected by employees who do not work in the respective company.
  - Transparency: more social groups have a deeper insight into companies. Especially SB-representatives of the group population can not afford not to care about transparency requirements of non-governmental organizations (NGOs).
  - For single projects of a company it becomes more likely that the interests of directly affected groups and individuals are considered appropriately. If representatives of the group population do not respect the affected groups enough, they will lose voters.
- b)** The population and their representatives have influence
- through their co-determination in big companies;
  - through the connections of the SB-members of the group population to (politically related) decision-makers in other democratic bodies and to civil society groups;
  - and through the cooperation of many political groupings that take part in this co-determination: To support the own interests as strong as possible (e.g. to get SB-seats in the biggest international companies), political groups can unite in international political groups. Obvious are alliances corresponding to party political groups like Socialists / Social Democrats, Conservatives, Liberals, Greens; but there can also be international alliances of other civil society organizations (NGOs).  
If the biggest of these international groups can agree on common aims, then through them can be acted on economy internationally and globally, e.g. with regard to social issues, human rights, ecology, tax justice.
- c)** EU Parliament: Political groups that have power through SB-seats of the group population, can find like-minded people in the EU-parliament, who they can jointly practice social influence with. Outside Europe similar is possible.
- d)** For exchange of views, organization and common positioning on a global scale a parliamentary assembly would be useful. There is indeed a campaign for a United Nations Parliamentary Assembly ([unpacampaign.org](http://unpacampaign.org)); this UN Parliament would initially have only an advisory function (for a decision to create this parliament a 2/3-majority in the UN general assembly suffices). From a part of this UN Parliament a parliamentary assembly could be formed, which has only members from countries that participate in this SB co-determination. In addition, to give small states more influence: Some decisions could need the consent of a states-body (with 1 vote for each state).
- e)** Through the governments, international political groups from 2.2.b can also have influence on international economic organizations like the World Trade Organization (WTO), the World Bank and the International Monetary Fund (IMF). In addition: Also the pressure and

influence of big companies on the WTO (and other organizations) and on the WTO member states is influenced by the international political groups from 2.2.b and the international parliamentary bodies from 2.2.c and 2.2.d, respectively.

- f) An important structure is created for the international coordination of labor unions among themselves (compare 4.2).
- g) An international democratic power structure arises, which is largely independent of national borders.

### 3. size of a company

Besides the number of the employees there are financial criteria for the introduction of this co-determination:

- value, value of the shares, turnover, balance sheet total of a company;
- especially in financial companies: value of property, that they manage for their customers.

There should be a graduation for the co-determination. Example:

	<b>big companies</b>	<b>medium-sized companies</b>
<b>ratio of votes in the SB</b>	$\frac{1}{3} : \frac{1}{3} : \frac{1}{3}$	$\frac{1}{2}$ for shareholders, $\frac{1}{2}$ for employees + population together
<b>employees</b>	more than 1000	100 - 1000
<b>financial values</b>	over A	1/10 A to A

To classify a company as big or medium-sized **either** the number of employees **or** a financial value must be reached.

For companies with up to 500 employees (or equivalent financial value), the procedure in appendix D can also be applied.

Also if you advocate a reduced size of the big companies and combines, this co-determination makes sense:

- The ratio of votes of  $\frac{1}{3} : \frac{1}{3} : \frac{1}{3}$  in the SB (+ paragraphs 4.2 and 4.4) prevents, that the company is subordinated to a combine.
- Would you, for example, divide big companies into companies that have only one 10th of the original size, then some of these smaller companies would still be big enough for the co-determination with the ratio  $\frac{1}{3} : \frac{1}{3} : \frac{1}{3}$  in the SB.

For companies that are small according to finance values and staff, it may in certain cases also be useful to use this co-determination. While doing so, at least in some cases the same members of the group population can be elected for various companies, such as the election would be only for 1 SB. Application areas:

- A group of companies in which the same person or group has larger shares;
- a group of companies that are formally independent, but operate under a common corporate identity;
- the technology used or the product produced of a company involves special risks.

In the first two points the financial values and the employees of these companies can be added together to exceed a financial or staff threshold.

## 4. Election procedures

### 4.1 Population: distribution of its SB-seats

#### 4.1.1 Variant A: less effort in filling SB-seats

- **Basic idea:** In a proportional representation procedure, citizens elect a list of candidates in which there are candidates for several supervisory boards.  
*Example: The candidate on the 1st place of the list is assigned to supervisory board A, the candidate on the 2nd place of the list is assigned to supervisory board B. It also means: If this list is entitled to a SB-seat, but all seats on supervisory board A are already assigned, then the candidate on the 1st place does not get the seat, but the candidate on the 2nd place, if there is still a free seat on supervisory board B.*
- The voters have votes for 2 candidate lists:
  - 1 vote is cast in an election involving the largest companies.
  - 1 vote is cast in an election with a group of companies that are smaller. Such a group of companies can be put together e.g. according to field of activity, size, location of headquarters. Which group of companies a voter can vote for is decided by a random process.
- Alternatives to who has the right to vote:
  - Alternative 1: Citizens of the participating states are entitled to vote, if they have a minimum age. The election could take place every 3 years (a SB-seat could then normally be assigned for 6 years).
  - Alternative 2: A part of the citizens get the right to vote for a certain year by a random process. In this case, annual elections can be held.
- For relatively small companies with 3-groups-co-determination, instead of this procedure there could be an alternative: Existing regional democratic bodies elect election committees that decide on the filling of the SB-seats.

Regarding the above-mentioned random processes: For the random selection, one or more starting values could be drawn publicly, on the basis of which certain values (e.g. identity card numbers) are selected by computer in a verifiable process. The source code of the computer program is publicly available.

#### 4.1.2 Variant B: the citizens elect SB-seats of self-selected companies

##### 4.1.2.1 basic

- a)** The citizens of the participating states have the right to vote. As in the past, a SB is elected for several years (for approximately four years), so that votes can only be cast for the same SB again after an interval of several years. There is a single annual date on which votes of the group population are cast for all SBs whose members of the group shareholders are elected in the months before or after.

Although the election takes place every year, a citizen can vote only every **10 years**, depending on the date of birth.

*Example: If you have your birthday on the 7th, 17th or 27th of a month, you can vote in the years 2027, 2037, ...*

This reduces costs and simplifies the organization.

- b)** There are several lists of candidates for the election of population representatives to the SB of a company. A proportional representation is applied (for example according to the method Sainte-Laguë / Webster).
- c)** A person entitled to vote can elect candidate lists for **6 SBs**.

How a person entitled to vote can choose from hundreds or more SBs 6:

- It is to be expected that there will be electoral proposals from political parties and other interest groups, and that there will be search websites of different interest groups for this election.
- In the election notice (it is sent by letter), any party that received at least 1% of the votes in the last parliamentary election could name up to 3 sources of guidance (e.g. internet address, address for receiving printed material).

Who has decided on the basis of these sources to cast votes for certain SBs, can have the ballot papers for these SBs sent to oneself.

*Example: In the election notice, a form is attached with which ballot papers can be ordered for up to 6 SBs. For this, up to 6 SB-numbers can be entered in this form.*

After this, voting takes place by postal ballot.

- d)** Due to the small number of SB-seats, the following rule is applied to ensure that
- the successful candidates and lists are elected by a larger proportion of voters;
  - it is possible to vote for a candidate list with rather low chances, without risking that so neither this list nor the second or third best alternative, which appears to have bigger chances, gets a SB-seat.

On the ballot paper of a SB, the numbers **1, 2 or 3** are entered for a selected candidate list: for the preferred list and the first and second **alternative list**.

For the calculation of the distribution of seats in a SB there are **several rounds** by proportional representation procedure, before which, respectively, **the list with the fewest votes is eliminated:**

- Before the 2nd round, that list is eliminated which got the least votes in round 1. From the 2nd round on, the votes of this eliminated list are distributed to **alternative lists**.
- Before the 3rd round, that list is eliminated which got the least votes in round 2.
- ...
- In the last round only those lists are left, which actually get a SB-seat.

*Making this calculation over several rounds by computer is not a problem, if for all interested parties the data records are accessible, respectively, of: which SB, preferred and 1st + 2nd alternative list, state from which a vote was given. Because with this, many people can independently of each other (with different computer programs) find out the final result, which results after several counting rounds.*

#### **4.1.2.2 additional details**

- a)** The counting of the votes can be done in this way:
1. Each ballot paper will be marked with a number, e.g. by a stamp.
  2. The votes are entered into computers and transmitted to a central location. For each ballot paper, a separate data record is passed, consisting of: SB-number, up to 3

selected candidate lists, ballot-paper-number, device number (for the device with which the data is transmitted), number for the location of data entry.

3. The ballot papers are looked at again: The ballot-paper-number (and the number for the location of the data entry) is used to check whether the centrally stored data matches the information on the ballot papers. While doing so, the person checking and the computer used must be different for the same ballot paper than in step 2.

**b)** It is possible to keep secret for which SBs someone orders ballot papers. The following can be used for this:

1. Before the sending of the election notice, decentrally (e.g. in individual cities or districts) a stamp number is pressed
  - on the order form for ballot papers (which will be sent together with the election notice)
  - and next to an adhesive address label with the address of a voter. (Alternatively: Instead of an address label, an envelope with an address can be used.)

This connection of stamp number and address is not stored electronically. The address labels are stored sorted by stamp number.

2. Voters send the order form for the ballot papers (that doesn't have their own address, but the stamp number) to an address used to hand over to a printing house. The printing house passes the printed ballot papers in envelopes with a stamp number (sorted by stamp number, at least with a pre-sorting) to the decentral location where the stamp number was assigned.
3. In this decentral location, the address labels from 1. are glued to the envelopes according to a matching stamp number. Then these letters with the ballot papers are sent to the voters.

**c)** About the SB-number when ordering ballot papers:

- The first 2 digits of the SB-number could represent a year (e.g. "27" for 2027), they would already be printed in the order form. 4 additional digits would be enough for thousands of SBs.
- If, when ordering the ballot papers, a wrong SB-number was used (e.g. from a website or a printed text of an interest group), this would attract attention as soon as the ballot papers reach the voter. So that it does not even come so far, the following measures are possible:
  - Up to about 1000 SB-numbers with company name could be sent in a supplement of the election notice.
  - Voters could download a pdf file from the internet containing SB-numbers with company name. In the election notice, there is an internet address for this pdf file and a hash value (a special alphanumeric string), by which a manipulated pdf file can be recognized: Even a small change (manipulation) would result in a completely different hash value; even if only a few voters test this hash value, it protects many others.
  - There may be a certificate for websites that display the SB-numbers based on predefined standards.

#### **4.1.2.3 if a SB got very few votes (or belongs to a relatively small company)**

If extraordinary few votes were given to a SB in the procedure according to "4.1.2.1 basic",

then it should be prevented that a list of candidates with very few votes gets SB-seats. Therefore for such SBs these seats are distributed using other procedures. These other procedures do **not have as high demands concerning international applicability or influence of individual citizens**, but they are sufficiently good for SBs that, according to 4.1.2.1, have received only a few votes. Examples of such procedures:

- There could be election committees whose members are essentially elected by a majority of two-thirds in regional democratic bodies (similar to the election of lay judges for courts of lay assessors in Germany).
- There could be election committees whose members were selected by drawing of lots.

It is not an alternative to simply not distribute seats to the group population for SBs which, according to 4.1.2.1, received only a few votes: because the reason for these few votes can be for an influential company that it is known to only a few people.

"Extraordinary few votes" could e.g. mean that the SB of a company gets less than 20% of those votes, that are given on average to a company per employee or per financial value (these 20% could be used separately for different company sizes).

Additionally could apply:

- For companies with up to 1000 employees (or an analogous financial value), the procedure in 4.1.2.1 could be waived and instead one of the two above-mentioned procedures could be applied directly.
- There could be a minimum number of votes that in total must be cast for a SB to achieve that SB-seats are given through the procedure in 4.1.2.1. This would be important for the smallest companies where 4.1.2.1. is applied.

### 4.1.3 on international use

**a)** Voters from the state in which a company has its **headquarters** get an advantage in the distribution of SB-seats over voters from other states,

- because otherwise small states will probably not participate in this international co-determination;
- because currently it is probably difficult to communicate if for well-known companies that are particularly strong rooted in a state (and therefore have its headquarters in the state) a guaranteed proportion of seats is not fill with votes from that state.

For this the votes are counted separately for **national and international votes**.

International votes include national votes. National votes are those votes, which are cast from voters in that state, where a company has its headquarters; with national votes, the same lists of candidates can be elected, which can also be elected with international votes (for "4.1.1 Variant A" with one specialty: at national level, in a candidate list those candidates are ignored who are candidates for a SB whose company has its headquarters in another state).

If the number of seats is odd, by national votes 1 seat less than half of the seats is given.

*Example: A SB has 15 members. 5 members are of the group population. 2 of the 5 members are elected by national votes, 3 by international votes.*

If the number of seats is even, half of the seats is given by national votes.

For the SB-seats that are elected with national votes the calculation of the seat distribution is completed first (with a proportional representation procedure). Subsequently, when the calculation for those SB-seats is done that are elected by international votes, the seats

obtained at national level of a candidate list are taken into account as follows:

- If, on the international level, a list X were to be given a seat in accordance with a proportional representation procedure, but this list has already been given a seat at national level, that list will not be given that international seat. Instead, the seat goes to the list which, according to the proportional representation procedure, has the next largest claim.
- If, in this proportional representation, the list X is entitled to a second seat, then that seat will be given to it (if it has won only 1 seat at the national level).

*Example of effects of these regulations: A SB has 5 members from the group population. 2 of them are elected by national votes, which is equal to 40%.*

- *If less than 40% of the votes cast are national votes, then fewer votes per SB-seat are required for the 2 members elected by national votes than for the 3 others.*
- *If, of the votes cast, e.g. 65% are national votes: For 40% of the votes, national votes are advantaged to the other votes, as 2 SB-seats are guaranteed for national votes. For the remaining 25%, the national votes are at least not disadvantaged.*

**b)** In addition to the "40%" from paragraph a):

Applying the procedure of a) to the rules in 4.1.2.1.d there could be an additional rule to prevent the same vote from being used twice in some cases.

*Example: A vote of a ballot paper is counted in the count for national votes for the 1st alternative list, and this list obtains a SB-seat with this vote. If the same ballot paper is then also used in the counting of international votes, then an additional rule may apply:*

- *Only this 1st alternative list is available for this vote; no longer the 2nd alternative list or the preferred list.*
- *This is applied to 40% of the votes, if the proportion of national votes is more than 40% (to which national votes this is applied or not can be decided by a random procedure). The up to 40% of the votes to which this restriction applies do not lead to an additional seat in the international counting: because of the subtraction of seats won by national votes in the election procedure of the international seats, in accordance with a).*

**c)** For the SB-seats that are elected with national votes (compare a)) the following special regulation is applied: With a 2/3-majority in an international parliamentary assembly and more than ½ of the votes of a states-body (every state has 1 vote) it can be decided, that for single companies the distribution of SB-seats by national votes does not apply. The so far national seats then are distributed internationally.

*Example for usage: A big international company has its headquarters in a small state that is financially very dependent on this company. Thus this company has a big influence on the government, the population and the legislative processes, by which it obtains unfair advantages over companies that have their headquarters in other states.*

**d)** The share of votes per state could be restricted to a maximum of 12.5% (= one 8th). In very large countries (e.g. India), as a compensation, the number of companies of that state can then be reduced, for which SB-seats are filled by international votes.

*Example: A state has 25% of the population and 20% of the companies. For the 7.5% (20% - 12.5% = 7.5%) of these companies that are internationally sought after least, the SB-seats are filled only by votes that come out of that state. (Had it taken only 8% instead of 20%, a share of 12.5% of the international votes had remained.)*

The mentioned 7.5% should not be related to the number of companies, but to a value calculated for each company from financial values and the number of employees.

- e) An international parliamentary assembly elects a human rights body, that can decrease the participation of the population of individual states because of human rights violations. A sentenced state loses e.g. up to 5% yearly of the normal portion of votes of its population. An even greater part can be subtracted, if after this body also the parliamentary assembly supports it with a 2/3-majority. Members of the parliamentary assembly who have the nationality of the concerned state cannot vote.

#### 4.1.4 in addition, if shareholders have half of the SB-seats

Variants in which the shareholders have half of the seats are mentioned

- in section 3 for medium-sized companies,
- in section 4.2.c on companies with high financial value, which have very few employees
- and in section "5.1 Europe" also for large companies, with regard to an introductory phase of the 3-groups-co-determination.

If the shareholders have half of the seats on the SB then it is appropriate to make it unlikely that population representatives will join the board,

- which are particularly close to the shareholders
- **and** are strongly rejected by a large part of the population or the employees.

In order to make this as unlikely as possible, it can be ensured that a particularly large share of the votes is required for a SB-seat of the group population.

Through the multiple voting rounds in 4.1.2.1.d (with respect to alternative lists) a list of candidates needs more votes than with a simple proportional representation to get a SB-seat. An additional way to increase the number of votes per seat:

For large companies with **many employees** can apply that the group **population has only 2 SB-seats**, if the shareholders have half the seats.

*Example: A supervisory board has 20 seats, of which 10 are for the shareholders, 8 for the employees and 2 for the population.*

For companies with high financial value, which have very few employees (see 4.2.c), the regulation in appendix 4.5.a is important.

In order to break the deadlock between shareholders, on the one hand, and employees and the public, on the other hand, one of the following procedures may be used (or all together in multiple election rounds, in that order):

- A neutral person is elected to the SB by the other members of the SB: The neutral person must receive from all 3 groups at least half of the votes.
- A neutral person is elected to the SB by the other members of the SB: The neutral person must receive 2/3 of the votes.
- The procedure in "4.4 chairperson of a SB" is applied.

#### 4.2 employees: distribution of their SB-seats

a) **At least half** of the employee representatives **up to all except 1** are elected by employees of the company.

- Only half of the representatives it is, if there is an individual case according to the second point in b).
- The company's employees are free to choose whether these representatives are from within the company or from outside. So they can e.g. flexibly choose sometimes more

and sometimes less external labor unionists.

**b) A minimum of 1 to a maximum of half** of the employee representatives is elected by unions:

1. Directly elected by unions is by default at least 1 representative.
2. In special cases it makes sense that half of the employee representatives are directly elected by unions. Example: finance-companies with high-income employees. Such companies can have a great influence on society and by this on the great number of employees at other companies, who earn less. The interests of these worse earning employees are supported by the direct influence of the unions.

So that half of the employees representatives are directly elected by labor unions (for the benefit of this see also "4.4 chairperson of a SB"), in individual cases this can be set in union meetings with 2/3-majority:

- without time limit in a central international assembly
- or with time limit in a smaller, subordinate assembly; there also faster decisions are to be possible.

An early reelection is not necessary: From the result of the last election of employee representatives results the candidates for additional seats for the representatives directly elected by unions, as well as the representatives of a) losing their SB-seat.

For these individual cases also applies: In the SB an odd number of employee representatives is reduced to an even number, so there is 1 employee representative less: If e.g. a SB normally has 5 employee representatives, now only 4 employee representatives remain, 2 of them are directly elected by labor unions.

**c)** In deviation from a) and b) there could be an additional regulation for companies with big financial value that have only very few employees: The employees have only 1 employee representative in the SB, and this one was directly elected by unions. And the shareholders receive an additional seat.

*Example: The ratio shareholders:employees:population is now 4:1:3 instead of 3:3:3.*

### **4.3 shareholders: many different voting procedures are possible**

The election process can be different in different states. In the same state it can be different for different company forms. As an example, here are 2 extremes:

*Example 1: A single person has the majority of the shares of a company and alone decides which shareholder representatives become member of the SB.*

*Example 2: The company is owned by the employees working there. These employees thus elect all shareholder representatives and the employee representatives according to 4.2.a into the SB.*

### **4.4 chairperson of a SB**

1. If there is no 2/3 majority in the election of the chairperson of a SB, then she/he will be elected by the representatives of the group "population" (they are the most neutral group).

If there is no majority for a candidate in the group population after 2 ballots, this right to vote will be transferred to one of the other two groups.

2. If a voting has resulted in a tie, then the chairperson has an additional vote in a repeated voting.

*(Alternative solution: If a voting has resulted in a tie, all representatives of the group population have an additional vote in a repeated voting.)*

This regulation can be helpful in breaking a deadlock in SB-votings, e.g.

- if the shareholders have half of the seats (see 4.1.4)

- or when using 4.2.b.2 (and if shareholders and population have the same number of votes) if there is an equality of votes between
  - on the one hand all shareholders-representatives together with those employees-representatives, who are only elected by employees of the concerning company,
  - and on the other hand all population-representatives together with those employees-representatives, who are also elected by employees from outside of the concerning company.

## 4.5 additions

**a)** In connection with 4.2 ("finance-companies with high-income employees") and 4.4 is the following regulation. It prevents that candidate lists of the group "population" that are especially near to shareholders can prevail against a big joint majority of other lists. This regulation is only applied if 4.2.b.2 or 4.2.c is used for a SB.

SB-members of the group "population" can decide with a  $\frac{2}{3}$  majority that another member of the group "population" no longer has a voting right in the SB (but this member remains a member of the SB). At the same time, a member of the shareholders then loses his or her voting right (for example, the member who received the least votes in the election; or according to drawing lots or an other procedure chosen by the shareholders).

*Example of application: A multimillionaire spends a lot of money on advertising. As a result, the list promoted by him reaches a SB-seat.*

As a comparison: it is not uncommon, that in the general meeting of a company all SB-members of the shareholders can be elected by a simple majority of the voting capital.

**b)** alternative and more direct procedures:

- Maybe in addition there should be an alternative procedure, where the group population does not exist. This could make sense for companies where the central tasks are forming of opinions and communication of information. See appendix C.1.
- In some companies there could be the wish, to make decisions like e.g. the election of the board of managers not indirectly through the SB, but by direct elections and decisions. Possibilities for this you find in appendix C.2.

## 5. carrying it through

### 5.1 Europe

First of all, the core of this proposal (see introduction) needs to be widely discussed. Then it can be aimed to ensure that a law will be adopted in the EU, that has elements of this proposal. This law could be adopted as part of the "enhanced cooperation" that is applied for a minimum of 9 EU states. In the beginning in many EU countries could apply:

- The population is added as the 3rd group into the SBs of big companies.
- **By default, shareholders have 50%** of the votes in a SB of the largest companies.
- **But under certain conditions** all 3 groups have **a third** of the votes:
  - when a company is by the majority owned by states;
  - when a company makes use of special state support;
  - or when a company introduces this voluntarily. This voluntariness e.g. can be stimulated by having different tax rates for company taxes, depending on the level of co-determination of a company. Or by considering the level of co-determination when purchasing. Or by company-specific customs duties.

The above-mentioned EU law should later be merged into a legal foundation that exists independent of the EU internationally and also applies to countries outside the EU.

## 5.2 purchases by state and private clients

The state with public contracts and private customers with private shopping can have influence by

- preferring companies that have much co-determination, if there is a choice only between big companies;
- preferring companies whose big suppliers (of goods and services) also have, to an as possible great extent, much co-determination.

Ranking lists or valuations in the internet or in magazines about products, producers, traders and service companies could be a help for the selection. For this the mass media and organizations can get information about suppliers, human rights, ecology etc. also from SB-members that are from the group "population":

- This information can support political aims of political groups (whose candidates are members in SBs as representatives of the group "population"); therefore they are interested in passing on their knowledge, as far as that is legally possible (especially interesting: differences with respect to the various political directions).
- The representatives of the group "population" are less inclined than the shareholder-representatives to make light of something or to keep something secret.
- Most political groups that are represented in SBs will probably develop standards for their information work. This increases the comparability of the information of different companies.

## 5.3 companies from states without this co-determination

If many states and private customers prefer companies with this co-determination when purchasing, then this can be an argument for companies from states without this co-determination, to introduce such a co-determination.

For such companies special regulations are necessary:

- The third of the SB-seats that is occupied by the representatives of the group "population" is elected a little differently: In the election that is according to 4.1 there is not the national counting of votes, which is mentioned in 4.1.3.a (despite of this, SB-candidates can come from the state of this company).
- By a decision of the shareholders' meeting this co-determination is fixed in the statute of the company.

## Appendix:

### A. property and constitution

Regarding property in connection with big companies, 2 areas can be distinguished:

- the financial value of a share ("financial element");
- the right to influence the decisions of a company ("membership powers").

In a verdict about co-determination the German Constitutional Court wrote, in context with §14 ("property,...") of the constitution:

*However regarding the property guarantee essentially only the **membership** powers of the shareholders are concerned, while the **financial** element of the property-share is not*

*affected. In addition the only **weak personal relation** of the share-rights in their membership-legal meaning carries weight*

(From the reasons of a verdict from 1999 about the "Montan"-co-determination; see BverfG, 1 BvL 2/91 of 2 March 1999, paragraph no. 77, <https://www.bverfg.de>.

See also a verdict from 1979 about the co-determination law from 1976; BverfGE 50, 290 [341 ff.]

From a verdict on the co-determination law of 1976:

- While the previous quote states that the financial element of the property-share „is not affected", the wording in this ruling on the co-determination law of 1976 is not that absolute:

It is pointed out that the property right is "mediated" by the membership right. And co-determination regulations affect primarily the right of shareholders to make decisions and affect „at most in the second instance“ the property value of a share.

- „Unlike the entrepreneur-owner, the shareholder is only indirectly able to work with his property; property liability for the economic consequences of wrong decisions ... refers to a limited part of his sphere of property.“

(See 1979 verdict on the co-determination law of 1976, BverfGE 50, 290 [pages 342-4, 348].)

## **B. to 1.2 ("...existing method in German companies,...")**

**B.1** As addition to the mentioned regulation (from the co-determination law from 1976): One of the persons elected by the employees to the SB is proposed by the executives: on a candidate list, which has only 2 candidates. And these executives each have 2 votes for this candidate list.

**B.2** A special case is the "Montan"-co-determination. This co-determination is valid for mining companies and for companies that produce iron and steel, that have more than 1000 employees. It has the following regulation:

*In the supervisory board shareholders and employees have the same amount of votes, additionally both groups together elect a "neutral" person.*

One could expand this regulation to all fields of company activity.

Also this regulation has disadvantages to my proposal:

- e.g. at "finance-companies with high-income employees" (compare 4.2). Such companies can have a great influence on society and by this on the great number of employees at other companies, who earn less. Through the "Montan"-co-determination these less earning employees and the society have no influence on these companies; through my proposal they have.
- Interests of the society that don't have much significance in the conflict "shareholders against employees" are not adequately considered.
- Many of the networking and effects mentioned in 2.2 for the democratization of the economy are not achieved by this.

Completion: According to the German law shareholders and employees have not entirely equal rights, when they elect the "neutral" person; through a regulation that twice involves a law court the shareholders can decide without the employees.

## **C. alternative and more direct election and decision procedures**

**C.1 Press / Media / News:** To show different opinions and views in a better way, it could be

useful, that this 3-groups-co-determination is not used for all big media-companies. If there is to be such an exception (as a voluntary alternative), then it must have roughly the following limitations to prevent a concentration of power to a few people:

- The company must be a cooperative, that is every member has the same amount of votes. So a member with a bigger financial stake does not have more votes. (In addition: For cooperatives in other fields of company activity still only the 3-groups-co-determination is used.)
- A big company must have more than 100,000 members. Or in more detail:

	<b>big companies</b>	<b>medium-sized companies</b>
<b>members</b>	more than 100,000	10,000 - 100,000
<b>employees</b>	more than 1000	100 - 1000
<b>financial values</b>	over A	1/10 A to A

To classify a company as big or medium-sized: beside the number of members **either** the number of employees **or** a financial value must be reached.

- The central task of the company must be communication of information and forming of opinions.

**C.2 direct + indirect votings** with the 3-groups-co-determination: In some companies there can be the wish, not to decide in the representative SB for some votings, but instead choose a direct-democratic way. Possibilities for this:

- E.g. during the election of the board of managers the shareholders and the employees of the company could vote themselves. Their votes are weight according to their proportion of vote in the SB.
- Such a procedure is not useful for the population-representatives and for the employees-representatives according to 4.2.b. For those the alternatives are:
  - They use their voting right as ever in the SB
  - or they can voluntarily give off their voting right. E.g. for some votings every population-representative can voluntarily give his voting right to all shareholders. So for every company separately a reaction is possible, whether rather a very close cooperation with the shareholders is appropriate (e.g. because the company is a cooperative and a big part of the voters of a population-representative are members and their relatives and acquaintances) or rather more distance to them.

**C.3 local utility companies** for energy and water: For these it can be considered, whether rather C.1 or a 3-groups-co-determination is appropriate (both alternatives are possible also for communal or municipal companies). One could think of a solution similar to C.1, the consumers would then correspond to the members. But energy and water are often not obtained at the location where the customers of a utility company live. This rather speaks in favor of the use of a 3-groups-co-determination, because through the population-representatives also those people can be represented, that live near the sources of energy and water.

## **D. smaller medium sized companies**

It makes a big difference if a company with 100 employees

- has all the workers in a single small community
- or these workers are spread across 10 major cities.

In the first case, the interest in co-determination is certainly greater in the population (if

there are no particularities in the second case).

Accordingly, for companies with 100-500 employees (or equivalent financial value), there may be rules that make it optional to have co-determination with 3 groups in these companies. For these companies to have such co-determination, voting is needed: by the population or by the employees.

#### **D.1 Voting by the population:**

- By drawing of lots, citizens become members of a decision-making body that, at the request of 1,000 supporters, decides whether this co-determination is to be introduced in a company.
- In each state that participates in this co-determination, there is at least one such decision-making body.
- The co-determination is introduced in a company if there is a simple majority for this in the decision-making body.

#### **D.2 Voting by employees of the company concerned:**

2 phases:

- Phase 1: 10% of the company's employees must agree within 2 months.
- Phase 2: In another 2 months, approval and rejection are possible: this co-determination is applied if the majority of the votes cast endorse it.

Either until rejection or in case of success until the introduction of this co-determination, including the election of the BoM:

- 10 initiators are protected from dismissal.
- The company must not transfer its headquarters to another state.

#### **E. additional points**

For E.1 till E.3 in addition the more direct co-determination according to C.2 can be used.

**E.1 Profit of a company:** The SB decides on how the profit of a company is used.

**E.2 Increase or decrease of capital** (e.g. issue of new shares): For this majorities are necessary in the SB and the shareholders' meeting.

**E.3: Relocation of the headquarters of a company to an other state:** For this majorities are necessary in the SB and the shareholders' meeting.

**E.4 right for final decision** ("Letztentscheidungsrecht"): The "right for final decision" of the general meeting (meeting of the shareholders) of a company, which exists according to § 111 IV AktG in Germany, is to be abolished. This law makes it possible for the BoM to submit certain decisions, if the SB does not agree, to the general meeting for a decision.

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In other languages:

Esperanto: [mitbestimmung.eu/esperanto](http://mitbestimmung.eu/esperanto)

German: [mitbestimmung.eu](http://mitbestimmung.eu)