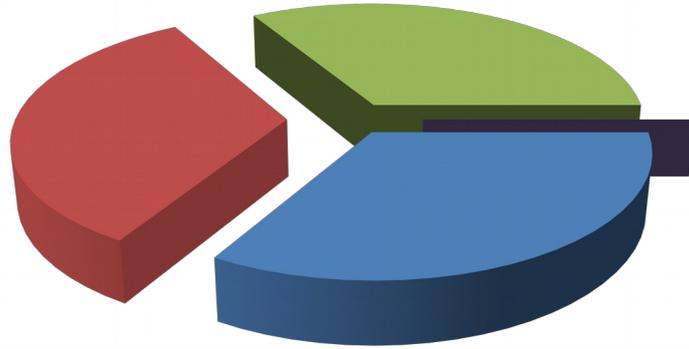


GOLIATH WATCH

For Democracy instead of Corporate Power.



Civil society co-determination in companies

Position paper – 30 April 2019
(translated in March 2020)

Contact: info@goliathwatch.de

Internet: www.goliathwatch.de

Goliathwatch is a non-profit organization that works for an economy that serves people and nature - not the other way around.
We stand up for a strengthening of our democracy and against corporate power.

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Civil society co-determination in companies

The current level of destruction of our ecosystem and increasing social inequality requires fundamental changes in our economic system. It is important that large companies and corporations serve less the financial and power interests of their shareholders – be they individuals, other companies or other institutions. And that the interests of other people, that are affected by the actions of these companies, are much more taken into account. We are therefore proposing a new form of co-determination to meet these requirements.

In large companies, co-determination should not only be a matter between employees and shareholders, but additional civil society actors should also have a say. These actors are referred to as „3rd group“ below. This 3rd group can be helpful in social issues, human rights, ecology, customer protection. It is about corporate co-determination in the supervisory board or another central body of a large company. We think that the following 4 points are important bases for such an approach:

1. Representatives of the 3rd group should not be elected by the other two groups.

There are co-determination proposals in which representatives of shareholders and employees elect the representatives of the 3rd group. We consider such a dependency of the 3rd group on the other two groups to be problematic for the following reasons:

- This dependency makes it difficult to take into account interests that are subordinate to those of employees and shareholders.
- The motivation of actors, who were not previously included in co-determination, to fight for co-determination with more than two groups is weakened by this dependency.
- With such a dependency, we do not see any possibility of meaningfully applying the co-determination mentioned in point 2 according to financial minimum values (for financially strong companies with few employees).

An example of how the representatives of the 3rd group could be elected instead: Entitled to vote are the residents of the states participating in the co-determination directly or their regional representatives. The voters each have a limited number of votes, which they can distribute among several companies.

2. The company size, from which co-determination is applied, should not only be about a minimum number of employees, but alternatively also about minimum financial values

such as value, share value, turnover, balance sheet total, assets managed for customers. Because a company with few (well-earning) employees and great financial strength can have a major impact on the general public. Such financially strong companies with few employees can be, for example:

Holdings, fund companies / investment companies, banks, companies with large land ownership, companies with highly automated factories.

3. The shareholders should have a minority of the votes, just like the other groups. For a previous interim solution, however, an approach should be observed in which the shareholders have 50% of the votes.

We think it is appropriate if in companies with many employees all 3 groups have a third of the votes. With such a ratio, the position of the shareholders is still strong: no other group is larger and the 3rd group is likely to be quite heterogeneous. But since the shareholders can be outvoted in this ratio of votes just like the other groups, the pressure on them to seek consensus is increased significantly.

However, such a minority of votes by the shareholders may initially appear to many as an unrealistic goal. For this reason, a modest variant should be observed more closely, especially for the introductory phase of a 3-groups-codetermination: 50% of the votes for the shareholders and together 50% for employees and 3rd group; in companies with many employees, the votes of the 3rd group could be limited to 2 votes. In addition, there could be an additional neutral person, elected by the existing members of the co-determination body with at least half of the votes in all 3 groups.

With such a modest 3-groups-codetermination, employees can have more influence than with the German Co-Determination Act of 1976 (despite their lower share of votes), because the shareholders cannot decide alone with this modest 3-groups-codetermination.

For comparison: Under the German Co-Determination Act of 1976, the shareholders can decide on their own. Under this law, employees and shareholders have nominally the same number of representatives on the supervisory board. However, 1 representative is elected by the employees from a list of only 2 candidates, which is put together by the executives. Moreover, the shareholders have an additional vote due to the double voting right of the chairperson of the supervisory board (who is elected by a simple majority of shareholder representatives if there was no two-thirds majority in the first ballot).

Example of a supervisory board with 20 members after changing from the German Co-determination Act of 1976 to a modest 3-groups-codetermination:

- *Shareholders have 10 votes. Two votes that are close to shareholders disappear:

 - *The executives no longer have a vote of their own.*
 - *A chairperson of the supervisory board with double voting rights can no longer be elected by a simple majority of shareholder representatives.**
- *Employees have 8 votes. One vote is lost for the employees (we do not count the vote of the executives among the votes of the employees).*
- *The new 3rd group has 2 votes.*

4. This co-determination should be transnational.

This co-determination should apply jointly to several states. Especially in the case of the largest companies, it is to be expected and desired that the groups standing for election are alliances of people and organizations from different states.

Further information on the topic is available in the introductory text at www.mitbestimmung.info/english

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Explanations

Function of the supervisory board (in Germany, as it exists up to now)

While the works council is central to operational co-determination, the supervisory board is central to corporate co-determination. Members of the supervisory board are representatives of shareholders and employees. There is a supervisory board for stock corporations (AGs), limited liability companies (GmbHs) and cooperatives; in the last two only mandatory from a certain size. In contrast to the executive board, the supervisory board does not manage the company, but controls the corporate governance of the executive board. This includes appointing and dismissing the executive board, advising and monitoring the work of the executive board and auditing the annual financial statements.

The supervisory board can define business that requires the approval of the supervisory board before it is carried out by the executive board. If the supervisory board refuses to give its approval, at the request of the executive board the general meeting of a company can approve it.

That the benefits of co-determination on the supervisory board for employees are severely limited under the German Co-determination Act of 1976, is already shown in point 3.

Example Bayer

Under point 3 is an example of a modest 3-groups-codetermination, which is intended as a temporary interim solution. Here, on the other hand, is an example of the variant to which it should actually come: The shareholders have a minority of the votes, just like the other groups.

At the chemical giant Bayer, the current supervisory board consists of 20 members, with nine members representing the employees (we do not count the representative of the executives here). When implementing our proposal, for example with 21 members, there would be seven members from the shareholders and seven from the employees.

The remaining seven members come from (civil) society, as in the case of the advisory councils in radio or the social insurance institutions in Germany. These could be, for example, representatives of environmental and development organizations, consumer organizations or groups close to political parties; or citizens like at courts of lay assessors. For the election of these seven representatives of the society, there could be competing candidate lists, including lists that are expressly close to Bayer employees or were even created by them.