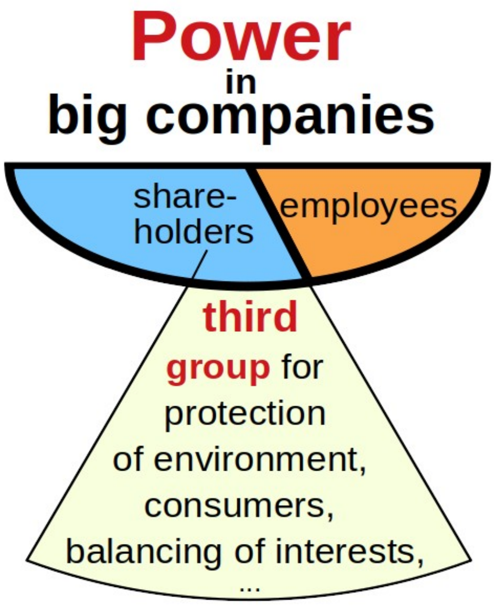
GOLIATH WATCH

For Democracy instead of Corporate Power.



Civil society co-determination in big companies

Position paper – 1 November 2022

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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 big 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 big 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 **„third group"** below. This third group can be helpful in social issues, human rights, protection of environment, consumer protection. It is about corporate co-determination in the supervisory board or another central body of a big company. This co-determination can become a **democratic minimum standard** for big companies. For such an approach, we list here

- 4 basic points
- and how to easily elect a third group.

The 4 basic points:

1. The third group should not be elected by the other two groups.

There are co-determination proposals in which supervisory board members of shareholders and employees elect the members of the third group. We consider such a dependency of the third 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 where 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).

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. 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.

4. 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 half 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 third 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.

Example: At the chemical giant Bayer, the current supervisory board consists of 20 members, with 9 members representing the employees (we do not count the member of the executives here); the 10 members of the shareholders have 11 votes because of the chairperson of the supervisory board. Instead, e.g. with 21 members, there could be 7 members from the shareholders, 7 from the employees and 7 from the third group.

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 third group; in companies with many employees, the votes of the third group could be limited to 2 votes. In addition, there could be an additional neutral person, elected by the so far existing members of the co-determination body.

With such a modest 3-groups-codetermination, employees can have more influence than with the German Co-Determination Act of 1976, 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 alone, e.g. elect the company's board of directors alone. Under this law, employees and shareholders have nominally the same number of members on the supervisory board. However, 1 member 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.

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 with double voting rights can no longer be elected by a simple majority of shareholders.*
- *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 third group has 2 votes. With additional regulations, the probability can be kept low that one of the two votes is particularly close to the shareholders.*

For comparison: There is the "Montan"-co-determination, which applies to some companies in the iron and steel producing industry. With the "Montan"-co-determination, shareholders and employees have the same number of seats and votes on the supervisory board, and both groups jointly elect an additional neutral person. Compared to the modest variant of the 3-groups-codetermination, the "Montan"-co-determination is more far-reaching, because the votes of non-shareholders in "Montan"-co-determination belong to only one interest group (the employees), which makes resistance to shareholder plans easier. The modest 3-groups-codetermination is therefore less far-reaching than an already existing co-determination by law for big private companies in Germany. This is significant for how easy it is to implement the modest 3-groups-codetermination by law.

How should a third group be elected?

Especially when introducing this co-determination, it is important that voting is simple. This is also why we consider the following approach to be particularly interesting:

With 1 vote, a voter elects not just supervisory board members of a single company, but supervisory board members of several companies together.

Such an approach can be found in **www.mitbestimmung.eu/en**.

For comparison, other approaches are in **www.mitbestimmung.eu/en/introduction**.

A third group means that there is greater diversity among those who have power in a company. As a result, greater openness in a company can be expected for the concerns of groups not or not directly represented on the supervisory board. These groups can be dealt with outside of the statutory corporate co-determination in each company in a way that is specifically suitable for a particular company.

1 November 2022

Explanation: 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 board of directors, the supervisory board does not manage the company, but controls the corporate governance of the board of directors. This includes electing and dismissing the board of directors, advising and monitoring the work of the board of directors 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 board of directors If the supervisory board refuses to give its approval, at the request of the board of directors 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 4.