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REPORT

CO-DETERMINATION

Workers' Participation in Management in the EC Countries

by Hildegard Waschke, Cologne *

In the last few years the whole area of workers' participation in management has been much discussed in the countries of the European Community (EC). There are, essentially, two ways of participation, i.e. at shop-floor level where works councils are widespread — though in a variety of types — and at the company board level by representative systems involving workers' participation in management decisions of a policy nature. The latter will be the main subject of this survey.

Works councils, i.e. institutions giving worker representatives participation or co-determination rights at the shop-floor level are common to all the nine countries belonging to the European Community. The respective terms are: in Belgium "conseil d'entreprise"; in Denmark "samarbejdsudvalg"; in the Federal Republic "Betriebsrat"; in France "comité d'entreprise"; in Ireland "joint industrial council"; in Italy "commissione interna" and "consiglio di fabbrica"; in Luxembourg "comité mixte"; in the Netherlands "ondernemingsraad"; whereas in the United Kingdom the names of joint consultation committees vary.

Works councils are legally prescribed in Belgium, the Federal Republic, France, Luxembourg and the Netherlands. They are collectively agreed between the top organizations of trade unions and employers' associations in Denmark and Italy. In the United Kingdom and the Republic of Ireland similar institutions are based on voluntary agreements between the collective bargaining parties.

There are fundamental differences as to the composition and functions of works councils in the different countries. Whereas in the Federal Republic and Italy works councils only consist of worker representatives, they comprise an equal number of worker and management representatives in Belgium, Denmark, Ireland, Luxembourg and the United Kingdom. In contrast to Germany and Italy the employer (chief executive) is chairman of the works council in Belgium, Denmark, France, Luxembourg, the Netherlands and usually in Ireland.

The works councils in the EC countries are not a union body and have no collective bargaining functions. Their worker representatives are elected by all the workers of an enterprise, whether unionized or not. (Only in Denmark shop stewards

are privileged.) Nevertheless, the trade unions exercise an important influence not only in those countries, where they exclusively submit the lists of candidates (Belgium, France, Italy). In the Federal Republic, e.g. most of the works council members are active unionists. In the Netherlands works councils are most effective where their work is supported by shop stewards and shop-floor union groups (bedrijvenwerk).

Usually the works councils are entitled to information and consultation in social and personnel affairs. Information rights as to the firm's economic and financial situation are granted to works councils in Belgium, Denmark, France, Germany, Luxembourg and the Netherlands. In Belgium the works council has decision-making powers in the sphere of work rules and vacation schedules, in Luxembourg also as to the introduction or application of health and safety measures. In Denmark the co-operation committees have co-determination powers on the general personnel policy and on general principles governing the organization of work, safety and welfare, in Germany in addition also as to individual hiring and firing, training and fixing of piece rates and bonuses. In France works councils are entitled to appoint four of their members to attend the meetings of company supervisory boards. In the Netherlands the works council may make nominations for or objections against the composition of the supervisory board of a company.

Finally, it should be mentioned that according to the supra-national proposals of the EC Commission all employees of a European Company (whether unionized or not) should have the right to be represented on a European works council

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(in addition to national works councils) with extensive rights of information and consultation even in economic affairs of the company.

The central issue of co-determination, i.e. of worker influence in corporate management, is the question whether workers should be represented on company boards. However, the discussions in the various EC countries show differences of opinion as to the extent of worker representation (equal representation problem) and as to the best suited company structure (two tier system – supervisory board and management board – as practised in the Federal Republic and the Netherlands or single board system as governing companies in Britain).

On April 30, 1975 the European Commission published the final draft of its proposal for a board regulation on a statute for European Companies, i.e. mergers, joint holdings or subsidiaries of at least two EC countries. The EC statute would introduce a two-tier board structure. The supervisory board would consist of one third shareholder representatives, one third worker representatives and one third independent members (representing general interests) co-opted by the other two groups. A worker representation on the supervisory board, however, would only be obligatory if a simple majority of the employees concerned vote in favour of it.

On November 10, 1975 the EC Commission issued a Green Paper meant as discussion paper on "Employee Participation and Company Structure" in the European Community. It advocates a suitable EC framework for the measures to be taken by the member states and stresses the need for flexibility in each member state. For the time being no uniform system will be obtainable in the nine EC countries¹. However, workers representation on company boards will remain an issue of constant debate. Following is a survey of the situation in the different EC countries.

Germany

Among the EC countries the Federal Republic of Germany has the most extensive system of worker representation on company boards. There are three pieces of legislation based on the two-tier company structure, i.e. a supervisory board elected by the general meeting of shareholders as controlling body and a management board appointed by the latter and responsible for the day-to-day business of the company.

In the coal, iron and steel industry worker representation on company boards was introduced

¹ It should be mentioned that the adoption of the final text of the Second Directive on Company Law Harmonization by the EC Council (on December 13, 1976) has nothing to do with worker representation on company boards.

as early as 1951 by the Act on Co-determination of Employees in Supervisory Boards and Management Boards of Enterprises in Mining and in the Iron and Steel Producing Industries of May 21, 1951 (Montanmitbestimmungsgesetz) extended by a Supplemental Act of August 17, 1956. This Legislation applies to companies of the coal and steel sector which employ more than 1,000 persons. The supervisory board of these companies must comprise an equal number of shareholder and worker representatives and an additional co-opted independent member on whom the other two groups agree. The appointment of the worker representatives on the supervisory board is clearly controlled by the unions.

The management board in coal and steel companies includes a labour director (Arbeitsdirektor) who can be appointed or dismissed only with the consent of the majority of the worker representatives on the supervisory board.

Apart from the coal and steel industries joint stock companies and "Kommanditgesellschaften auf Aktien" (i.e. joint stock companies with limited liabilities which include members whose liability is unlimited) with less than 2,000 employees and limited liability companies with between 500 and 2,000 employees are governed by the Works Constitution Act (Betriebsverfassungsgesetz) of January 15, 1972, based on the previous Act of October 11, 1962. Here one third of the supervisory board must be worker representatives. They may be proposed by the works council or by employees of the firm (not by the employer or a union) and are elected by ballot by all the employees. Two of the worker representatives must be employees of the firm, the others may be outsiders, which in practice means union officials.

Companies with more than 2,000 employees (except in the coal and steel industries) are covered by the Co-determination Act (Mitbestimmungsgesetz) of May 4, 1976 (effective since July 1, 1976) providing for an equal number of shareholder and worker representatives (each between 6 and 10, according to the size of the firm). The employees' side must consist of two trade union members (except where it has 10 members in which case three must be union members). The union members may but must not be employees of the firm. The other members will be chosen from blue-collar workers, white-collar workers and executives according to their relation in the firm but each group represented by at least one member. These worker representatives are elected directly (in firms of up to 8,000 employees) or by electoral college (usually in firms with more than 8,000 employees). In the latter case there are separate electoral colleges for wage earners, salaried employees and executives.

The union representatives are proposed by the unions represented in the firm and elected by the combined electoral colleges. Both sides of the supervisory board (i.e. shareholder and worker representatives) elect, by a two-thirds majority, a chairman and a deputy chairman. If a two-thirds majority cannot be obtained the shareholders provide the chairman and the workers his deputy. Decisions of the supervisory board are taken by a simple majority. In the event of a tie the chairman has an additional casting vote, i.e. the final decision.

The Co-determination Act also provides for a labour director (Arbeitsdirektor) on the board of management (which is appointed by the supervisory board). However, his appointment or removal is governed by the same rules as those which apply to any other member of the board of management. This means that in the final analysis the labour director could be appointed or removed only by the shareholder representatives of the supervisory board as a result of the casting vote of the chairman. This differs from the coal and steel system, where the labour director can be appointed or removed only with the consent of the majority of worker representatives.

Whereas the German unions are longing for a genuine parity representation, the employers (on June 29, 1977) launched a complaint with the Federal Constitutional Court alleging that the final decision right of liable property as guaranteed by the German Basic Law is not maintained under the new Co-determination Act and that the labour director provisions are encroaching upon collective bargaining autonomy.

Netherlands

There are no worker representatives on company boards in the Netherlands, but there is a special procedure. A company law passed on May 6, 1971, fully operative since July 1973, provides that companies having a capital employed of more than hfl. 10 mn, a works council and at least 100 employees must have a supervisory board of at least three members appointed by the general meeting of shareholders. Thereafter, vacancies arising must be filled by co-option by the remaining board members. Nominations of candidates may be submitted by the general meeting of shareholders, the management board or the works council (which is composed of worker representatives under the chairmanship of the chief executive). The decision is taken by the supervisory board but both the shareholders' meeting and the works council have the right of veto. If the supervisory board wishes to make an appointment to which an objection has been

raised, it must apply for final decision to the Economic and Social Council (Sociaal Economische Raad), a national tripartite body composed of one third each of employer, worker and public interest representatives. It should be mentioned that so far employees of the firm as well as union officials are not allowed to be members of the supervisory board. The supervisory board appoints the management board.

The Dutch Government has asked the SER for an opinion on possibilities of granting workers more influence in the composition of supervisory boards.

The Socialist union (NVV) does not want worker representation on company boards but aims at the Yugoslav model of self-management. The Catholic union (NKV) advocates the German co-determination model, and the Protestant union (CNV) prefers the single board company structure with parity representation by members of the unions represented in the firm.

Denmark

According to the Danish Companies Act (No. 370) of June 13, 1973 (in force since January 1, 1974) companies employing (on an average during the past three years) 50 or more workers the latter are entitled to elect two (or more) representatives to the supervisory board in addition to the (at least three) members elected by the general meeting of shareholders. The worker representatives must have been employed by the company for at least one year. They are elected by secret ballot by the whole staff outside union machinery. The admittance of worker representatives to the supervisory board of directors requires that at least half of the employees of the company vote for it. There is no upper limit for the number of worker representatives nor is there a fixed relation between worker and shareholder representatives. However, the latter must be in a majority. Thus the Danish system is not based on parity of representation.

Luxembourg

The law of May 6, 1974 establishing works councils in the form of joint committees also includes worker representation on company boards. In joint stock companies which have usually been employing at least 1,000 persons for the last three years or in which the state has financial stake of at least 25%, or which benefit from a state concession relating to the company's principal activities one third of the members of the administrative board must be worker representatives. (In practice, the administrative board often delegates day-to-day business to a management board which, however, is not compulsory.)

They must be employees of the firm for at least two years and are elected in secret ballot by separate delegations for blue-collar workers and white-collar workers. There is a special provision for the iron and steel industry where the most representative unions at national level nominate three worker representatives who need not be employed in the firm.

The unions in Luxembourg want a parity representation of the board, i.e. an equal number of shareholder and worker representatives.

France

Here nationalized companies have a tripartite supervisory board, with one-third of the seats each for government, worker and consumer representatives, all of whom have the same voting rights. There are different forms of electing worker representatives. In the case of coal mining, railroads and public utilities e.g. they are chosen by the most representative union of the company. In the case of Air France they are elected by all employees, in the case of the nationalized motor company Renault by the works council.

There are no worker representatives so far in the private sector. But in companies which have more than 50 employees the works councils (comités d'entreprise) are entitled (under an act of June 18, 1966) to appoint (since 1973) four (originally two) of their members (two of blue and lower white collar workers, one for supervisors and one for executives) to attend the meetings of the board of directors or of the supervisory board where one has been established. At present, however, the role of these appointees is only consultative, they have no voting rights.

In February 1975 the report of the Sudreau Committee on company reform² recommended that this statutory role should be strengthened. Up to one third of seats on boards should be going to employee representatives who should exercise a function of joint supervision (co-surveillance).

The Sudreau Committee (composed of three employer representatives, three union representatives, three university teachers and one State Council member and presided over by Pierre Sudreau) was unanimous that this should be voluntary in undertakings with less than 2,000 employees. It was split, however, on the question of whether it should be compulsory in larger companies.

In May 1976 proposals were submitted to the French National Assembly modifying the French company law to provide — on a voluntary basis — for the representation of workers on the super-

visory boards of companies employing more than 2,000 persons. Worker representatives (also including one representative of executives) would hold one third of the seats on supervisory boards. So far, however, no bill has been enacted.

The French unions are predominantly not interested in worker representation on company boards in private industry. With their ideological attachment to the principle of confrontation between unions and management they reject any idea of co-determination or co-operation with the capitalist system. What they advocate is either increasing nationalization or — as final aim — self-management (autogestion).

Belgium

In the public sector the board (conseil d'administration) of the National Railways includes (among its 21 members) three members proposed by the unions and elected by the staff. So far there are no legal provisions for worker representation on company boards in private industry. However, on February 8, 1978 a bill was presented to Parliament under which in a two-tier board system the supervisory board (conseil d'administration) which appoints the management board (directoire) would be composed of an equal number of shareholders and workers with due regard to executive employees the latter being elected by the two groups of the staff — whether unionized or not.

Among the Belgian trade unions only the liberal organization CGSLB (Centrale Générale des Syndicats Libéraux) is in favour of a company board with an equal representation of shareholders and workers. The two largest organizations, the Christian CSC (Confédération des Syndicats Chrétiens) and the Socialist FGTB (Fédération Générale du Travail) do not aim at co-determination on the board level in their country. The Socialist FGTB prefers to keep apart from the management structure because its final aim is workers' control, not integration into the capitalist system.

Italy

So far there are no provisions for worker representation on company boards in the private sector of Italy. But the National Board for Hydrocarbons (Ente Nazionale Idrocarburi = ENI) and the National Board for Electrical Energy (Ente Nazionale per l'Energia Elettrica = ENEL) provide two public sector (state holding) examples of the appointment of worker representatives to supervisory boards. They are isolated and unrepresentative.

² Rapport du comité d'étude pour la Réforme de l'Entreprise, présidé par Pierre Sudreau. Rapport remis au Président de la République et au Premier Ministre le vendredi 7 février 1975. La Documentation Française, Paris 1975.

The Italian unions, like those in Belgium and France, view such concepts as co-determination and worker representation on company boards with considerable suspicion as being calculated to dilute the impact of unions on management. Their final aim is workers' self-management.

United Kingdom

There is only one board, the board of management governing companies in Britain. So far there are no legal provisions for worker representatives on company boards in private industry. Very few firms (such as the John-Lewis-Partnership, the Scott-Bader-Commonwealth, Chrysler's British subsidiary) have voluntarily included a minority of worker representatives in their boards of management. The boards of the nationalized industries, however, usually include a minority of union members as worker representatives.

On January 26, 1977 the so-called Bullock Report on Industrial Democracy was submitted to the House of Commons. It consists of a majority report (i.e. the recommendations of the chairman Lord Bullock, three TUC (= Trades Union Congress) representatives, two academics and a City solicitor, and a minority report written by the three industrialists on the Committee.

As to the companies to be covered the majority report proposes all parent holding companies and operating subsidiaries with more than 2,000 employees, the minority report parent companies with more than 2,000 employees excluding banks, most financial institutions and subsidiaries.

Whereas the majority report wants to maintain the present unitary board system, the minority report advocates a two-tier structure, with employee representatives on the supervisory board, not on the management board.

For board members the majority report presents the $2X + Y$ formula giving shareholders and union members equal representation. They jointly choose the smaller "Y" group. Only employees of the firm could be worker directors (i.e. no outside union officials unless they are chosen for the "Y" group). The chairman — in contrast to the German Co-determination Act — would have no casting vote (the uneven number of board members excludes a tie). It is recommended that in the early years the chairman should come from the shareholder representatives, but can come from either of the two other groups if the board unanimously agrees.

The minority report proposes three equal-sized groups on the supervisory board, with the employee third including blue-collar, white-collar

and executive representatives. Shareholder and worker representatives jointly choose the third group of independent members. Worker directors must have worked in the firm for at least ten years.

According to the proposals of the majority report worker representation would be introduced by a process starting with a claim of one or more recognized unions representing at least 20 % of the company's employees and a secret ballot of all employees. The selection of worker representatives would be made by a new Joint Representation Committee (representing all recognized unions in the company). No-union employees would be disfranchised after the initial ballot on whether worker representation should be introduced.

According to the minority report the introduction of worker representatives on the supervisory board should not be voted until a complementary sub-structure of an employee participation council (works council) has been established and operated effectively for three years. All the employees — not only union members — should be involved in elections.

The discussions concerning the Bullock Report are going on. The TUC advocates a two-tier system with a parity representation of shareholders and workers (i.e. no independent third group). The Confederation of British Industry (CBI) prefers worker directors to be voluntary and only up to one third of a board, if the company wants them.

Ireland (Republic)

As in Britain there is only one board in Irish companies (although the Irish unions advocate the two-tier structure of the German system). There are no provisions requiring worker representation on the board of directors in the private sector, although the law does not prevent those forming a company from making such representation. In August 1976 a Worker Participation—State—Enterprises—Bill was submitted to Parliament to provide for a one-third worker representation in the boards of seven state enterprises, i.e. Aer Lingus (airline), Bord Na Móna (peat-charring), B + J (shipyard), The Irish Sugar Company, CIE (railroads and buses), ESB (electricity) and Nitrigin Einreann. The worker representatives will be proposed by the unions and elected by all the employees. They must have worked in the respective enterprise for at least three years.

To sum up: in spite of differences in company law, collective bargaining systems and union philosophies the extension of workers' participation in management indicates a general European trend.