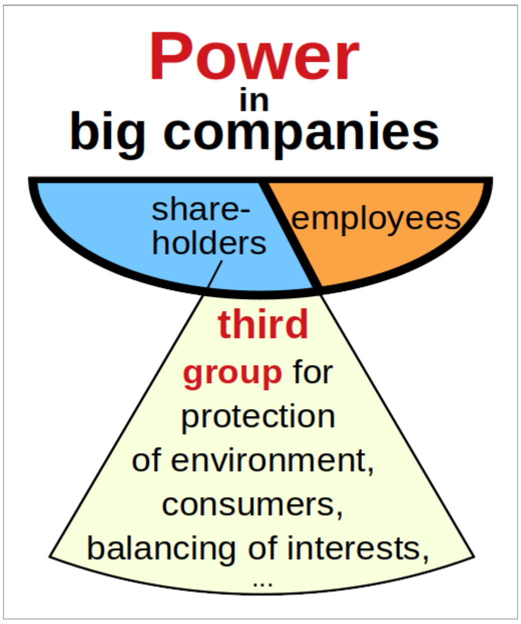
Introduction: company co-determination with at least 3 groups

Version 2022-11-04, author: Michael Kox

Here are a few examples of company co-determination with at least 3 groups, this means a co-determination with at least a third group in addition to shareholders and employees. There is much more information in the German text version.



- **a) 1970-75 on the implementation of a European Company**
- **b) 1975-78, Bullock Commission in Great Britain: system „2x+y“**
- **c) 1988, William M. Evan and R. Edward Freeman**
- **d) 2019, Economy for the Common Good / Christian Felber**
- **e) 2022, Michael Kox**
- **f) 2022, Goliathwatch**

a) 1970-75 on the implementation of a European Company
(The following sources are translated from German.)

- In 1970, Gerard Lyon-Caen published a study on behalf of the Commission of the European Communities entitled "Beitrag zu den Möglichkeiten der Vertretung der Interessen der Arbeitnehmer in der Europäischen Aktiengesellschaft" ("Contribution to the Possibilities of Representing the Interests of Employees in the European Company"). From this, two of his suggestions (pages 46-47):
  „b) It would be in line with current trends if the general interest, the general public of consumers, were not kept away from the supervisory body (…) To avoid confrontation between the representatives of shareholders and the representatives of the employees, a delegation representing the public interest would be introduced in the council, which would result, schematically: *one third for shareholders, one third for employees, one third for the representatives of general interests.* …
  c) It can also be imagined that the representatives of the shareholders and the employees call in independent experts in a certain ratio according to the German method, which would make voting more flexible: 40% employees, 40% shareholders, 20% experts (10% nominated by the shareholders, 10% by the employees). …“
  The "according to the German method" mentioned above refers to the “Montanmitbestimmung” (co-determination in coal and steel industry).[1]

- Also in 1970 there was a decision of the ECFTU (European Confederation of Free Trade Unions in the Community) on co-determination with 3 groups (see text in the magazine "Das Mitbestimmungsgespräch" from 1970, pages 94-95):
  „At its last meeting, the Executive Committee of the European Confederation of Free Trade Unions adopted a common concept for its demands on employee participation in the European Company.
  … The supervisory board of the European Company is composed of three equal parts of competent persons, who are elected as follows:
  a) for a third of the members of the Supervisory Board, candidate proposals are submitted to the electoral body by the General Meeting of the European Company;
  b) for a third of the members of the Supervisory Board, candidate proposals are submitted to the electoral body by the unions at Community level;
  c) a third of the members of the Supervisory Board is elected by co-optation.
  … After the two thirds of the members of the Supervisory Board have been elected, they elect the remaining third … by means of a co-opting procedure.“

- The book "Mitbestimmung, Wirtschaftsordnung, Grundgesetz" (MWG, "Co-determination, Economic Order, Basic Law")[2] also mentions a decision of the European Parliament in 1974 and a proposal of the European Commission in 1975.

  [MWG page 40:]
  “In July 1974, the European Parliament voted with a very large majority for a composition of the supervisory board according to the following model:
  - 1/3 shareholder representatives,
  - 1/3 employee representatives,
  - 1/3 independent members elected by both groups, representing "general interests".
  The basics of this model have been advocated by the European Trade Union Confederation since 1970. The European Parliament has shaped this model after four years of detailed committee deliberations and two days of extensive plenary debate. It was supported by the Socialist and Christian-Democrat groups and by many members of other groups.
  The Commission based its amended proposal of 13 May 1975 on this model (printed as Special Supplement 4/75 to the EC Bulletin).”
  Nevertheless, this did not become law because the "Council of the Communities" (European Council)

did not adopt it by consensus. It was not until 2001 that a European Company (SE) was adopted, but with different rules.[3]

[MWG page 41:]
„The members of the last third are elected by the representatives of the shareholders and the representatives of the employees on the supervisory board by a two-thirds majority, from among nominations which may only be submitted by the General Meeting, the European Works Council and the Management Board.
If no agreement can be reached on the election, the decision shall be taken by an arbitration board consisting of one assessor elected by the shareholders' representatives on the supervisory board, one assessor elected by the employees' representatives and a chairman jointly appointed by these assessors. If the assessors cannot agree on a chairman, the chairman shall be appointed by the president of the court having jurisdiction over the company.
The co-opted members of the last third should represent "general interests". Through this, in addition to the interests of the shareholders and employees directly concerned, other interests relating to the activities of the European Company shall also be included. This concept must be seen together with two further requirements, according to which these representatives must not be directly dependent on the shareholders, the employees or their respective organizations and must have "the necessary knowledge and experience". The underlying idea is that the supervisory board, with the help of the representatives of the last third, can make decisions which take into account, as far as possible, all the interests affected by the activities of the European Company, thus recognizing the special responsibility of the company towards these interests.“

b) 1975-78, Bullock Commission in Great Britain: system „2x+y“
On the proposal of the Bullock Commission ("Report of the committee of inquiry on industrial democracy"), Thomas Piketty wrote in his book "Capital and Ideology" (2020) on pages 506-8:

"One particularly interesting case involves the so-called *2x+y* proposal discussed in the United Kingdom in 1977-1978. In 1975 Labour Prime Minister Harold Wilson commissioned a report from a commission chaired by historian Allan Bullock and composed of jurists, trade unionists, and employers. The commission‘s conclusions were submitted in 1977.
…
In any case, the Bullock Commission proposed in 1977 that the Labour government adopt the so-called *2x+y* system. Concretely, in every firm with more than 2,000 employees, shareholders and workers were both to elect a number *x* of board members, and the government would then top off the board by naming *y* independent directors, who would cast the decisive votes in case of a stalemate between shareholder and worker representatives. For example, a board of directors might consist of five shareholder representatives, five worker representatives, and two representatives of the government. The numbers *x* and *y* could be set by the firm‘s bylaws, but the latter could not affect the overall structure or the fact that the board of directors alone had the right to make the most important decisions (such as naming the firm‘s executives, approving its financial reports, distributing dividends, and so on). Unsurprisingly, shareholders and the City of London‘s financial community outspokenly opposed the proposal, which radically challenged the usual assumptions of private capitalism, potentially going much farther than German or Swedish co-management. By contrast, there was strong support from the unions and the Labour Party, with no compromise in sight. *[Footnote: Union and employer representatives had clashed within the Bullock Commission, and it was the jurists and academics who cast the deciding votes in favor of the majority report.]* In the fall of 1978, James Callaghan, the new Labour prime minister who replaced Wilson in 1976, seriously contemplated calling a snap election at a time when the polls were predicting a Labour victory. In the end, he decided to wait another year. The country was immobilized by numerous strikes during the „Winter of Discontent“ (1978-79) in a period of high inflation. The Tories, led by Margaret Thatcher, won the election in 1979, and the project was definitively buried.
…

Broadly speaking, one key issue concerns the extent to which it is possible to overcome the automatic majority that shareholders enjoy unter the German system of co-management. The Bullock Commission's *2x+y* proposal is one answer to this question, by assigning a major role to the state. This might work with very large firms (where it would be tantamount to making local and national governments minority shareholders), but it might be problematic to apply such a system to hundreds of thousands of small and medium firms. *[Footnote: It could be problematic unless the procedures for appointing public board members are spelled out and steps are taken to ensure that the system functions in a satisfactory manner (which is not neccessarily impossible but would require concrete historical experimentation).]* One important limitation of the German system is that it applies only to large firms (with more than 500 employees), whereas Nordic co-management applies much more broadly (to firms with more than thirty, thirty-five, or fifty salaries depending on the case). Since the majority of workers work for small firms, it is essential to find solutions applicable to companies of all sizes.
As a complement to ideas like *"2x+y"*, one might also want to encourage employee shareholding, …"

In the original text for the system „2x + y" it can be seen that the third group (the "y") is added by the other two groups:[4]

- "... the boards should be reconstituted to be composed of three elements – an equal number of employee and shareholder representatives plus a third group of co-opted directors. These additional directors should: (a) be co-opted with the agreement of a majority of each of the other two groups – the employee and the shareholder representatives; ..."
- "... a third co-opted group ... The formal task of co-opting the directors will fall, of course, to the prospective directors – the employee and shareholder representatives – who will sit ultimately on the reconstituted board."

c) 1988, William M. Evan and R. Edward Freeman:
"A Stakeholder Theory of the Modern Corporation: Kantian Capitalism" (in "Ethical theory and business" (Beauchamps / Bowie)), pages 100-105:

„*Principle of Corporate Rights (PCR):* The corporation and its managers may not violate the legitimate rights of others to determine their own future.
Principle of Corporate Effects (PCE): The corporation and its managers are responsible for the effects of their actions on others.
…
Freeman and Reed (1983) distinguish two senses of stakeholder. The "narrow definition" includes those groups who are vital to the survival and success of the corporation. The "wide definition" includes any group or individual who can affect or is affected by the corporation. While the wide definition is more in keeping with (PCE) and (PCR), it raises too many difficult issues. We shall begin with a more modest aim: to articulate a stakeholder theory using the narrow definition.
...
1. The Stakeholder Board of Directors. We propose that every corporation of a certain size yet to be determined, but surely all those that are publicly traded or are of the size of those publicly traded, form a Board of Directors comprised of representatives of five stakeholder groups, including employees, customers, suppliers, stockholders, and members of the local community, as well as a representative of the corporation, whom we might call a „metaphysical director" since he or she would be responsible for the metaphysical entity that is „the corporation." Whether or not each representative has an equal voting right is a matter that can be decided by experimentation;
…
Therefore representatives of each stakeholder group would be elected from a „stakeholder assembly" who would initially meet to adopt working rules, charters, and so on, and whose sole purpose would be to elect and recall representatives to corporate boards.
…

Each stakeholder group would have the right to elect representatives and to recall representatives to boards. Whether this is done on a corporation-by-corporation, an industry-by-industry, or a country-by-country basis is a matter for further discussion.
…
Management would have the right to act on its fiduciary duty, as interpreted and constrained by the Board and the courts, …“

d) 2019, Economy for the Common Good / Christian Felber:

In the book "Change Everything – Creating an Economy for the Common Good" (2019, Christian Felber) in the section "Democratization of Corporations" starting on page 84:
„… Multinational corporations are quite another matter, however. Today global groups exist that are more powerful than many governments. Their decisions have the potential to affect hundreds of thousands of people and they exert a disproportionate influence on the media, political parties, science and justice. The fact that a few private individuals determine the course taken by such giants while all those affected – inside corporations and beyond them – are given no say is profoundly undemocratic. This situation is irreconcilable with the highest good in Western culture, namely democracy. For this reason, large corporations should be democratized to ever higher degrees in proportion to their growth in size, and the degree of co-determination granted to society should be increased accordingly. Take this possible scenario, for example:

- in enterprises with over 250 employees the workforce and society get 25 percent of the voting power;
- in enterprises with over 500 employees they receive 50 percent of the voting power;
- in enterprises with over 1,000 employees they have two-thirds of the voting power;
- in enterprises with over 5,000 employees the voting power is distributed evenly among the owners, the employees, the customers, the gender equality officers and the environmental ombudspersons.

In some countries, such as Germany, employee co-determination already exists in large corporations; the largest challenge is still to achieve co-determination of society, … One could conceivably have a regional economic parliament which would act as a representative of the sovereign people and be on the supervisory board of all large companies in the region. This parliament would be elected by means of a direct democratic procedure.
… If the public and the employees were to take more responsibility the larger a company became, it would only be fair for them to help bear the prunt of any financial losses. Freedom and responsibility should be coupled.“

e) 2022, Michael Kox,

my text on 3-groups-codetermination in **www.mitbestimmung.eu/en**
Some points from it:

- The third group is called "population".
- The **basic idea** for the election of the third group: Citizens elect SB-members (supervisory board members) of several companies together, using a proportional representation method.
    - „A person entitled to vote has 1 vote for the **companies list** of an interest group. An interest group has for each company of its companies list a separate **candidates list.**
      The first elections will show whether the interest groups that stand for election are more like parties, as we know them from parliamentary elections, or are rather other organizations.
      Example *for the distribution of SB-seats: Since proportional representation is used, a companies list with 20% of the vote, for example, gets about 20% of the seats. Which companies list gets the first, second, ... last seat can be seen with proportional representation (with a "highest averages method"). If a companies list gets the 10th seat as first seat, then it is possible that for the company on position 1 of this companies list all SB-seats have already been distributed, since 9 seats have already been distributed to other companies lists. In this case, a candidate for the company on position 2 of this companies list receives a seat if there is still a seat available for this company.*

In more general terms, this means: The later a seat is distributed, the less likely it is to get a seat in a particularly desired company.
In a companies list, a company can appear more than once, so that an interest group can have more than one seat on the same supervisory board. ..."

- None of the three groups dominates the others.
- Whether a company is large enough for this co-determination depends not only on a minimum number of employees, but also alternatively on minimum financial values.
- A part of the representatives of the employees can be elected also from employees who do not work in the respective company.
- This co-determination proposal pays particular attention to functioning internationally.
- With a proposal to introduce a more modest form of this co-determination in Europe to start with.

f) 2022, Goliathwatch:

I am active at Goliathwatch.
In https://goliathwatch.de/third-group (pdf) is the text "Civil society co-determination in big companies". In it 4 basic points for co-determination with third group are mentioned:

1. The third group should not be elected by the other two groups.
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 …
3. This co-determination should be transnational.
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.

For the simple election of a third group this text says:
"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. ..."

Footnotes:

1 Compare in Lyon-Caen section „§ 1 – Das deutsche Beispiel" on pages 39-42.

2 "Mitbestimmung, Wirtschaftsordnung, Grundgesetz - Protokoll der Wissenschaftlichen Konferenz des Deutschen Gewerkschaftsbundes vom 1. bis 3. Oktober 1975 in Frankfurt am Main", published by Heinz O. Vetter, 1975, Europäische Verlagsanstalt

3 "Mitbestimmung für die Europäische Aktiengesellschaft: Nützliche Lehren aus mehr als dreißig Jahren Seifenoper" of Arndt Sorge, 2006, WZB discussion paper (SP III 2006-204)

4 Pages 96 and 99 (points 13. and 23.) in: "Report of the Committee of Inquiry on Industrial Democracy", Chairman Lord Bullock, 1977