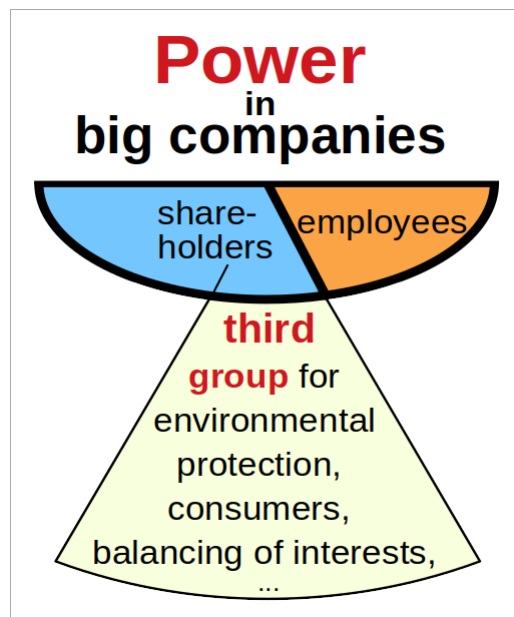


Co-determination in big companies: Proposal with third group



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 population.
- No group dominates the others.
- Election of the group "population" with simple voting: With a **single vote** a voter can elect SB-members for several companies. (4.1.1)
- 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 SB-members of the employees can be elected also from such employees who do not work in the respective company.
- This is to become a **democratic minimum standard** for big companies.

1. basic issues

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- C. alternative and more direct election and decision procedures
- D. smaller medium sized companies
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1. basic issues**1.1 democracy, power and property/possession**

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 or possession. This power through property or possession 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** (according to the co-determination law from 1976): 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 the 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**

- The board of managers cannot be elected by one of the 3 groups alone.
- Because there is no clear majority, one-sided positions can hardly be carried through. This applies both to the SB and to the board of managers elected by the SB. Whether it is about the highest possible dividend for the shareholders or about high salaries for the employees: Both interest groups do not have the majority to make such decisions 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 protection of environment.

2.2 other consequences

- 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 can not be enforced only by shareholders.
- Since, as an alternative to the number of employees, it also depends on financial minimum values whether this co-determination is applied, 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 become wider, and so more balanced. In the future, business associations that lobby could be divided into general business associations, and those business associations that represent 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 third 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).
- The new group "population" 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 that are not or not directly represented on the SB. These groups can flexibly be dealt with outside of the statutory corporate co-determination in each company in a way that is specifically suitable for a particular company.
- If interest groups, that stand for election in the group "population", can agree on common aims, then through them can be acted on economy more strongly, e.g. with regard to social issues, human rights, protection of environment, tax justice. Such influence can be all the stronger the less such agreements are limited to individual companies. This is particularly important at the international level, where democracy is more difficult to implement.

3. size of a company

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

- share value or other sales value, turnover, balance sheet total of a company;
- especially in financial companies: value of assets, that they manage for their customers.

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

	big companies	medium-sized companies
ratio of votes in the SB	$\frac{1}{3} : \frac{1}{3} : \frac{1}{3}$	$\frac{1}{2}$ for shareholders, $\frac{1}{2}$ for employees + population together
employees	more than 1000	100 - 1000
financial values	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.

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

For companies with up to 500 employees (or equivalent financial value), this co-determination can be optional (details are in appendix D).

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 core

Basic idea: With 1 vote, a person elects SB-members for several companies, 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.

- Alternatives to who has the right to vote:
 - Alternative 1: People from 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 persons entitled to vote get the right to vote for a certain year or month by a random process. In this case, elections can be held more often.
For the random selection of voters, certain data (e.g. date of birth or ID card number) can be distributed among several lists. These lists are then assigned to a year or month by drawing lots.
- For the smallest companies with 3-groups-co-determination, the following may apply instead: Existing regional democratic bodies elect election committees that decide on the filling of the SB-seats of the group "population".

4.1.2 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 filled by 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 these national votes, the same companies lists are elected, which are also elected with international votes; with one specialty: at national level, companies are ignored that have their 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 the proportional representation procedure from 4.1.1. During the seat distribution at the international level, care is taken to ensure that a companies list does not receive too many seats on some SBs as a result of the division into national and international counting. Example:

If, in the distribution of seats at the international level, a companies list is entitled to 1 SB-seat, but has already won 1 seat on the same SB at the national level, then this companies list will also in total receive only 1 seat on this SB.

b) 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.

c) 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 (even if it were only 9% instead of 20%, it would remain at 12.5% of the international votes for this state). For 7.5% (20%-12.5%=7.5%) of these companies the SB-seats are filled only by votes that come out of that state. These 7.5% of companies could be selected at random, with the largest companies being excluded from this random selection.

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.

d) 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.

4.1.3 in addition, if shareholders have half of the SB-seats and SB-votes

Variants in which the shareholders have half of the seats and votes 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 and votes on the SB then it is appropriate to make it unlikely that population representatives have voting rights in the board,

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

For this in large companies with many employees can apply that the group population has only 2 SB-seats and votes, 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.

Another possibility: SB-members of the group "population" can decide that certain members of the group "population" do not have the right to vote on a SB (but these members remain SB-member). At the same time,

an equal number of members of the shareholders then lose their voting right (e.g. members who received the fewest votes in an election; or according to drawing of lots or another procedure chosen by the shareholders).

Alternatives to decide this:

- Alternative 1: SB-members of the group "population" can decide with a $\frac{2}{3}$ majority (also jointly for several SBs).

This procedure can also be used, if the shareholders have less than half of the SB-seats but the procedure from 4.2.b.2 is used.

- Alternative 2, if a company has many employees (and has only 2 SB-members of the group population): This is decided in the supervisory board with half of the votes of the group "population" and the majority of the votes of the employees. (A possible cancellation of this withdrawal of voting rights could take place with a majority of the votes of the group "population" or a majority of the votes of the employees).

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.

The co-determination, in which the shareholders have half of the seats and votes and the group "population" has 2 seats and votes, is referred to below as "modest" 3-groups-codetermination.

This modest 3-groups-codetermination is stronger than the co-determination of the co-determination law from 1976 (which is described in 1.2), but less far-reaching than 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.

In order to break the deadlock between shareholders, on the one hand, and employees and population, 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 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 members of the SB: The neutral person must receive $\frac{2}{3}$ 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 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 or high-tech 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 for the SB-seats of the shareholders 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 and votes (see 4.1.3)
- 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

- Maybe in addition there should be an alternative procedure for some cases, 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 through company-specific consumption taxes (to also consider supply chains for the level of consumption taxes, blockchains or holochains can be used).

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 companies from states without this co-determination

Companies that do not have their headquarters in a state with this co-determination may be interested in introducing such co-determination for itself, e.g. if this co-determination plays a role in state or private purchases or in taxes.

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 4.1.2.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 asset 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 candidates list, which has only 2 candidates. And these executives each have 2 votes for this candidates 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 or high-tech 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. In practice, this does not seem to have much relevance.

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:

	big companies	medium-sized companies
members	more than 100,000	10,000 - 100,000
employees	more than 1000	100 - 1000
financial values	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. But they can give up their voting rights voluntarily. For example, for single votings every population-representative can voluntarily give her or his voting right to all employees or to all shareholders. So e.g. 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, people 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 (shareholders' meeting) 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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