

## Role of co-determination versus shareholder-oriented corporate governance

### Three elements of co-determination – a model of cooperation:

- collective participation (collective agreements with sectoral trade unions, trade union mandates in supervisory boards),
- works councils at establishment and group level,
- employee representation in supervisory boards

- **Stakeholder approach:** „*The Management Board is responsible for independently managing the enterprise in the interest of the enterprise, thus taking into account the interests of the shareholders, its employees and other stakeholders, with the objective of sustainable creation of value.*“ (German Corporate Governance Code, 4.1.1)
- **Dualistic model** with managing board and supervisory board and dominance of **concentrated ownership**
- **Workers´ Participation increases social partnership and sustainability**
  - Integral part of corporate governance (**stakeholder approach**)
  - **Sustainability: long-term interest** as a balance to short term profit maximization
  - Co-determination is an effective instrument for **reconciling the differing** interests in a company
  - Co-determination increases **motivation, job loyalty** and **productivity**
  - Guarantee for **social peace and economic stability** (economic crisis)
  - Integral part of **social market economy** and **social Europe** (EU Treaty)

### Government Commission (Biedenkopfkommision) on the future of co-determination 2006:

„*In the view of the academic members, the **involvement of employees at workplace level and on supervisory boards** has succeeded in the task of providing an effective instrument for **reconciling the differing interests of employees and employers, particularly in economically difficult times**. The co-operative approach of the German system of employee involvement has not simply had a positive impact on the **motivation** and **sense of responsibility** of employees; it also has important **social effects** through its contribution to the maintenance of **social harmony**. Companies can and should take competitive advantage of the **productivity** provided by co-operation.*“

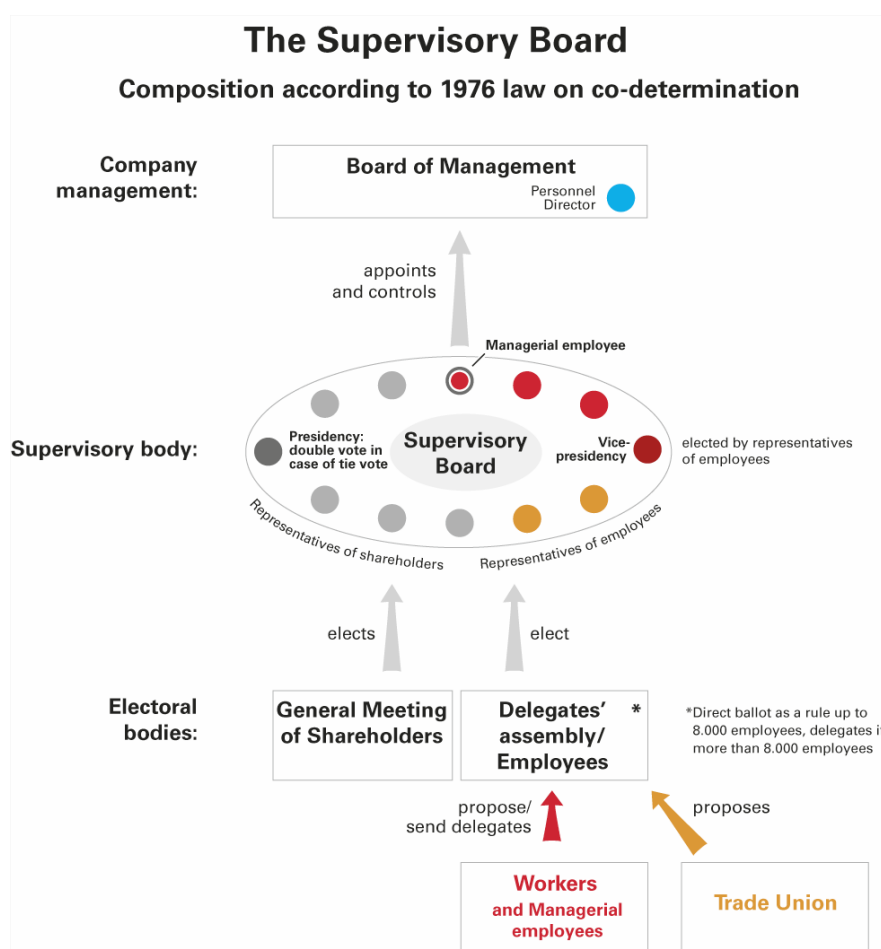
### Conclusion:

- ➔ Workers´ participation at workplace and board-level protects against a short-term focus on profit and helps to build sustainable companies
- ➔ Co-determination and social partnership is one reason for success of the German economy in the economic crisis
- ➔ Despite success during the crisis and international recognition the model is under threat in the European internal market
  - Dominance of Anglo-Saxon corporate governance thinking (monistic board model, share holder orientation, independence, professionalisation)
  - Corporate mobility and competition of company legal forms (ECJ rulings)
    - ➔ Race to the bottom?

## Some facts and explanations to the German system

### Supervisory board: two-tier system

- **Parity:** company with more than 2,000 employees: employee representatives of the company and external representatives of the trade union; decisive vote of chairman who is a representative of the shareholders.
- **1/3 participation:** company with more than 500 employees
- Same rights and obligations for employee representatives and shareholder representatives, including confidentiality
- Main responsibilities of supervisory board members:
  - Election of management board and pay scheme
  - Monitoring of management board and business operations including strategy
  - Right to approve transactions of fundamental importance
    - decisions or measures which fundamentally change the asset, financial or earnings situations of the enterprise, e.g. restructuring, takeover, credit line

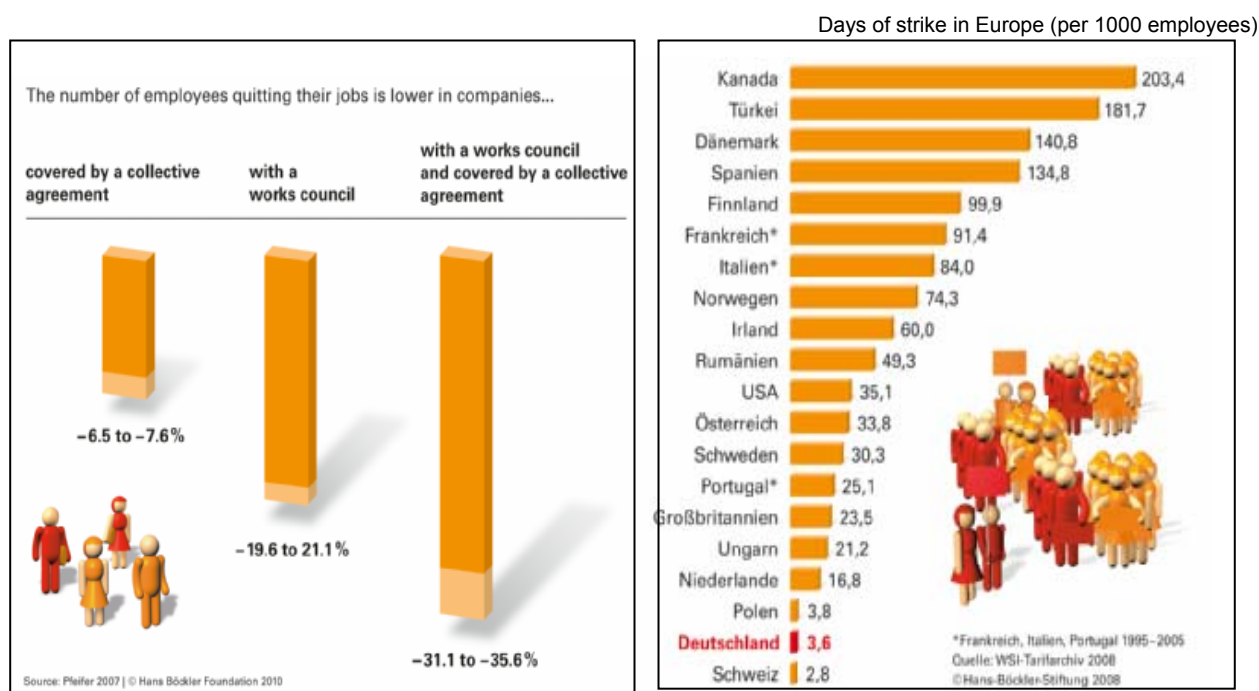


Hans-Böckler-Stiftung 2012, [http://www.boeckler.de/pdf/mbf\\_umb\\_engl.zip](http://www.boeckler.de/pdf/mbf_umb_engl.zip)

**Companies with board-level employee representation (> 2000 employees, parity)  
(31 December 2011)**

Company legal form	31.Dec.2010	Change by			31.Dec.2011
		Entry	Outflow	Legal Form	
AG	281	5	14	+ 4 / - 9	267
SE	11	-	-	+ 1 / - 1	11
GmbH	345	10	22	+ 11 / - 6	338
KGaA	13	1	-	+ 2	16
Kapitalges. & Co. KG	24	-	4	- 2	18
Genossenschaften	8	1	-	-	9
<b>Total</b>	<b>682</b>	<b>17</b>	<b>40</b>	<b>+ 18 / -18</b>	<b>659</b>

**There are about 1500 companies with 1/3-parity (2009).**



Relevant web-links:

Hans-Böckler-Foundation

[www.boeckler.de](http://www.boeckler.de) (with English content <http://www.boeckler.de/37080.htm>)

English version of German Corporate Governance Code

<http://www.corporate-governance-code.de/index-e.html>