Session 3:
Development of Workplace Representation in Germany

PD Dr. Martin Behrens

WSI Summer School
IG Metall Training Facility Pichelssee, 19 September 2012
Contents

1. History and structure of establishment-level codetermination
2. Works Councils: Trends and Developments
3. The Economic Effects of Works Councils
1. History and Structure of Establishment-level Codetermination
What is a Works Council?

- Elected by the entire work force (not just union members)
- Different representative bodies for the public sector and religious organizations
- Establishments in private sector with 5+ employees
- Number of council members increases along with establishment size (5-20 employees: 1 works council member, 21-50: 3, 51-100: 5)
- Establishments 200+: full-time works councillor
- Establishments 100+: Economic Committee
Works Constitution Act

- Roots in the Weimar Republic „Betriebsrätegesetz“ 1920
- Works Constitution Act, first enacted in 1952, substantial revisions in 1972 and 2001
- „Dual System“ of interest representation
## The „dual system“

<table>
<thead>
<tr>
<th>Level</th>
<th>Establishment</th>
<th>Above establishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key actors</td>
<td>Works councils, plant management</td>
<td>Labor unions, employers‘ associations, single employers</td>
</tr>
<tr>
<td>Major law applicable</td>
<td>Works Constitution Act</td>
<td>Collective Bargaining Act, Section 9 III German Constitution</td>
</tr>
<tr>
<td>Major key tasks</td>
<td>Regulation at the workplace level, applying content of collective agreements</td>
<td>Negotiating collective agreements on wages, hours and working conditions</td>
</tr>
<tr>
<td>Dominant mode of conflict resolution</td>
<td>Arbitration panels, withdrawal from cooperation, certain pressure tactics</td>
<td>Strike, lock-outs, go-slow etc.</td>
</tr>
<tr>
<td>General principles</td>
<td>Integrative bargaining: cooperation, „peace obligation“</td>
<td>Distributional bargaining</td>
</tr>
</tbody>
</table>

Behrens
Share of WCs saying that they actively recruit union members

- 500 to 999: 59% (2007), 70% (2004)
- 200 to 499: 54% (2007), 59% (2004)
- 100 to 199: 52% (2007), 53% (2004)
- 5 to 49: 49% (2007), 38% (2004)
- All: 49% (2007), 49% (2004)
Hierachy of participation rights: Information, Consultation, Veto- and Codetermination rights

Areas for participation: social issues, work environment, individual employment relationship, business strategy
Example 1: Veto-Rights in the Case of Dismissal

1. Employer intends to dismiss employee
2. Inform Works Council: Who, when, for which reason?
3. Time period for deliberation (1 week)

What might happen?

**Option 1**: Employer *does not* inform/consult WC: dismissal violates the law

**Option 2**: Employer *does* inform/consult, WC remains *silent*: employer can proceed with dismissal

**Option 3**: Employer *does* inform/consult, WC *agrees*: see Version 2

**Option 4**: Employer *does* inform/consult, WC *disagrees*: Employer has to refer to the local labor court to replace WC‘s veto
Codetermination rights

- distribution of working time
- extension of regular working time
- principles for workers taking vacation time
- surveillance
- occupational safety and health
- company services: cafeteria, sport facilities, housing, childcare etc.
- general principles of renumeration, standards for performance based pay
- group work
How do Codetermination Rights Work in Practice

- Issue subject to codetermination
- Management or works council initiates negotiations
- Outcome 1: Management and WC agree on joint policy and conclude a **works agreement**.
- Outcome 2: Management and WC disagree and decide not to pursue issue any longer
- Outcome 3: Also disagreement but one party refers issue to **binding arbitration** (*Einigungsstelle*). The arbitration panel (equal number of members from both sides and neutral chairperson) issues a binding decision (**works agreement**).
2. Works Councils: Trends and Developments
Establishments with 5 and more employees: Share of establishments with works council

- 5 to 50 employees: 6% West Germany, 6% East Germany
- 51 to 100 employees: 38% West Germany, 37% East Germany
- 101 to 199 employees: 62% West Germany, 58% East Germany
- 200 to 500 employees: 78% West Germany, 72% East Germany
- More than 500 employees: 88% West Germany, 92% East Germany

Comparing West Germany and East Germany across different employee size categories.
Establishments with 5 and more employees: Share of employees working in an establishment with WC.

- 5 to 50 employees:
  - West Germany: 10%
  - East Germany: 11%

- 51 to 100 employees:
  - West Germany: 38%
  - East Germany: 39%

- 101 to 199 employees:
  - West Germany: 63%
  - East Germany: 59%

- 200 to 500 employees:
  - West Germany: 79%
  - East Germany: 75%

- More than 500 employees:
  - West Germany: 92%
  - East Germany: 92%

- All employees:
  - West Germany: 44%
  - East Germany: 36%
Share of employees working in an establishment with a Works Council (1993-2011)
Establishments/employees with works councils (2011, West Germany)
3. Economic Effects of Co-Determination at the Establishment Level
Productivity

More recent studies predominantly find positive associations between productivity and works councils; some studies find effects to be not significant.


Factors moderating the effects of works councils: positive effects are stronger when: establishment is covered by a multi-employer collective agreement, large establishment, no profit sharing schemes for management.
Wages

- Only few studies do analyze effects on wages: two of these studies find positive effects of WC on wages, one does not.

- In the literature there is indication, that WCs do contribute reducing the gender pay gap.
Profits

- **subjective estimates on company’s profits**: studies tend to find a negative influence of WCs
  

- **hard profit indicators**: studies tend to find a positive influence of WCs
  
  (Zwick 2007, Mohrenweise/Zwick 2009)
Innovation

- No significant association between WCs and innovation at the level of production technology/organization and companies’ investment behaviour.

- There is, however, evidence that WC’s positively influence certain types of product innovation.
**Employment**

- WC’s do reduce workforce fluctuation  

- WC’s improve companies ability to fill vacant positions with qualified applicants  
  (Backes-Gellner/Tuar 2009)

- Development of employment level: contradictory results
Working time

- Usage of overtime work: no significant influence

- but: positive association between WCs and the existence of working time accounts
  
4. To wrap it up

- Rather modest decline of Works Council coverage
- However, small firm sector only weakly covered
- Close link between WC and unions
- WCs mostly pursue „integrative bargaining“ in contrast to „distributive bargaining“
- Research has given little reason to assume, that WCs are bad for business