

Co-determination and new corporate cultures -

Survey and perspectives

Report of the Co-determination Commission

- Foreword -

**Bertelsmann Foundation
and Hans-Böckler-Foundation**

(publishers)

Verlag Bertelsmann Stiftung

Gütersloh 1998

Foreword

At its sixth and final meeting on 22 April 1998 the Kommission Mitbestimmung (Co-determination Commission) unanimously adopted the following "Recommendations: Shaping the Co-determination of the Future". The Commission had been set up back in 1996 by the Bertelsmann Foundation and the Hans Böckler Foundation with the aim of collating the practical experiences gained with co-determination and of offering advice and making recommendations on the way it should be developed in future. The Commission consisted of leading figures from the business community, trade unions, collective organisations and politics; the accompanying social-scientific work was conducted under the leadership of Prof. Dr. Wolfgang Streeck, Director of the Max Planck Institute for Social research in Cologne¹.

The central task of the Commission, which had been proposed by the Foundations and accepted by the Commission members, was based on the conviction that co-determination constitutes one of the central pillars of Germany's economic order, and must be retained and developed further as an element of the social market economy. All the participants were in agreement that co-determination is oriented towards cooperation and is therefore incompatible with any form of confrontational ideology. Where it functions in accordance with the idea of cooperation, it is in equal measure a means of social integration and of effective corporate leadership, combining as it does social responsibility with economic reason. Modern leadership in a co-determined company does not rely on orders from the top, but rather on creativity from the bottom, by incorporating employees at all levels into the firm's processes and opening up opportunities for autonomous action.

This recognition, which had emerged not least from previous projects conducted by both of the Foundations on the subject of corporate culture, has certainly exerted a

¹ The full version of the concluding report of the Commission is available in German: Bertelsmann Stiftung and Hans Böckler Stiftung (eds.), *Mitbestimmung und neue Unternehmenskulturen - Bilanz und Perspektiven: Bericht der Kommission Mitbestimmung*, Gütersloh 1998.

not inconsiderable influence on the members of the Commission. And it led to the belief that a corporate culture oriented towards both the market and the workforce is an essential competitive advantage; in this co-determination is a central, and determining factor.

The Commission has made an extremely thorough study of co-determination in practice, in order to derive recommendations for those bearing responsibility in related areas, be it in companies, collective organisations, trade unions or the political sphere.

More than 50 experts were called upon to contribute their knowledge and experience of co-determination, including entrepreneurs and managers, trade unionists and works councillors. Comprehensive preliminary work was conducted in the form of numerous hearings with social scientists and on three committees. In addition, members of the Commission conducted a series of interviews with representatives of collective organisations and trade unions and with politicians and experts from the field.

Given the complexity of the topic and the unanimous view of the members of the Commission that the common core of their findings should not be obscured by differences of detail, each and every member of the Commission cannot be held to each and every formulation in the following recommendations. In the interest of reaching a joint position, members have in some instances accepted certain formulations even though they themselves would have preferred to have gone further or not as far. For the sake of the project as a whole, mutual concessions were and are always necessary on individual questions; it was only on the basis of this willingness to compromise that the concluding report and the recommendations could be unanimously adopted.

The atmosphere in the Commission was at all times businesslike, fair and characterised by mutual respect. Criticism was seen as evidence of devotion to the common task. The *esprit de corps* within the Commission proved extremely productive.

The Foundations have successfully shown that personalities from different interest groups are perfectly willing to act together. This is conditional, however, on clear recognition of the overriding goal and a strong commitment to achieving a result in an atmosphere of mutual tolerance. From this perspective, the Co-determination Commission constitutes an example of a trust-based culture.

The Foundations have sent a signal. They call on the "forces of optimistic reason" across all political and social boundaries to overcome tactical foot-dragging in all its forms and to come to the realisation that successful economic modernisation must incorporate interpersonal relationships, must, in other words, be based on a corporate culture that points to the future.

Prof. Karl-Heinz Briam

Chairman of the Co-determination Commission

Co-determination and new corporate cultures -

Survey and perspectives

Report of the Co-determination Commission

- Summary of the Report -

**Bertelsmann Foundation
and Hans-Böckler-Foundation**

(publishers)

Verlag Bertelsmann Stiftung

Gütersloh 1998

The development of co-determination as an institution

1. In its present form, co-determination can be traced back to a number of different and in some cases contradictory traditions and experiences. At no point in time has co-determination been a uniform system cast out of a single mould. In the various historical forms in which it has appeared it has always represented the result of compromises between various motives and interests and already extant institutions that were themselves the result of historical development processes (Section 3.1).

2. Co-determination corresponds to a number of traditional specificities of the mode of operation of German companies, in particular their product strategy and organisational structure; it reinforces these characteristics, just as it, in turn, is supported by them. Since the start of industrialisation German firms have, in international comparative terms, been characterised by an extensive use of occupationally specific qualifications, flat hierarchies, a pronounced degree of integration of dispositive and executive activities and a decentralisation of responsibility and decision-making on a technical-occupational basis. This accords with a tendency for German firms to occupy a strategic position in markets with high demands in terms of product differentiation and product quality ("diversified quality production"; Section 3.2).

3. The history of co-determination since the Federal Republic of Germany was founded is the history of its growing plant-level orientation. This, in turn, was the inevitable consequence of the integration of co-determination into a market economy, to the social acceptance and social "dimension" of which it has made a vital contribution. Co-determination at plant and company level, where they have existed alongside one another, have become increasingly closely intertwined. In practice, co-determination at company level has become the 'extended arm' of plant-level co-determination, whereby as a rule the leading members of the works council also represent the workforce on the supervisory board, where they essentially use their position as established by company law (i.e. on the supervisory board) to extend their scope for action and gaining access to information granted by works constitution legislation (i.e. on the works council). The reversal of the relative importance of the two forms of co-determination compared with the early years of the Federal Republic that this implies was ratified and driven forward by the legislation enacted during the

1970s, which strengthened the role of the works councils, but refrained from extending the company-level co-determination regulations applying in the coal and iron and steel industries (Montanmitbestimmung) to the rest of the economy (Sections 3.4 and 4).

4. At the end of the 1990s, and in any conceivable future scenario, co-determination is nothing but an element of the managerial and decision-making structure (corporate governance) of profit-maximising companies exposed to competition on the market, whose strategic positioning it seeks to influence, in the interest of the employees it represents, internally and within the framework set by the market order. In this function, co-determination is no longer fundamentally challenged by employers as a body; the ideological debates, that continued into the 1970s, on the reconcilability of co-determination with the market economy and private property have come to an end (Section 3.5).

5. The increasingly plant-oriented nature of co-determination is also reflected in a changed relationship vis-à-vis the trade unions. The external trade union representatives on the supervisory board of codetermined companies now see their primary task as that of advising the internal representatives of the workforce. Concern that they might operate as agents of a centralised coordination of the co-determination actors by the trade union - that is as a sort of private central planning apparatus - is now seldom voiced. It is still the case that most works council representatives and virtually all of the supervisory board members representing employees are trade union members. Non-union members elected to the works council often join the relevant trade union during their period in office in order to benefit from its expertise and political support. The trade unions, in turn, are dependent on the cooperation of the works councillors, traditionally in attracting new members and increasingly also in implementing the collective agreements reached at supra-plant level (Section 3.6 to 10).

6. Consequently, the distinction between and interaction of collective bargaining and co-determination - or, to put it another way, between supra-plant collective (pay) agreements and plant-level agreements - can be seen as the characteristic centre-

piece of the German system of industrial relations since the Second World War. To the extent that structural change is increasingly necessitating solutions that come under the aegis of collective bargaining but must be adjusted to the conditions prevailing in individual plants, the number of points of contact between the two systems is also increasing, thereby complicating the interrelationship between co-determination and regional-sectoral collective agreements (Section 3.11)..

7. As an element of the corporate governance of the company, co-determination , particularly following the second wave of legislation during the 1970s, has proved to be an effective means of ensuring the social integration of the company. By placing the involvement of the work force in decision-making by employers on a legal basis, and thus, in principle, removing it from workplace disputes, the German system of co-determination has reduced the potential for conflict between employer and work-force. The trust-based cooperation this has made possible has been conducive to a broad-based implementation of non-hierarchical and information-intensive managerial methods and the establishment of cooperative corporate cultures (Section 3.12 to 13).

8. The German system of co-determination corresponds to an employment model oriented towards the long-term tenure of core workforces in order to make substantial investment in human capital profitable. The rights to organisational participation respond to established expectations by German workers that they will be consulted on important decisions in line with their high level of qualifications and the loyalty to the firm expected of them. The organisational structure and product policies of German firms, in turn, have come to rely on the ready willingness of employees to identify with the strategic aims of the company and to assume responsibility. Co-determination both calls forth such behaviour institutionally and recognises it culturally (Section 3.14).

9. Within the company co-determination helps to bridge over hierarchies and to reduce the social divide between "top" and "bottom". In so doing it is conducive to the social integration of society as a whole. Co-determination at plant level, in particular,

offers a substantial number of citizens the opportunity to assume democratic responsibility. Experience with co-determination has shown that firms can find product and market strategies in the implementation of which employee participation and the underpinning of workers' rights by means of representative institutions are not barriers to efficiency, but, on the contrary, productive resources (Section 3.15 to 18).

10. In the course of its consolidation following the legislative amendments passed in the 1970s and its development into an infrastructure of plant-level integration and cooperation, co-determination has, in spite of the still uniform nature of its legal base, become increasingly highly differentiated in response to the specific technological and economic conditions prevailing in different sectors and companies. The internal differentiation of the system of co-determination is essentially the result of a process of institutional maturity, as a consequence of which co-determination has become less reactive and is increasingly used to accompany decision-making processes; its actors are frequently called in before decisions are taken, even where this is not required by law. In practice co-determination legislation is being applied less and less schematically, and increasingly in a way that takes account of the prevailing circumstances and the practical requirements of the specific case at hand (Section 3.19).

11. One reason for the growing diversity in the way co-determination is implemented in practice is the growing importance of informal additions to and modifications of formal co-determination legislation, in the context of cooperative corporate cultures, in which the joint search for appropriate problem solutions takes the place of formalistic claims to legal entitlements. Employer initiatives to develop cooperative corporate cultures have proved just as compatible with the legal basis of co-determination as the new decentralised structures introduced in many companies. In many cases it has proved possible to adapt the legal structure of co-determination to specific or changing circumstances by means of contractual agreements, particularly at plant level (Section 3.20 to 23).

12. In the second half of the 1990s, the increasingly competitive national and international environment, the acceleration of technological, economic and organisational

change, and the emergence of a trend towards a Europeanisation of certain aspects of labour relations have confronted the German system of co-determination with new challenges. The evolved structures of co-determination have come under adjustment pressure from the changed conditions for success on goods and capital markets, and the increasing locational competition between societies with different social regimes. At the same time, changes in the structure of companies, plants and employment relations are undermining important practical prerequisites of effective co-determination in its prevailing form and threaten to erode its legal resources.

- As a representative system of employee participation, co-determination is conditional on a centralisation of decision-making processes within plants and companies at the level of the elected representative organs. Yet it appears that, given the changed conditions for success on increasingly competitive international markets, it is those companies that have to a significant extent decentralised their decision-making processes that are at an advantage.
- To a greater extent than in the past, tougher international competition requires companies to provide customised solutions for the increasingly decentralised organisation of their labour relations and decision-making processes. As a consequence, it is to be expected that in practical or formal terms statutory co-determination law will be reduced to the procedural regulation of decentralised bargaining processes, even down to the level of the individual workstation. At the same time the emphasis of co-determination is shifting away from the defensive maintenance and realisation of rights towards the permanent incorporation of workforce interests into a decision-making process targeted towards international competitiveness and gaining support for the implementation of strategic decisions within the firm that have been adopted in consensus.
- Under changed market conditions, co-determination most support the transition from a standardisation of performance and performance demands towards new project-oriented and customer-oriented forms of work. As a result and in response to new economic necessities, a shift will occur in the balance between the traditional protective functions of co-determination and the contribution it makes to ensuring friction-free production processes.
- At the same time, despite the proven ability of co-determination to adapt auto-

mously to new conditions, the reality of companies and plants threatens to 'grow out of' the established legal forms of co-determination. The growing importance of small and medium-sized enterprises, and the decline in employment in manufacturing industry and its expansion in services have increased the size of the 'co-determination-free zone', i.e. those companies with neither co-determination on the supervisory board nor a works council. New logistics concepts by means of which plants belonging to various companies are closely networked, with a strict division of labour, make it difficult to bring together employee interests that transcend the individual establishment in a way traditionally performed by company or group-wide works councils. The growth of precarious forms of employment, the replacement of employees by genuinely or purely formally self-employed persons, flexible working time regimes and part-time employment tend to reduce the proportion of the workforce that is interested in or represented by co-determination. Similar consequences result, albeit in a different way, from the growing proportion of the total workforce employed by German firms that work abroad, and the high and stable levels of mass unemployment (Section 3.24 to 29).

The development of co-determination in figures

13. The number of companies subject to the specific form of co-determination in the coal and steel industries (Montanmitbestimmung) had fallen to 31 by the end of the 1980s. Due to reunification this figure arose in 1991 to 46, and currently stands at 45. The number of employees in this sector fell during the 1980s from 434,000 in 1985 to 352,000 in 1990. Following reunification it briefly rose to 492,000, only to decline to 307,000 by 1994, that is below the previous West German level. In 1996 the number of employees in companies subject to this form of co-determination amounted to around 400,000. This means that at least 100,000 employees active outside the coal and steel industries were represented by supervisory boards set up according to the Coal and Steel Co-determination Law of 1951 (Section 4.1 and 2).

14. In 1996 728 companies were co-determined on the basis of the 1976 law. Back in 1983 the figure had been 481, since when there has been a steady increase. In 1990 the figure was 522. In 1991, a year after reunification, it initially jumped up to

575, and subsequently rose to 719 in 1995. The number of companies and corporate groups with more than 2,000 employees that are not subject to co-determination is around 75 (Section 4.3 to 5).

15. In the mid-1980s the number of employees in firms co-determined under the 1976 law was estimated at around 4.5 million. By 1996 this had risen to 5.0 million. The figures show that the increase in the number of co-determined companies of more than one third since the mid-1980s has been accompanied by a substantially slower rise in the total number of employees in these companies (Section 4.6 to 9).

16. According to figures provided by the German trade union federation (DGB), in 1994 works councils were elected in 40,000 enterprises with a total of around 220,000 members. In West Germany the number of enterprises with a works council had gradually declined from 36,300 in 1981 to 33,000 in 1990, the number of works council members declining from 199,000 to 184,000. According to figures provided by the Institut der deutschen Wirtschaft, in 1994 around 78 percent of those eligible voted in works council elections; in 1984 and 1987 the figure had been 82 and 83 per cent respectively. By far the largest share of works council seats were won by candidates of trade unions belonging to the DGB (Section 4.10 and 11).

17. The decisive factor for the existence of a works council is the size of the plant. Recent studies have shown that less than one per cent of manufacturing plants with between five and ten employees have a works council, whereas in plants with 250 or more employees around 98 per cent of enterprises have a works council (Section 4.12).

18. According to the European Trade Union Institute, there are currently 318 companies in Germany that are obliged by the directive on European Works Councils and the national law on European Works Councils (28 October 1996) to negotiate with their European workforces on establishing a European works council. By November 1997 69 of these companies had established European works councils; 669 German subsidiaries of foreign and German companies were represented by European works councils. Foreign and German companies subjected to the provisions of the

directive maintained around 2400 subsidiaries in Germany that could be represented by European works councils. In 1996 they employed around 4.5 million workers. It can be assumed that the vast majority of these are already represented by German works councils (Section 4.16).

19. In the private sector three zones of varying 'co-determination intensity' can be distinguished (Section 4.13 to 15 and 17):

- A zone of dual co-determination in which workforces are represented both by the employee representatives on the supervisory board - in accordance with either the coal and steel model or the 1976 Law - and by works councils. Given that virtually all enterprises belonging to companies subjected to co-determination on the supervisory board also have works councils, the employees in this zone correspond more or less exactly to those in co-determined large companies. In the mid-1990s the 774 companies subject to one of the two versions of company co-determination with equal representation on the supervisory board (paritätische Mitbestimmung) employed almost 5.4 million workers, representing 24.5 per cent of private sector employment. In the mid-1980s workers represented by these two forms of co-determination constituted 30.5 percent of total private sector employment;
- A zone of simple co-determination involving exclusively works councils in companies with no determination on the supervisory board. Currently, around 3.4 million employees, that is just under 15 percent of all socially insured employees in the private sector, are to be found in the zone of simple co-determination. In 1984 3.1 million people were employed in the simple co-determination zone, representing at the time around 19 percent of private sector employment;
- A co-determination-free zone, in which there is neither supervisory board nor works council co-determination. This consists primarily of very small companies with less than five employees, in which the Works Constitution Law makes no provision for the option of setting up a works council, and the overwhelming majority of companies with less than 20 employees. Yet the zone also includes a proportion of larger-scale service sector companies in which works councils have not been established. By the mid-1990s the co-determination-free zone in the pri-

vate sector had expanded to more than 60.5 percent of employees, from 50.6 percent in the first half of the 1980s. In absolute terms the number of workers not represented by co-determination at plant or company level has risen from 8.3 million in the mid-1980s to 13.8 million in the mid-1990s.

20. If the public sector, with its growing share of overall employment and the complete representation of its employees by "staff councils" (Personalräte) is brought into the analysis, a number of variables change, but the overall picture remains the same. In particular, even allowing for the expanding public sector, the co-determination-free zone has expanded by more than one fifth from 37 to almost 45 percent of employment. If the unemployed are included, in the mid-1990s 50.8 percent of the working population (excluding the self-employed) were not represented by co-determination organs, compared to 42.7 per cent in 1984 (Section 4.18).

The economic effects of co-determination

21. The German economy has achieved an extraordinarily high level of affluence and competitiveness in international comparative terms, particularly in the 1970s and 1980s. The industrial sector, exposed to global competition, and with a considerable number of large companies in which co-determination is particularly influential, has made a decisive contribution to this achievement. More specifically, for decades the German economy has almost continuously earned export surpluses, even though in international comparative terms it has a high and relatively narrowly dispersed wage structure. One of the most important reasons for this has been the high average level of productivity which, in turn, is due to persistently high investment and the large capital stock this has generated. Also characteristic of the German economy is the high level of education of its population and high levels of investment in industrial and public research and development (Section 5.1 to 8).

22. The competitiveness of the industrial core sectors of the German economy has meant that the process of deindustrialisation has proceeded comparatively slowly in Germany. This does not mean that structural change has been retarded, however. On the contrary, the persistent and in recent years increasing export successes of

German industry show that during the 1990s it has coped with structural change particularly well and competitively. Additional signs of this are the rapid development of producer services, the strong position held by leading-edge-technology sectors, and the far-reaching reorganisation of companies and plants currently underway, together with the rapid process made towards their internationalisation (Section 5.10 and 11).

23. The major employment problems facing Germany are largely to be found in the area of personal and especially low-skill services. Co-determination cannot be held responsible for the slow pace of transition to the service society, which is the most important reason for the high level of German unemployment. Given that the private service sector is dominated by small companies that do not usually have a works council, and certainly not a co-determined supervisory board, its inadequate development must be put down to other factors, possibly including inadequate inter-sectoral wage differentiation. To some extent the relative sluggishness of the growth of employment in personal services may be conditioned by the traditionally high competitiveness and employment-capability of the co-determined industrial sector (Section 5.2).

24. An objective evaluation of the employment effects of co-determination must, however, consider a number of countervailing effects. By helping, in conjunction with collective wage bargaining, to increase the capital intensity of the German economy, co-determination may have led to an excessive substitution of labour by capital. At the same time, however, it has raised the competitiveness of German companies and has safeguarded employment by virtue of the contribution it has made to improving the human capital endowment of the labour force and raising productivity through cooperation. In addition, in a number - indeed, an increasing number - of cases it has enabled a working time policy of work redistribution to be implemented at plant level, and has thus helped to maintain employment, albeit in defensive fashion. To the extent that co-determination has contributed to Germany's traditionally flat wage structure, it was able to do so primarily in those (industrial) sectors exposed to the world market whose share of overall employment is relatively high in Germany. Besides, the blame for excessive labour costs should be put primarily on

collective bargaining and social policy, rather than on co-determination (Section 5.13).

25. The extent to which co-determination has made a causal contribution to the prosperity of the German economy, and whether, conversely, this would have been even higher in the absence of co-determination, cannot be established with absolute certainty. The available econometric evidence is equivocal: quantitative studies that ascribe (usually weak) positive effects to co-determination for specific indicators of performance and periods of time must be offset against others that find (in most cases also weak) negative effects for other or the same indicators and periods. Statistically significant results are seldom and their explanatory value seems limited in the light of the results of other studies with which they cannot be easily reconciled (Section 5.14 to 18).

26. Nor are theoretical-deductive analyses illuminating. Some authors, for example, have ascribed negative economic effects to co-determination at company level, whose consequences they have modelled with the help of a theory of property rights; other authors, on the other hand, basing their arguments on theories of participation, have found efficiency-raising, i.e. positive effects. Similarly divergent results are generated by theories of co-determination at plant level. Models based on price theory treat co-determination as a result of a distortion of relative factor costs, more specifically of an increase in the costs of labour above its market price. By contrast, participation-theory approaches emphasise in particular the economic advantages of a stable workforce with low labour turnover and of a tried and trusted and socially integrated plant organisation (Section 5.19 to 21).

27. It is not possible to decide, fundamentally and once and for all, in favour of either property and price theories on the one hand or participation and cooperation theories on the other. Rather, it can be assumed that both approaches account for important partial aspects of reality, and that in the real world co-determination as an institution generates both efficiency-reducing misallocation and efficiency-raising productivity and cooperation effects. The net impact of these parallel and simultaneous partial effects cannot be determined a priori. Alongside the particular institu-

tional context, an important role here is played by the prevailing economic parameters, in particular whether and to what extent a company is active in markets in which operative capabilities that can be improved by participation and cooperation are honoured monetarily. It seems, in particular, that cooperation and trust within the company are a substantial competitive advantage in markets in which what counts is to offer changing, customised product variants - rather than price-competitive mass-produced products - with the help of flexible technology and work organisation and a high human capital deployment ("diversified quality production"). In such a context the efficient effects of co-determination exceed the inefficient effects. In price-competitive markets, on the other hand, in which "cooperation rents" cannot be earned and companies can prosper even with highly standardised products and working patterns, it seems conceivable that co-determination may primarily constitute a cost factor (Section 5.22 and 23).

28. There is some evidence for the view that co-determination in its present form is less appropriate to certain new exogenous requirements than to the external conditions prevailing in the 1970s and 1980s. To the extent that this is indeed the case, changes need to be made to the structure and mode of functioning of co-determination in order to defend its economic performance. The following are some of the new phenomena to which co-determination must adapt:

- An increase in the decision-making pressure and reduced decision-making times for companies operating on world markets. Shorter product cycles and, more generally, increasingly incalculable markets call for fast decisions, and make it more difficult for co-determined companies, as was previously the case, to offset extended consensus-forming times by short implementation times;
- Increasing cost pressure, even in markets for high-quality goods. The return of price competition to the high-price markets for high-quality products, which had long been dominated by German firms, prevents companies from using product innovations, particularly in the middle-technology field, as a substitute for process innovations in order to facilitate internal consensus building;

- The change in the predominant innovation paradigm. In its historically developed form, co-determination seems to be particularly conducive to incremental innovation, i.e. gradual and continuous improvements in products and processes within the boundaries of and with the means open to existing companies. Under the prevailing technological and economic conditions, however, it appears to be becoming increasingly important for the success of a company that it is able, alongside incremental innovation, to generate, absorb and quickly market basic or quantum-leap innovations;
- Reduced investor time horizons and the growing importance of capital markets for corporate financing. The extension and internationalisation of capital markets forces co-determined German companies to come to terms with investors who are increasingly demanding, short-term oriented, less loyal and willing to compromise, and who are used to indicating their preferences regarding corporate strategy and corporate earnings primarily via the capital market.
- High and persistent unemployment. The loss of full employment confronts works councils, in particular, with the question of how the increasing employment risks, divergent conditions of employment and the declining number of secure jobs are to be distributed between various groups of workers and between the employed and job seekers. Unlike in earlier times, under the conditions now prevailing the legitimacy of co-determination depends on whether it proves capable of representing not only the interests of the particular workforce in question, but also those of job seekers, and of reconciling the goal of stable employment with an opening up of internal labour markets in order to facilitate job creation (Section 5.24 and 25).

29. The impact of co-determination on employment and the scope for co-determination to contribute to solving the employment crisis depend to a very high degree on the economic and political context in which it is embedded. Whether or not, for instance, co-determination has the effect of closing internal labour markets is influenced by the level of aggregate demand, government labour market policy and, in particular, collective bargaining. If the negotiating partners at plant level have at their disposal suitable instruments, including (selective) working time reduction, social protection for part-time work and flexible forms of employment and partial retire-

ment, co-determination can help to realise at enterprise level a government economic policy and a concomitant incomes policy by collective pay bargainers that are oriented towards employment growth (Section 5.26).

Co-determination in the context of structural economic change in the 1990s

30. A process of broad and deep structural economic change has occurred in Germany, under difficult conditions, during the 1990s, the - by and large - successful course of which is one of the main reasons for the current economic upturn. Co-determination has not been an obstacle to this structural change, the aim of which has been to adjust to tougher competition in increasingly globalised markets. On the contrary, in many cases it has actively supported it, not least in those areas in which changes have required considerable sacrifices from workers (Section 6.1 to 3).

31. Where company management and co-determination representatives have made joint efforts to reattain or defend the competitiveness of the firm, in response to increasingly difficult market conditions and especially rising cost pressure, a process of cooperative modernisation was induced in the course of which changes occurred not only in the structure and strategy of the firm, but also in the practice of co-determination, in the latter case without any change in the legislative framework. Although structural change by no means proceeded co-operatively in all cases, the numerous examples in which this was the case show that it is possible for firms to adjust successfully to changed conditions within the German co-determination system and by the means it provides. To this extent the concept of cooperative modernisation represents a best practice of negotiated structural change, one that has proved possible in a sufficient number of cases and whose diffusion appears not only desirable, but also realistic (Section 6.4 to 7).

32. The institution of co-determination is conducive to a cooperative modernisation path, while at the same time rendering it more difficult to implement modernisation without the participation of elected employee representatives and to pursue a strategy of cost-cutting by cutting wages rather than raising productivity. Consequently,

in Germany cooperative modernisation is the method of adjustment to the increasingly difficult economic conditions that most readily suggests itself. Given the institutional conditions under which they operate, German companies, taken as a whole, appear better able than those in other countries to decentralise their structures lastingly and to develop cooperative corporate cultures in cooperation with elected employee representatives. In return, they are obliged to take account of their employees' vital interests and ensure that they are reflected in their day-to-day decision making process (Section 6.8 to 11).

33. Co-determination can facilitate workforce agreement to job losses that are necessary for economic reasons by enabling the elected representatives of the workforce, particularly where accompanied by corresponding collective bargaining measures, to exert an influence on the redundancy strategies actually adopted, and not least to exhaust all practical possibilities for work redistribution. At the same time, co-determination puts employees in a position to obtain from the owners and managers of the company credible assurances that their prime aim is to ensure the company's future and that employment maintenance is to be included in the catalogue of corporate goals as far as is economically possible. The willingness of employees and their representatives to play their part in introducing far-reaching changes and to support them through co-determination is generally conditional on an assurance of this kind (Section 6.12).

34. In the day-to-day life of modern corporate organisations, the transition to more cooperation-dependent forms of work organisation and the delegation of decision-making responsibility down to the individual employee frequently means that the form of co-determination that is based on, and is a response to, decisions taken by the employer at central level appears too formalistic, unwieldy, superficial and practically irrelevant. Consequently, in many companies reactive, ex post co-determination is being replaced by an ongoing incorporation of employee representatives in a joint information, search, learning and decision-making process, wherever this appears objectively necessary, and irrespective of whether participation is required by law. Against the background of formal legislation, which remains, as it were, in reserve, the precise nature of the role played, in particular, by the works

council is left to negotiated agreements adjusted to the situation at hand within the framework of a cooperative corporate culture; this permits an informal modification of the statutory provisions at any time (Section 6.17).

35. Cooperative modernisation also involves the consensual adjustment of the structure and mode of operation of co-determination to the specific conditions prevailing in the enterprise or company. In the best case, this occurs by embedding co-determination in a cooperative corporate culture that corresponds to the specific characteristics of the firm and in which participants can rely on informal agreements based on mutual trust to a greater extent than previously. Such a local optimisation of co-determination practice, which has the effect of increasing the extent of differentiation, cannot be generalised by legislative means. Rather, it requires learning processes on both sides, the results of which can be passed on from one firm to another, allowing for their respective characteristics, in the form of practical "co-determination know-how". Given that some firms have proved better in coping with the local optimisation of co-determination than others, the diffusion of the emerging best practice of co-determination in modern companies, allowing for their specific differences, constitutes an important practical task for co-determination in the coming years (Section 6.18 to 22).

36. Although in most cases co-determination is conducive to structural change and modernisation, the latter trends are creating a number of problems for the functioning of co-determination in its present form, problems that the co-determination organs at plant level are unable to resolve by themselves. Firms' ability to continue to utilise co-determination as a productive social resource in competition and structural change depends not least on whether it proves possible to adjust the institutions and practice of co-determination to the new forms of plant and company organisation demanded by the market. The following are some of the developments that are calling into question the effective functioning of co-determination in its traditional form

- the decentralisation of corporate decision-making;
- the trend towards a blurring of the distinction between employer and employee in systems of direct participation;

- changes in the modes of performance and pay determination within new, decentrally steered forms of work;
- the increasing replacement of employees by outsourced suppliers and subcontractors;
- the increasing heterogeneity of workforces;
- the increasing differentiation of corporate cultures and the associated delegation of regulatory issues from collective bargaining institutions to the social partners at plant level;
- the downsizing of companies, corporate entities and plants (Section 6.23).

37. In many companies in which, in the wake of structural change, co-determination has come up against the limitations set by its legal bases, workforce representatives and management have been looking for ways to adapt it to changed organisational conditions. The solutions found point to a high degree of joint improvisation and innovation capability. Further efforts and support from outside appear necessary, however, if it is to be ensured that co-determination remains functional in a newly structured corporate environment. The solutions adopted include the following:

- setting up group works councils, 'production location works councils' or joint works council bodies in dispersed corporate structures;
- orienting the work of the supervisory boards to the actual decision-making structures of the company or the group;
- extending the self-organisation and experimentation capabilities of co-determination at plant and company level;
- further improving the skills and information access of works council members;
- increasing the effectiveness of the advice given works councils by trade unions;
- contractual adjustments of co-determination rights and institutions to changed conditions (Section 6.24).

38. In a number of cases, workforce representatives, usually in conjunction with the trade union responsible, have agreed to far-reaching organisational restructuring programmes within the framework of so-called "production location agreements on job maintenance" (Standortvereinbarungen zur Beschäftigungssicherung). Such

agreements constitute a new form of participation by works councils and workforce representatives on the supervisory board in company decision-making, not least in its long-term planning. Such agreements have as their subject matter the competitiveness and the strategic prospects - in the broadest sense - of a company in a given production location; the negotiations leading to such agreements involve parameters ranging from market evaluation to the whole issue of cost factors. The outcomes consist of a package negotiated between employer and employees representatives consisting of medium-term measures aimed at safeguarding competitiveness and employment at a given production location, and usually oriented towards the economic parameters set by competitors either outside or within the company. The central element in such agreements are concessions by workers regarding working time flexibility and work organisation. The co-determination organs are involved in their implementation (Section 6.25 to 30).

Co-determination and collective bargaining

39. Although co-determination and collective bargaining are in principle independent regulatory systems, there are innumerable points of contact, resulting not least from the growing importance of the plant level in both systems. Collective bargaining and co-determination are mutually supportive; their interactive relationship, which assumes a different form depending on branch and sector, constitutes the central element of the German system of industrial relations. It is difficult to achieve cooperative relations between the works council and employers without the help of collective agreements; without effective plant level co-determination, collectively agreed framework regulations and minimum standards cannot be implemented in a differentiated way; without the scope for differentiating collective agreements, plant-level co-determination cannot perform its changing role in corporate adjustment to new competitive and labour market conditions. The interaction of co-determination and collective bargaining creates a scope for solutions appropriate to individual plants that does not exist in countries lacking co-determination, and helps strengthen Germany as a production location (Section 7.1 to 6).

40. Even now the institutions of co-determination at plant-level are being extensively used in order to implement collectively agreed regulations in a situation-specific, differentiated fashion. The collective agreements in force permit a high degree of flexibility and offer the social partners at plant level a considerable degree of decision-making freedom. In future this will be far more the case. On the other hand, collective agreements must respect the practical and legal limits to the regulatory capabilities of the social partners at plant level. Forms of implementation of branch/regional collective agreements at plant level that force tasks on the parties to co-determination that belong outside the co-determination system and by their very nature must be performed at supra-plant level, not only endanger collective bargaining, not least by undermining in the longer-term the trade unions' monopoly on the right to strike, but also co-determination itself (Section 7.7 and 8).

41. The undermining of valid supra-plant collective agreements via understandings at plant level endangers both the system of regional/industrial collective bargaining and co-determination. § 77 (3) of the Works Constitution Act protects the partners to co-determination from being obliged to deal with topics the treatment of which at plant level would in the longer run threaten cooperation between the works council and management on the basis of trust or would bring the works council into conflict with employees' negative rights of association or with the trade unions' monopoly on the right to strike. It is possible to both adhere to this rule and to create solutions that are flexible enough to respond to all conceivable economic and organisational conditions (Section 7.9 to 13).

42. The interaction between collective agreements and co-determination requires effective interest representation at plant level if it is to function properly. To the extent that a more flexible collective agreement transfers regulatory functions to the co-determination partners at plant level, the low density of works councils in small and medium-sized enterprises, in particular, poses a threat not least to the reform of collective bargaining, and thus to the effectiveness of the dual system of industrial relations as a whole (Section 7.14 to 16).

43. Although a growing number of companies are turning away from collective bargaining and co-determination, this is not yet characteristic of the system of industrial relations in Germany as a whole. The trend does indicate, however, in which areas co-determination and its relationship to collective bargaining must be developed further. The connection between general collectively agreed provisions and customised solutions at plant level makes unusual requirements in practical terms of all participants. Both plant level co-determination and collective bargaining must provide a stable framework for performing such tasks (Section 7.17).

44. The responsibility of collective bargainers for co-determination consists above all else in designing collective agreements in such a way that they can be implemented and adhered to at plant level. When transferring regulatory functions to plant level, collective bargainers are also responsible for ensuring that the partners at plant level have the resources available to enable them to perform the additional tasks; this is particularly true with regard to small and medium-sized enterprises. It is to be hoped that collective bargainers will see it as a joint task to train and advise works councils and management on a case-by-case basis on how to deal with collective agreements that can and must be implemented in a differentiated way. They must have a common interest in treating plant level co-determination with due care and offering it their active support, as it constitutes an indispensable basis for the system of collective bargaining (Section 7.18 to 20).

45. The collective agreement can also be used as an instrument with which to adjust the statutory institutions of co-determination, in particular in the area of the works constitution, in appropriate ways to the specific conditions prevailing in individual industries or companies or to new forms of plant or corporate organisation not foreseen by the law (corporate networks, the disembodied factory) or to place options to this end at the disposal of plant-level partners. Conceivable would be provisions against an extension of co-determination rights with the help of labour disputes to areas not desired by government. Another instrument with which the two sides of industry can further develop co-determination and its scope for action at plant and company level in a direction considered desirable by both sides are "social partner agreements", with the help of which enterprises can be made aware of the scope for

an up-to-date organisation of co-determination and best practice recommendations can be made (Section 7.21).

Co-determination on the supervisory board

46. Co-determination on the supervisory board under the 1976 Act is now a firmly entrenched institution, accepted by all sides, a given fact of social life. Fears that it would prove irreconcilable with the market economic order have not been confirmed and are now seldom voiced. This is partly thanks to the experience that co-determination at company level is not implemented on a uniform pattern and that it is compatible with the establishment of cooperative corporate cultures and indeed can promote them. A further reason is the close link between co-determination on the supervisory board and the system of plant-level co-determination (Section 8.1, 5 and 6).

47. Co-determination on the supervisory board offer participants far-reaching information and consultation opportunities, of which extensive use is made in many firms with a view to the goal of consensus formation. In addition it enables workers to bring their interest in the company's pursuit of a long-term personnel management and human capital policy to bear. The vast majority of decisions on the supervisory board are taken unanimously (Section 8.2).

48. Within the framework set by the laws of 1951 and 1976, a diverse range of co-determination cultures have developed in which different branch and corporate cultures find expression. In a number of companies subject to the 1976 Act, proceedings do not differ much in practice from those in the coal and steel industry. Overall, particularly under the 1976 Act, the spectrum of the treatment accorded to the internal and external representatives of workers on the supervisory council ranges from a degree of incorporation exceeding that required by law to their practical exclusion (Section 8.4).

49. In many companies, particularly those with close links either to the public sector or the coal and steel industry, the practice of reaching contractual agreements on

co-determination has developed. Contractual co-determination regulations increase the diversity of forms of co-determination below and alongside the level of the statutory provisions. In addition they point to the scope for a situative adjustment of co-determination structures which could, in principle, be utilised in other cases, such as in new corporate forms and networks (Section 8.11 and 12).

50. Among the economic consequences of co-determination at company level, its proponents emphasise the productive effects of consensus and cooperation, the support for "social peace" and the contribution made by co-determination to a corporate culture based on trust, and to the greater understanding of the workforce for the needs and interests of the company. On the other hand, fears have been voiced that the presence and influence of employee representatives on the supervisory board could result in a preference for structurally conservative corporate strategies, shielding management from control by shareholders and the capital market and leading to technological immobility, excessive emphasis on personnel and employment-related aspects in German firms, and excessively consensus-oriented management. In response it is claimed, among other things, that the long-term orientation of corporate strategies creates advantages and that the problems of implementation are taken into account at an early stage of firms' decision-making processes. What is certain is that in the past co-determination has repeatedly adapted to difficult competitive conditions; there is much to support the view that it will be able to do so even in the face of the increased claims made by shareholders and investors (Section 8.13 to 18, 21).

51. German co-determination appears to be but one element in a national 'organisation culture' in which responsibility is typically divided and in which for this reason alone the costs of mutual information provision and coordination are high. The chairman of the board of a German joint-stock company, for example, is less omnipotent and omnicompetent than the Chief Executive Officer of most American companies; in most cases he is the primus inter pares of a collegial organ. This organisational culture has the disadvantage not only that it requires time-consuming consultation processes - the efficiency of which must be carefully cultivated - but also that it tends to generate conservative decisions. On the other hand it has the

advantage that crass errors of decision-making caused by "solitary decisions" are rather seldom. Co-determination is part of this culture of divided responsibility and coordination and shares both its advantages and its disadvantages (Section 8.20).

52. Neither the traditional German distinction between supervisory board and management board (Aufsichtsrat and Vorstand), nor employee co-determination at company level constitutes a barrier to the success of a company, as innumerable examples show. German supervisory boards are no less competent on average than corporate governing bodies in countries lacking co-determination. To the extent that in the past codetermined supervisory boards have taken decisions (or permitted them to be taken) that have inflicted economic damage on the firm, these are individual cases that can justify neither a reduction in the absolute or relative presence of employee representation nor the transition to an Anglo-American board system. Examples of incorrect decisions, mismanagement and personal failings can also be found in companies run by an integrated board. Where an improvement in the work of the supervisory boards is required, this can be achieved within the existing framework of corporation and co-determination legislation. There is no need to re-regulate co-determination in order to raise the effectiveness of supervisory boards (Section 8.22 and 23).

53. Co-determination has not left a uniform "stamp" on the work of supervisory boards. Fears that co-determination as such would be detrimental to the operations of supervisory boards and their control functions have not been confirmed in practice. Most German companies have found ways to make supervisory boards, even large ones, workable, not least within the framework of and with the help of a corporate culture based on trust. In many successful companies members of the supervisory boards are informed about the company and incorporated into its work to a greater extent than is required by law (Section 8.24 pp).

Internationalisation and Europeanisation

54. German co-determination will continue to exist within Europe as a national specificity. There is no reason to expect a European-wide harmonisation of the na-

tional systems of employee participation at plant and company level. This implies that co-determination will in future have to face up to the pressure of institutional and economic competition to an even greater extent than has been the case so far (Section 9.1 and 2).

55. German co-determination has not been an obstacle to an internationalisation of the strategic perspectives of German companies. In the longer run, however, the exclusive presence of German employee representatives on the organs of co-determination may become a problem in companies in which a substantial proportion of the workforce is employed in other European countries, not least for the legitimacy of co-determination as an institution (Section 9.5 to 8).

56. The emerging European legislation on plant and company-level employee participation has been conceived in a procedurally and substantively open fashion, and stresses voluntarism and subsidiarity. It strengthens the role of trade unions in plant-level interest representation and at the same time supports the maintenance of national traditions and structures. At the European level, it is leading to a particularisation of employee representation by company and national origin. At the same time, in its emphasis on the trade unions and on negotiation, it is in tension with the German tradition, which prefers "hard" statutory regulation. Having said that, the German system is also changing in the direction of plant-level solutions, internal differentiation and a greater role for agreements and bargaining; these trends will be reinforced by the influence of European law (Section 9.9, 16, 21, 23 and 24).

57. The establishment of European works councils that is currently under way calls on German co-determination - for the first time - to incorporate institutions that go beyond national borders into its existing, until now purely national, institutional framework. One of the most important tasks in Germany in the coming years will be to tie in the additional level of employee participation established in the form of the European Works Councils with the already existing levels, particularly the group-level works councils and the employee representatives in codetermined German supervisory boards, in such a way that neither demarcation disputes nor losses of efficiency occur. The fact that the creation of a system of European works councils has

so far proceeded virtually without friction shows that neither employers nor workers perceive them as a threat. The participation of the European trade union federations in the work of the European works councils does not appear to be causing any problems in practice. German companies and trade unions are using the European works councils not least in order to make the German system of co-determination known abroad and to incorporate the workforces in foreign plants belonging to German companies into the German model of uniform interest representation (Section 9.10 to 13).

58. The Europeanisation of German companies and their partial incorporation into a European works and corporate constitution would be accompanied by conflict if it were to lead to reductions in established co-determination rights (Section 9.18 to 20 and 22). On the other hand, the emerging contours of a European works and corporate constitution permit European firms and trade unions to transpose their specific national cultures, traditions and labour relations as part of their transnational development. As in the case of the European works councils, it is to be expected in the case of the European joint-stock company that co-determination practices will be largely determined by the national customs prevailing at company headquarters. This offers German employers and employee representatives the opportunity to anchor the fundamental principles of German co-determination in the international companies under German influence and to make co-determination a pillar of a transnational corporate culture and identity. In this way the comparative advantages of co-determination could be transferred to the European level (Section 9.25).

Co-determination and new corporate cultures -

Survey and perspectives

Report of the Co-determination Commission

- Recommendations -

**Bertelsmann Foundation
and Hans-Böckler-Foundation**

(publishers)

Verlag Bertelsmann Stiftung

Gütersloh 1998

Recommendations: Shaping the Co-determination of the Future

1. At the end of the 20th century, the task of shaping co-determination must be seen in the context of the necessary adaptation of the German system of labour relations to changed markets, technologies, organisational structures and ways of life. The aim must be to reach agreement on and to operationalise a new 'works social contract' that brings rights and duties, security and risks, collective and individual interests, formal rules and informal corporate cultures, and statutory and collectively agreed regulation of labour relations in the plant and the company into a new balance, one that takes account of changing economic and social conditions. To this end it is necessary to identify and cultivate the historical strengths of co-determination, to adapt it to new necessities and to open it up to new opportunities. Important hints are to be obtained here from careful observation of the actual practice of co-determination, the future-oriented elements of which need to be elaborated and reinforced by creative policy-making.

2. German co-determination has contributed to cooperation between employers and employees based on mutual trust primarily by statutorily underpinning the participation rights of the workforce. In particular, it has been conducive in a sustained manner to the broad-based deployment of non-hierarchical and information-intensive managerial methods and to the creation of cooperative corporate cultures. Where co-determination has been understood by both sides in this sense, it has contributed to the success of the firm, to the benefit of all concerned. The development of co-determination in the coming years must follow the guiding vision of a cooperative, decentralised, participatory and information-intensive corporate culture.

3. In the course of its development into an infrastructure of workplace cooperation, co-determination has adapted in a differentiated way to the specific technical and economic circumstances prevailing in the various branches and companies. This has led in practice to highly differentiated forms of co-determination, underpinned by a

uniform legal basis. Co-determination policy and law must respect the diversity of co-determination that has evolved and support, in a differentiated way, the case-by-case optimisation of co-determination practice with respect to workplace and company-specific characteristics.

4. The experiences of the 1990s have shown that, given joint efforts to shape it, co-determination can be developed into a competitive advantage for firms located in Germany. The dependable incorporation of all participating interests ensured by co-determination enables the 'productivity of cooperation' to be mobilised in a more difficult market environment. What is vital for German firms in the coming years is to make strategic use of the advantages of co-determination. To this end its effectiveness must be guaranteed in the face of changing conditions.

5. The task of moulding co-determination in a differentiated way that takes account of individual situations, in order to bring about the transition to a new workplace social contract, cannot in the first instance be performed by government. Responsibility for the productive use of co-determination lies primarily at workplace and company level. In addition, it is the responsibility of the organised labour market parties, with the means at their disposal, to facilitate and support a differentiated modernisation of co-determination at workplace and company level. The co-determination of the future must be developed as part of the self-organisation of society; any legislative reforms must be based on this principle.

6. Even within a changing European environment, co-determination will remain as an element of an autonomous German system of industrial relations. The task of German policy-makers, therefore, must be to adapt it to new conditions, in order to retain its advantages, not least at the points of contact with the emerging European works and corporate constitution. Irrespective of any legislative changes that may become necessary, co-determination must and can be adjusted to new conditions by means of a flexible adaptation of its day-to-day practices, particularly with the support of the parties to collective bargaining. The already extant and substantial scope for such adaptation should be utilised more intensively and extended.

7. In day-to-day practice co-determination has proved able, often to an astounding degree, to adapt to new organisational circumstances in plants and companies undergoing change by means of a diverse, improvised and innovative development of institutions and procedures adapted to meet the needs of the situation at hand. Examples include the delegation of works-council co-determination rights to work and project groups, an appropriate distribution of competencies between plant, company and group-level works councils, and the application of the "spirit" of company co-determination laws to new corporate structures that were no longer adequately covered by existing law. A modern co-determination law must not restrict the scope for such innovations, that are negotiated on a contractual basis to deal with the specific needs of individual companies.

8. The numerous efforts observed in practice to render co-determination more flexible, less bureaucratic and more highly decentralised, reflecting the new economic, technological and organisational conditions, deserve the support of government, the social partners and the labour courts. The aim of a future-oriented remoulding of co-determination must be to open up co-determination for negotiated solutions to a greater extent than has been the case to date, without endangering the peace and trust-creating function of the statutory basis of co-determination. Instruments that might be considered in this context include collectively and voluntarily agreed works constitution norms in accordance with Articles 3 and 4 of the law on collective agreements (*Tarifvertragsgesetz*) and Article 3 of the Works Constitution Act (*Betriebsverfassungsgesetz*) on the structure and mode of operation of the co-determination organs. This is conditional, however, on the concerns about the possibility of strike action in support of additional co-determination rights being removed.

9. The co-determination of the future demands structures that are appropriate to the indispensable diversity of its concrete forms and the expectations made of them. Consequently, participation rights must be able to be additionally established - on the basis of joint agreement - at a level that is below that applying to all equally, and below the level of the central workplace co-determination organs. Given its considerable flexibility, the collective agreement appears particularly suited to the

situation-specific development of co-determination, all the more so given that a growing proportion of the regulatory activities of the co-determination organs at plant level is determined by option clauses in collective agreements concluded at supra-company level.

10. As an insurance policy against breaches of trust at the workplace, German co-determination law has made a decisive contribution to creating and stabilising a cooperative corporate culture. Co-determination law will remain indispensable in the future to reduce conflict potential and underpin process-oriented cooperation as a mandatory basis for autonomous development in diverse and increasingly highly differentiated workplace situations. Particularly politic in this context would appear to be an extension of the scope for plant-level agreements on the structure and mode of operation of the co-determination organs. In particular it is necessary to extend the scope for institutional innovation and joint organisational learning existing at the workplace, and to remove legal uncertainty surrounding the exploitation of this scope.

11. Collective agreements and free collective bargaining between trade unions and employers' federations should support the conclusion of "production location agreements" (*Standortvereinbarungen*) between the works council and the employer, the aim of which is to safeguard existing and create new jobs. To the extent that medium-term investment commitments by the employer depend on the ability of the works council to incorporate provisions on working time and pay that are normally regulated by collective agreement into a joint package of measures to maintain competitiveness and employment at the production location, this should be permitted by the relevant collective agreements. In particular, they should support a distribution of pay and working time that accords with the specific conditions of the individual case, and is aimed at maximising employment, along with other measures to expand employment. The necessary protection against excessive bargaining power by the "other" side and the prevention of a "race to the bottom" between competing firms can be assured by a provision in the collective agreement for a ratification by the parties to collective bargaining of plant-level agreements that intervene in and modify collectively agreed provisions.

12. Seem from the perspective of the parties to collective bargaining, co-determination can be used as a instrument to achieve a differentiated implementation of an employment-oriented collective bargaining and pay policy. The practice of reaching production location agreements indicates that collective understandings between the parties on the mode of converting productivity growth into employment need not fail merely because the details of such an implementation cannot be regulated centrally and uniformly due to the complexity of their conditions. The local "Alliances for Jobs" concluded at local level in numerous firms could be made even more effective if they were supported by a corresponding collectively agreed alliance at industry or national level. This would ensure that concessions made by the trade unions regarding wage flexibilisation and working conditions are actually used to safeguard and expand employment.

13. New forms of employment and of workplace and corporate organisation threaten to lower the value of the legal resources of co-determination. Where stable and legitimate employee interests in exerting a representative influence on events in the workplace and company exist, they must be enabled to take effect even under changed organisational circumstances. The strategic utilisation of the productive resources of co-determination must not be allowed to fail as a result of their erosion. In view of the diversity and uncertainty of the developments involved, it may be politic to promote workplace or collectively agreed solutions adapted to the situation at hand by opening up the scope for regulatory activity at local level and by instituting process-oriented rights. To the extent that these remain inadequate, it may be necessary to amend co-determination law, in particular by redefining the legal definitions of concepts such as group, company, workplace and employee. Legal amendments could be preceded by legally sanctioning pilot schemes agreed jointly by the parties. There is a legitimate public interest in maintaining the integrity and effectiveness of co-determination .

14. The increasing importance for employment of small and medium-sized enterprises, in which there is not usually a works council, or at least not a full-time employee representative, threatens to lead to a loss of importance and influence of

co-determination as a whole. To the extent that more flexible branch/regional collective agreements transfer regulatory responsibilities to the social partners at workplace level, the limited diffusion of works councils in small and medium-sized enterprises poses a threat to the reform of the system of supra-plant collective agreements, and thus to the effectiveness of the dual system of industrial relations as a whole. It would appear to be a priority task for trade unions and employers' federations to ensure that collective agreements, co-determination and government regulation are able to interact in an optimal way even under the specific conditions prevailing in small and medium-sized enterprises. Among other things, this means that ways must be found, on the basis of joint efforts, to overcome the existing barriers to the setting up of works councils. This is conditional on due attention being paid to the specific condition prevailing in such enterprises and, above all, the avoidance of an excessive formalisation of decision-making processes.

15. In the past co-determination has repeatedly and successfully adjusted to changes in competitive conditions. It now must face up to the challenge of dealing with increasing cost pressure, new innovation requirements, shortened decision-making times and more demanding investors in the context of increasingly globalised goods and capital markets. In order to achieve this, numerous changes will be required in its structures and modes of operation. Successful and promising approaches to this have already been implemented in a large number of companies; they must be pursued, observed and supported.

16. The question of co-determination on the supervisory board is particularly controversial, with widely differing positions being taken. Representatives of industry have argued for a reduction in the size of co-determined supervisory boards in order to enable them to work more efficiently. Representatives of the trade unions, on the other hand, are in favour of maintaining the number of supervisory board members stipulated by law, in order to ensure that greater expertise is brought into the company. There is agreement, however, on the urgent need to simplify the procedures for elections to the supervisory board under the 1976 Co-determination Act.

17. The presence of employee representatives on the supervisory board does not constitute an obstacle to the board performing its supervisory function in those companies in which a corporate culture based on trust exists that enables the employee representatives to exercise their co-determination rights in a non-schematic and non-formalistic way. The creation of such a culture can be promoted, as is shown by the practice in a large number of successful companies and groups, by continuously informing all members of the supervisory board, including the employee representatives, at more meetings and on a broader range of issues than is required by law. Clearly, such a practice is conditional on the maintenance of absolute respect for the mutual trust established.

18. The continued effectiveness of co-determination will depend decisively on the maintenance of a division of tasks between co-determination and collective bargaining. The reform of supra-plant level collective agreements in certain industries must not be achieved by methods that call into question the dual system of labour relations. In particular, the social partners at plant level must not be transferred regulatory tasks - nor should such tasks fall to them due to a failure on the part of collective bargainers - whose performance at plant level would pose a threat to trustful cooperation between the works council and management, or would bring the works council into conflict with employees' negative right of association or the trade unions' monopoly on the right to strike. Adherence to Article 77 (3) of the Works Constitution Act is thus of fundamental importance.

19. At the same time, there exists a whole range of opportunities for collective agreements to delegate regulatory issues to the social partners at plant level that are in accordance with both the Works Constitution and the Collective Agreement acts. To this extent co-determination can be used as part of a controlled decentralisation of the collective bargaining system, with the aim of rendering collective agreements more flexible, in the face of a growing need for more highly differentiated plant-level solutions, and thus to ease the pressure on such agreements.

20. In co-determined German companies that employ a significant proportion of their total workforce in other European countries, over the medium-term the question will increasingly arise as to the legitimacy of filling the employee block on the supervisory board exclusively with German representatives. A simple solution to this problem is not apparent at the present time. What could be examined, however, is whether, in the context of possible changes in the electoral procedures for the internal employee representatives, the possibility of electing representatives of workforces located abroad should be opened up.

21. To the extent that the institutional structures of co-determination in a future European Joint-stock Company will be left to negotiations between employers and employees, it is to be expected that the negotiations will be conducted by the representatives of German labour with the aim of preventing a reduction in their scope for co-determination in the course of the transition to a European corporation law, at least in German parts of the company. Fears that the Europeanisation of corporation law could lead to a cut in the level of co-determination that has evolved in Germany could lead to tensions between employers and workforces at plant level. For this reason the transition of German companies to a new legal form under European law should only proceed with the early and complete involvement of the co-determined company organs.

22. The Europeanisation of the corporate constitution offers German companies the chance of using the cooperative management model of co-determination as a guiding vision for the creation of a cross-border corporate culture and identity. Numerous indications suggest that the economic performance and value of German co-determination is frequently underestimated abroad. To a significant degree, the future of co-determination will depend on the trust placed in it by foreign investors. Government and the central partners are called upon to seek ways to correct the mistaken view of co-determination prevailing in public opinion abroad, by means of joint publicity measures.

23. Conflicts of interest between employers and trade unions surrounding the details of co-determination are certain to remain in future. Yet there is no justification for

losing sight, because of these difference, of their joint interest in a constructive, on-going development of co-determination as a whole. The task of creating awareness of this common interest could be served by a continuation of the dialogue between the social partners begun in the Co-determination Commission, on the basis of joint observation of the changing circumstances in workplaces and companies; this might focus on the emergence of new forms of employment and of workplace and company organisation, and on the Europeanisation of production and corporate structures. The continuation of a "co-determination dialogue", oriented towards practical requirements, in which both collective organisations and workplace representatives participate, could help continuously to reassert the joint interests held in common by the social partners.

24. Where co-determination comes into conflict with the economic goals of a company, the causes do not usually lie in the statutory provisions - to which both successful and not so successful companies are equally subject - but rather in their application. Consequently, the aim in the on-going development of co-determination must focus on local process optimisation by achieving as broad a diffusion as possible of the best practices developed by the leading companies. This requires new forms of case-by-case information and advice provision that take account of the diversity of actual co-determination cultures and problems, and that are able to promote the use of the opportunities for development and experimentation that must be granted at plant level.

25. In addition, the provision of back-up support for a situationally appropriate operationalisation of co-determination in the individual enterprise would appear to be a priority task for the collectively organised social partners. One instrument that could be deployed to this end are joint advisory bodies - possibly, although not necessarily, in the form of joint institutions as provided for by Article 4 (2) of the Collective Agreement Act - to which companies could turn voluntarily when modernising their co-determination processes and to mediate in cooperation processes or in cases of conflict. Such institutions could also play a part in helping to improve the skills and know-how of works councillors and managers in dealing with the increasingly complex co-determination system. Also conceivable would be

more frequent recourse for co-determination purposes to social partner agreements, not linked directly to collective bargaining, with the help of which enterprises could be informed of and recommended new opportunities for the productive use of co-determination in line with the prevailing best practices.

26. The on-going development of co-determination by means of a continuous observation of co-determination in practice, the organisation of a permanent co-determination dialogue at a high level and separate from bargaining and decision-making situations, and case-by-case advice provision and mediation are all to be seen as public development tasks, the performance of which is primarily the responsibility of the organised social partners. The Commission calls on them to search together for suitable organisational forms for observation, dialogue and advice provision, permitting synergy effects between these areas to be used and external know-how brought in. This must be allowed to lead neither to the creation of new bureaucracies nor to the division of new, joint tasks among existing bureaucracies. A central role will therefore be played by flexible, project-specific expert staffs and the establishment of competence networks that transcend organisational boundaries.

Co-determination and new corporate cultures -

Survey and perspectives

Report of the Co-determination Commission

- Summary of the Report -

**Bertelsmann Foundation
and Hans-Böckler-Foundation**

(publishers)

Verlag Bertelsmann Stiftung

Gütersloh 1998

The development of co-determination as an institution	3
The development of co-determination in figures	8
The economic effects of co-determination	11
Co-determination in the context of structural economic change in the 1990s.....	16
Co-determination and collective bargaining.....	20
Co-determination on the supervisory board.....	23
Internationalisation and Europeanisation.....	25

The development of co-determination as an institution

1. In its present form, co-determination can be traced back to a number of different and in some cases contradictory traditions and experiences. At no point in time has co-determination been a uniform system cast out of a single mould. In the various historical forms in which it has appeared it has always represented the result of compromises between various motives and interests and already extant institutions that were themselves the result of historical development processes (Section 3.1).

2. Co-determination corresponds to a number of traditional specificities of the mode of operation of German companies, in particular their product strategy and organisational structure; it reinforces these characteristics, just as it, in turn, is supported by them. Since the start of industrialisation German firms have, in international comparative terms, been characterised by an extensive use of occupationally specific qualifications, flat hierarchies, a pronounced degree of integration of dispositive and executive activities and a decentralisation of responsibility and decision-making on a technical-occupational basis. This accords with a tendency for German firms to occupy a strategic position in markets with high demands in terms of product differentiation and product quality ("diversified quality production"; Section 3.2).

3. The history of co-determination since the Federal Republic of Germany was founded is the history of its growing plant-level orientation. This, in turn, was the inevitable consequence of the integration of co-determination into a market economy, to the social acceptance and social "dimension" of which it has made a vital contribution. Co-determination at plant and company level, where they have existed alongside one another, have become increasingly closely intertwined. In practice, co-determination at company level has become the 'extended arm' of plant-level co-determination, whereby as a rule the leading members of the works council also represent the workforce on the supervisory board, where they essentially use their position as established by company law (i.e. on the supervisory board) to extend their scope for action and gaining access to information granted by works constitution legislation (i.e. on the works council). The reversal of the relative importance of the two forms of co-determination compared with the early years of the Federal Republic that this implies was ratified and driven forward by the legislation enacted during the

1970s, which strengthened the role of the works councils, but refrained from extending the company-level co-determination regulations applying in the coal and iron and steel industries (Montanmitbestimmung) to the rest of the economy (Sections 3.4 and 4).

4. At the end of the 1990s, and in any conceivable future scenario, co-determination is nothing but an element of the managerial and decision-making structure (corporate governance) of profit-maximising companies exposed to competition on the market, whose strategic positioning it seeks to influence, in the interest of the employees it represents, internally and within the framework set by the market order. In this function, co-determination is no longer fundamentally challenged by employers as a body; the ideological debates, that continued into the 1970s, on the reconcilability of co-determination with the market economy and private property have come to an end (Section 3.5).

5. The increasingly plant-oriented nature of co-determination is also reflected in a changed relationship vis-à-vis the trade unions. The external trade union representatives on the supervisory board of codetermined companies now see their primary task as that of advising the internal representatives of the workforce. Concern that they might operate as agents of a centralised coordination of the co-determination actors by the trade union - that is as a sort of private central planning apparatus - is now seldom voiced. It is still the case that most works council representatives and virtually all of the supervisory board members representing employees are trade union members. Non-union members elected to the works council often join the relevant trade union during their period in office in order to benefit from its expertise and political support. The trade unions, in turn, are dependent on the cooperation of the works councillors, traditionally in attracting new members and increasingly also in implementing the collective agreements reached at supra-plant level (Section 3.6 to 10).

6. Consequently, the distinction between and interaction of collective bargaining and co-determination - or, to put it another way, between supra-plant collective (pay) agreements and plant-level agreements - can be seen as the characteristic centre-

piece of the German system of industrial relations since the Second World War. To the extent that structural change is increasingly necessitating solutions that come under the aegis of collective bargaining but must be adjusted to the conditions prevailing in individual plants, the number of points of contact between the two systems is also increasing, thereby complicating the interrelationship between co-determination and regional-sectoral collective agreements (Section 3.11)..

7. As an element of the corporate governance of the company, co-determination , particularly following the second wave of legislation during the 1970s, has proved to be an effective means of ensuring the social integration of the company. By placing the involvement of the work force in decision-making by employers on a legal basis, and thus, in principle, removing it from workplace disputes, the German system of co-determination has reduced the potential for conflict between employer and work-force. The trust-based cooperation this has made possible has been conducive to a broad-based implementation of non-hierarchical and information-intensive managerial methods and the establishment of cooperative corporate cultures (Section 3.12 to 13).

8. The German system of co-determination corresponds to an employment model oriented towards the long-term tenure of core workforces in order to make substantial investment in human capital profitable. The rights to organisational participation respond to established expectations by German workers that they will be consulted on important decisions in line with their high level of qualifications and the loyalty to the firm expected of them. The organisational structure and product policies of German firms, in turn, have come to rely on the ready willingness of employees to identify with the strategic aims of the company and to assume responsibility. Co-determination both calls forth such behaviour institutionally and recognises it culturally (Section 3.14).

9. Within the company co-determination helps to bridge over hierarchies and to reduce the social divide between "top" and "bottom". In so doing it is conducive to the social integration of society as a whole. Co-determination at plant level, in particular,

offers a substantial number of citizens the opportunity to assume democratic responsibility. Experience with co-determination has shown that firms can find product and market strategies in the implementation of which employee participation and the underpinning of workers' rights by means of representative institutions are not barriers to efficiency, but, on the contrary, productive resources (Section 3.15 to 18).

10. In the course of its consolidation following the legislative amendments passed in the 1970s and its development into an infrastructure of plant-level integration and cooperation, co-determination has, in spite of the still uniform nature of its legal base, become increasingly highly differentiated in response to the specific technological and economic conditions prevailing in different sectors and companies. The internal differentiation of the system of co-determination is essentially the result of a process of institutional maturity, as a consequence of which co-determination has become less reactive and is increasingly used to accompany decision-making processes; its actors are frequently called in before decisions are taken, even where this is not required by law. In practice co-determination legislation is being applied less and less schematically, and increasingly in a way that takes account of the prevailing circumstances and the practical requirements of the specific case at hand (Section 3.19).

11. One reason for the growing diversity in the way co-determination is implemented in practice is the growing importance of informal additions to and modifications of formal co-determination legislation, in the context of cooperative corporate cultures, in which the joint search for appropriate problem solutions takes the place of formalistic claims to legal entitlements. Employer initiatives to develop cooperative corporate cultures have proved just as compatible with the legal basis of co-determination as the new decentralised structures introduced in many companies. In many cases it has proved possible to adapt the legal structure of co-determination to specific or changing circumstances by means of contractual agreements, particularly at plant level (Section 3.20 to 23).

12. In the second half of the 1990s, the increasingly competitive national and international environment, the acceleration of technological, economic and organisational

change, and the emergence of a trend towards a Europeanisation of certain aspects of labour relations have confronted the German system of co-determination with new challenges. The evolved structures of co-determination have come under adjustment pressure from the changed conditions for success on goods and capital markets, and the increasing locational competition between societies with different social regimes. At the same time, changes in the structure of companies, plants and employment relations are undermining important practical prerequisites of effective co-determination in its prevailing form and threaten to erode its legal resources.

- As a representative system of employee participation, co-determination is conditional on a centralisation of decision-making processes within plants and companies at the level of the elected representative organs. Yet it appears that, given the changed conditions for success on increasingly competitive international markets, it is those companies that have to a significant extent decentralised their decision-making processes that are at an advantage.
- To a greater extent than in the past, tougher international competition requires companies to provide customised solutions for the increasingly decentralised organisation of their labour relations and decision-making processes. As a consequence, it is to be expected that in practical or formal terms statutory co-determination law will be reduced to the procedural regulation of decentralised bargaining processes, even down to the level of the individual workstation. At the same time the emphasis of co-determination is shifting away from the defensive maintenance and realisation of rights towards the permanent incorporation of workforce interests into a decision-making process targeted towards international competitiveness and gaining support for the implementation of strategic decisions within the firm that have been adopted in consensus.
- Under changed market conditions, co-determination most support the transition from a standardisation of performance and performance demands towards new project-oriented and customer-oriented forms of work. As a result and in response to new economic necessities, a shift will occur in the balance between the traditional protective functions of co-determination and the contribution it makes to ensuring friction-free production processes.
- At the same time, despite the proven ability of co-determination to adapt auto-

mously to new conditions, the reality of companies and plants threatens to 'grow out of' the established legal forms of co-determination. The growing importance of small and medium-sized enterprises, and the decline in employment in manufacturing industry and its expansion in services have increased the size of the 'co-determination-free zone', i.e. those companies with neither co-determination on the supervisory board nor a works council. New logistics concepts by means of which plants belonging to various companies are closely networked, with a strict division of labour, make it difficult to bring together employee interests that transcend the individual establishment in a way traditionally performed by company or group-wide works councils. The growth of precarious forms of employment, the replacement of employees by genuinely or purely formally self-employed persons, flexible working time regimes and part-time employment tend to reduce the proportion of the workforce that is interested in or represented by co-determination. Similar consequences result, albeit in a different way, from the growing proportion of the total workforce employed by German firms that work abroad, and the high and stable levels of mass unemployment (Section 3.24 to 29).

The development of co-determination in figures

13. The number of companies subject to the specific form of co-determination in the coal and steel industries (Montanmitbestimmung) had fallen to 31 by the end of the 1980s. Due to reunification this figure arose in 1991 to 46, and currently stands at 45. The number of employees in this sector fell during the 1980s from 434,000 in 1985 to 352,000 in 1990. Following reunification it briefly rose to 492,000, only to decline to 307,000 by 1994, that is below the previous West German level. In 1996 the number of employees in companies subject to this form of co-determination amounted to around 400,000. This means that at least 100,000 employees active outside the coal and steel industries were represented by supervisory boards set up according to the Coal and Steel Co-determination Law of 1951 (Section 4.1 and 2).

14. In 1996 728 companies were co-determined on the basis of the 1976 law. Back in 1983 the figure had been 481, since when there has been a steady increase. In 1990 the figure was 522. In 1991, a year after reunification, it initially jumped up to

575, and subsequently rose to 719 in 1995. The number of companies and corporate groups with more than 2,000 employees that are not subject to co-determination is around 75 (Section 4.3 to 5).

15. In the mid-1980s the number of employees in firms co-determined under the 1976 law was estimated at around 4.5 million. By 1996 this had risen to 5.0 million. The figures show that the increase in the number of co-determined companies of more than one third since the mid-1980s has been accompanied by a substantially slower rise in the total number of employees in these companies (Section 4.6 to 9).

16. According to figures provided by the German trade union federation (DGB), in 1994 works councils were elected in 40,000 enterprises with a total of around 220,000 members. In West Germany the number of enterprises with a works council had gradually declined from 36,300 in 1981 to 33,000 in 1990, the number of works council members declining from 199,000 to 184,000. According to figures provided by the Institut der deutschen Wirtschaft, in 1994 around 78 percent of those eligible voted in works council elections; in 1984 and 1987 the figure had been 82 and 83 per cent respectively. By far the largest share of works council seats were won by candidates of trade unions belonging to the DGB (Section 4.10 and 11).

17. The decisive factor for the existence of a works council is the size of the plant. Recent studies have shown that less than one per cent of manufacturing plants with between five and ten employees have a works council, whereas in plants with 250 or more employees around 98 per cent of enterprises have a works council (Section 4.12).

18. According to the European Trade Union Institute, there are currently 318 companies in Germany that are obliged by the directive on European Works Councils and the national law on European Works Councils (28 October 1996) to negotiate with their European workforces on establishing a European works council. By November 1997 69 of these companies had established European works councils; 669 German subsidiaries of foreign and German companies were represented by European works councils. Foreign and German companies subjected to the provisions of the

directive maintained around 2400 subsidiaries in Germany that could be represented by European works councils. In 1996 they employed around 4.5 million workers. It can be assumed that the vast majority of these are already represented by German works councils (Section 4.16).

19. In the private sector three zones of varying 'co-determination intensity' can be distinguished (Section 4.13 to 15 and 17):

- A zone of dual co-determination in which workforces are represented both by the employee representatives on the supervisory board - in accordance with either the coal and steel model or the 1976 Law - and by works councils. Given that virtually all enterprises belonging to companies subjected to co-determination on the supervisory board also have works councils, the employees in this zone correspond more or less exactly to those in co-determined large companies. In the mid-1990s the 774 companies subject to one of the two versions of company co-determination with equal representation on the supervisory board (paritätische Mitbestimmung) employed almost 5.4 million workers, representing 24.5 per cent of private sector employment. In the mid-1980s workers represented by these two forms of co-determination constituted 30.5 percent of total private sector employment;
- A zone of simple co-determination involving exclusively works councils in companies with no determination on the supervisory board. Currently, around 3.4 million employees, that is just under 15 percent of all socially insured employees in the private sector, are to be found in the zone of simple co-determination. In 1984 3.1 million people were employed in the simple co-determination zone, representing at the time around 19 percent of private sector employment;
- A co-determination-free zone, in which there is neither supervisory board nor works council co-determination. This consists primarily of very small companies with less than five employees, in which the Works Constitution Law makes no provision for the option of setting up a works council, and the overwhelming majority of companies with less than 20 employees. Yet the zone also includes a proportion of larger-scale service sector companies in which works councils have not been established. By the mid-1990s the co-determination-free zone in the pri-

vate sector had expanded to more than 60.5 percent of employees, from 50.6 percent in the first half of the 1980s. In absolute terms the number of workers not represented by co-determination at plant or company level has risen from 8.3 million in the mid-1980s to 13.8 million in the mid-1990s.

20. If the public sector, with its growing share of overall employment and the complete representation of its employees by "staff councils" (Personalräte) is brought into the analysis, a number of variables change, but the overall picture remains the same. In particular, even allowing for the expanding public sector, the co-determination-free zone has expanded by more than one fifth from 37 to almost 45 percent of employment. If the unemployed are included, in the mid-1990s 50.8 percent of the working population (excluding the self-employed) were not represented by co-determination organs, compared to 42.7 per cent in 1984 (Section 4.18).

The economic effects of co-determination

21. The German economy has achieved an extraordinarily high level of affluence and competitiveness in international comparative terms, particularly in the 1970s and 1980s. The industrial sector, exposed to global competition, and with a considerable number of large companies in which co-determination is particularly influential, has made a decisive contribution to this achievement. More specifically, for decades the German economy has almost continuously earned export surpluses, even though in international comparative terms it has a high and relatively narrowly dispersed wage structure. One of the most important reasons for this has been the high average level of productivity which, in turn, is due to persistently high investment and the large capital stock this has generated. Also characteristic of the German economy is the high level of education of its population and high levels of investment in industrial and public research and development (Section 5.1 to 8).

22. The competitiveness of the industrial core sectors of the German economy has meant that the process of deindustrialisation has proceeded comparatively slowly in Germany. This does not mean that structural change has been retarded, however. On the contrary, the persistent and in recent years increasing export successes of

German industry show that during the 1990s it has coped with structural change particularly well and competitively. Additional signs of this are the rapid development of producer services, the strong position held by leading-edge-technology sectors, and the far-reaching reorganisation of companies and plants currently underway, together with the rapid process made towards their internationalisation (Section 5.10 and 11).

23. The major employment problems facing Germany are largely to be found in the area of personal and especially low-skill services. Co-determination cannot be held responsible for the slow pace of transition to the service society, which is the most important reason for the high level of German unemployment. Given that the private service sector is dominated by small companies that do not usually have a works council, and certainly not a co-determined supervisory board, its inadequate development must be put down to other factors, possibly including inadequate inter-sectoral wage differentiation. To some extent the relative sluggishness of the growth of employment in personal services may be conditioned by the traditionally high competitiveness and employment-capability of the co-determined industrial sector (Section 5.2).

24. An objective evaluation of the employment effects of co-determination must, however, consider a number of countervailing effects. By helping, in conjunction with collective wage bargaining, to increase the capital intensity of the German economy, co-determination may have led to an excessive substitution of labour by capital. At the same time, however, it has raised the competitiveness of German companies and has safeguarded employment by virtue of the contribution it has made to improving the human capital endowment of the labour force and raising productivity through cooperation. In addition, in a number - indeed, an increasing number - of cases it has enabled a working time policy of work redistribution to be implemented at plant level, and has thus helped to maintain employment, albeit in defensive fashion. To the extent that co-determination has contributed to Germany's traditionally flat wage structure, it was able to do so primarily in those (industrial) sectors exposed to the world market whose share of overall employment is relatively high in Germany. Besides, the blame for excessive labour costs should be put primarily on

collective bargaining and social policy, rather than on co-determination (Section 5.13).

25. The extent to which co-determination has made a causal contribution to the prosperity of the German economy, and whether, conversely, this would have been even higher in the absence of co-determination, cannot be established with absolute certainty. The available econometric evidence is equivocal: quantitative studies that ascribe (usually weak) positive effects to co-determination for specific indicators of performance and periods of time must be offset against others that find (in most cases also weak) negative effects for other or the same indicators and periods. Statistically significant results are seldom and their explanatory value seems limited in the light of the results of other studies with which they cannot be easily reconciled (Section 5.14 to 18).

26. Nor are theoretical-deductive analyses illuminating. Some authors, for example, have ascribed negative economic effects to co-determination at company level, whose consequences they have modelled with the help of a theory of property rights; other authors, on the other hand, basing their arguments on theories of participation, have found efficiency-raising, i.e. positive effects. Similarly divergent results are generated by theories of co-determination at plant level. Models based on price theory treat co-determination as a result of a distortion of relative factor costs, more specifically of an increase in the costs of labour above its market price. By contrast, participation-theory approaches emphasise in particular the economic advantages of a stable workforce with low labour turnover and of a tried and trusted and socially integrated plant organisation (Section 5.19 to 21).

27. It is not possible to decide, fundamentally and once and for all, in favour of either property and price theories on the one hand or participation and cooperation theories on the other. Rather, it can be assumed that both approaches account for important partial aspects of reality, and that in the real world co-determination as an institution generates both efficiency-reducing misallocation and efficiency-raising productivity and cooperation effects. The net impact of these parallel and simultaneous partial effects cannot be determined a priori. Alongside the particular institu-

tional context, an important role here is played by the prevailing economic parameters, in particular whether and to what extent a company is active in markets in which operative capabilities that can be improved by participation and cooperation are honoured monetarily. It seems, in particular, that cooperation and trust within the company are a substantial competitive advantage in markets in which what counts is to offer changing, customised product variants - rather than price-competitive mass-produced products - with the help of flexible technology and work organisation and a high human capital deployment ("diversified quality production"). In such a context the efficient effects of co-determination exceed the inefficient effects. In price-competitive markets, on the other hand, in which "cooperation rents" cannot be earned and companies can prosper even with highly standardised products and working patterns, it seems conceivable that co-determination may primarily constitute a cost factor (Section 5.22 and 23).

28. There is some evidence for the view that co-determination in its present form is less appropriate to certain new exogenous requirements than to the external conditions prevailing in the 1970s and 1980s. To the extent that this is indeed the case, changes need to be made to the structure and mode of functioning of co-determination in order to defend its economic performance. The following are some of the new phenomena to which co-determination must adapt:

- An increase in the decision-making pressure and reduced decision-making times for companies operating on world markets. Shorter product cycles and, more generally, increasingly incalculable markets call for fast decisions, and make it more difficult for co-determined companies, as was previously the case, to offset extended consensus-forming times by short implementation times;
- Increasing cost pressure, even in markets for high-quality goods. The return of price competition to the high-price markets for high-quality products, which had long been dominated by German firms, prevents companies from using product innovations, particularly in the middle-technology field, as a substitute for process innovations in order to facilitate internal consensus building;

- The change in the predominant innovation paradigm. In its historically developed form, co-determination seems to be particularly conducive to incremental innovation, i.e. gradual and continuous improvements in products and processes within the boundaries of and with the means open to existing companies. Under the prevailing technological and economic conditions, however, it appears to be becoming increasingly important for the success of a company that it is able, alongside incremental innovation, to generate, absorb and quickly market basic or quantum-leap innovations;
- Reduced investor time horizons and the growing importance of capital markets for corporate financing. The extension and internationalisation of capital markets forces co-determined German companies to come to terms with investors who are increasingly demanding, short-term oriented, less loyal and willing to compromise, and who are used to indicating their preferences regarding corporate strategy and corporate earnings primarily via the capital market.
- High and persistent unemployment. The loss of full employment confronts works councils, in particular, with the question of how the increasing employment risks, divergent conditions of employment and the declining number of secure jobs are to be distributed between various groups of workers and between the employed and job seekers. Unlike in earlier times, under the conditions now prevailing the legitimacy of co-determination depends on whether it proves capable of representing not only the interests of the particular workforce in question, but also those of job seekers, and of reconciling the goal of stable employment with an opening up of internal labour markets in order to facilitate job creation (Section 5.24 and 25).

29. The impact of co-determination on employment and the scope for co-determination to contribute to solving the employment crisis depend to a very high degree on the economic and political context in which it is embedded. Whether or not, for instance, co-determination has the effect of closing internal labour markets is influenced by the level of aggregate demand, government labour market policy and, in particular, collective bargaining. If the negotiating partners at plant level have at their disposal suitable instruments, including (selective) working time reduction, social protection for part-time work and flexible forms of employment and partial retire-

ment, co-determination can help to realise at enterprise level a government economic policy and a concomitant incomes policy by collective pay bargainers that are oriented towards employment growth (Section 5.26).

Co-determination in the context of structural economic change in the 1990s

30. A process of broad and deep structural economic change has occurred in Germany, under difficult conditions, during the 1990s, the - by and large - successful course of which is one of the main reasons for the current economic upturn. Co-determination has not been an obstacle to this structural change, the aim of which has been to adjust to tougher competition in increasingly globalised markets. On the contrary, in many cases it has actively supported it, not least in those areas in which changes have required considerable sacrifices from workers (Section 6.1 to 3).

31. Where company management and co-determination representatives have made joint efforts to reattain or defend the competitiveness of the firm, in response to increasingly difficult market conditions and especially rising cost pressure, a process of cooperative modernisation was induced in the course of which changes occurred not only in the structure and strategy of the firm, but also in the practice of co-determination, in the latter case without any change in the legislative framework. Although structural change by no means proceeded co-operatively in all cases, the numerous examples in which this was the case show that it is possible for firms to adjust successfully to changed conditions within the German co-determination system and by the means it provides. To this extent the concept of cooperative modernisation represents a best practice of negotiated structural change, one that has proved possible in a sufficient number of cases and whose diffusion appears not only desirable, but also realistic (Section 6.4 to 7).

32. The institution of co-determination is conducive to a cooperative modernisation path, while at the same time rendering it more difficult to implement modernisation without the participation of elected employee representatives and to pursue a strategy of cost-cutting by cutting wages rather than raising productivity. Consequently,

in Germany cooperative modernisation is the method of adjustment to the increasingly difficult economic conditions that most readily suggests itself. Given the institutional conditions under which they operate, German companies, taken as a whole, appear better able than those in other countries to decentralise their structures lastingly and to develop cooperative corporate cultures in cooperation with elected employee representatives. In return, they are obliged to take account of their employees' vital interests and ensure that they are reflected in their day-to-day decision making process (Section 6.8 to 11).

33. Co-determination can facilitate workforce agreement to job losses that are necessary for economic reasons by enabling the elected representatives of the workforce, particularly where accompanied by corresponding collective bargaining measures, to exert an influence on the redundancy strategies actually adopted, and not least to exhaust all practical possibilities for work redistribution. At the same time, co-determination puts employees in a position to obtain from the owners and managers of the company credible assurances that their prime aim is to ensure the company's future and that employment maintenance is to be included in the catalogue of corporate goals as far as is economically possible. The willingness of employees and their representatives to play their part in introducing far-reaching changes and to support them through co-determination is generally conditional on an assurance of this kind (Section 6.12).

34. In the day-to-day life of modern corporate organisations, the transition to more cooperation-dependent forms of work organisation and the delegation of decision-making responsibility down to the individual employee frequently means that the form of co-determination that is based on, and is a response to, decisions taken by the employer at central level appears too formalistic, unwieldy, superficial and practically irrelevant. Consequently, in many companies reactive, ex post co-determination is being replaced by an ongoing incorporation of employee representatives in a joint information, search, learning and decision-making process, wherever this appears objectively necessary, and irrespective of whether participation is required by law. Against the background of formal legislation, which remains, as it were, in reserve, the precise nature of the role played, in particular, by the works

council is left to negotiated agreements adjusted to the situation at hand within the framework of a cooperative corporate culture; this permits an informal modification of the statutory provisions at any time (Section 6.17).

35. Cooperative modernisation also involves the consensual adjustment of the structure and mode of operation of co-determination to the specific conditions prevailing in the enterprise or company. In the best case, this occurs by embedding co-determination in a cooperative corporate culture that corresponds to the specific characteristics of the firm and in which participants can rely on informal agreements based on mutual trust to a greater extent than previously. Such a local optimisation of co-determination practice, which has the effect of increasing the extent of differentiation, cannot be generalised by legislative means. Rather, it requires learning processes on both sides, the results of which can be passed on from one firm to another, allowing for their respective characteristics, in the form of practical "co-determination know-how". Given that some firms have proved better in coping with the local optimisation of co-determination than others, the diffusion of the emerging best practice of co-determination in modern companies, allowing for their specific differences, constitutes an important practical task for co-determination in the coming years (Section 6.18 to 22).

36. Although in most cases co-determination is conducive to structural change and modernisation, the latter trends are creating a number of problems for the functioning of co-determination in its present form, problems that the co-determination organs at plant level are unable to resolve by themselves. Firms' ability to continue to utilise co-determination as a productive social resource in competition and structural change depends not least on whether it proves possible to adjust the institutions and practice of co-determination to the new forms of plant and company organisation demanded by the market. The following are some of the developments that are calling into question the effective functioning of co-determination in its traditional form

- the decentralisation of corporate decision-making;
- the trend towards a blurring of the distinction between employer and employee in systems of direct participation;

- changes in the modes of performance and pay determination within new, decentrally steered forms of work;
- the increasing replacement of employees by outsourced suppliers and subcontractors;
- the increasing heterogeneity of workforces;
- the increasing differentiation of corporate cultures and the associated delegation of regulatory issues from collective bargaining institutions to the social partners at plant level;
- the downsizing of companies, corporate entities and plants (Section 6.23).

37. In many companies in which, in the wake of structural change, co-determination has come up against the limitations set by its legal bases, workforce representatives and management have been looking for ways to adapt it to changed organisational conditions. The solutions found point to a high degree of joint improvisation and innovation capability. Further efforts and support from outside appear necessary, however, if it is to be ensured that co-determination remains functional in a newly structured corporate environment. The solutions adopted include the following:

- setting up group works councils, 'production location works councils' or joint works council bodies in dispersed corporate structures;
- orienting the work of the supervisory boards to the actual decision-making structures of the company or the group;
- extending the self-organisation and experimentation capabilities of co-determination at plant and company level;
- further improving the skills and information access of works council members;
- increasing the effectiveness of the advice given works councils by trade unions;
- contractual adjustments of co-determination rights and institutions to changed conditions (Section 6.24).

38. In a number of cases, workforce representatives, usually in conjunction with the trade union responsible, have agreed to far-reaching organisational restructuring programmes within the framework of so-called "production location agreements on job maintenance" (Standortvereinbarungen zur Beschäftigungssicherung). Such

agreements constitute a new form of participation by works councils and workforce representatives on the supervisory board in company decision-making, not least in its long-term planning. Such agreements have as their subject matter the competitiveness and the strategic prospects - in the broadest sense - of a company in a given production location; the negotiations leading to such agreements involve parameters ranging from market evaluation to the whole issue of cost factors. The outcomes consist of a package negotiated between employer and employees representatives consisting of medium-term measures aimed at safeguarding competitiveness and employment at a given production location, and usually oriented towards the economic parameters set by competitors either outside or within the company. The central element in such agreements are concessions by workers regarding working time flexibility and work organisation. The co-determination organs are involved in their implementation (Section 6.25 to 30).

Co-determination and collective bargaining

39. Although co-determination and collective bargaining are in principle independent regulatory systems, there are innumerable points of contact, resulting not least from the growing importance of the plant level in both systems. Collective bargaining and co-determination are mutually supportive; their interactive relationship, which assumes a different form depending on branch and sector, constitutes the central element of the German system of industrial relations. It is difficult to achieve cooperative relations between the works council and employers without the help of collective agreements; without effective plant level co-determination, collectively agreed framework regulations and minimum standards cannot be implemented in a differentiated way; without the scope for differentiating collective agreements, plant-level co-determination cannot perform its changing role in corporate adjustment to new competitive and labour market conditions. The interaction of co-determination and collective bargaining creates a scope for solutions appropriate to individual plants that does not exist in countries lacking co-determination, and helps strengthen Germany as a production location (Section 7.1 to 6).

40. Even now the institutions of co-determination at plant-level are being extensively used in order to implement collectively agreed regulations in a situation-specific, differentiated fashion. The collective agreements in force permit a high degree of flexibility and offer the social partners at plant level a considerable degree of decision-making freedom. In future this will be far more the case. On the other hand, collective agreements must respect the practical and legal limits to the regulatory capabilities of the social partners at plant level. Forms of implementation of branch/regional collective agreements at plant level that force tasks on the parties to co-determination that belong outside the co-determination system and by their very nature must be performed at supra-plant level, not only endanger collective bargaining, not least by undermining in the longer-term the trade unions' monopoly on the right to strike, but also co-determination itself (Section 7.7 and 8).

41. The undermining of valid supra-plant collective agreements via understandings at plant level endangers both the system of regional/industrial collective bargaining and co-determination. § 77 (3) of the Works Constitution Act protects the partners to co-determination from being obliged to deal with topics the treatment of which at plant level would in the longer run threaten cooperation between the works council and management on the basis of trust or would bring the works council into conflict with employees' negative rights of association or with the trade unions' monopoly on the right to strike. It is possible to both adhere to this rule and to create solutions that are flexible enough to respond to all conceivable economic and organisational conditions (Section 7.9 to 13).

42. The interaction between collective agreements and co-determination requires effective interest representation at plant level if it is to function properly. To the extent that a more flexible collective agreement transfers regulatory functions to the co-determination partners at plant level, the low density of works councils in small and medium-sized enterprises, in particular, poses a threat not least to the reform of collective bargaining, and thus to the effectiveness of the dual system of industrial relations as a whole (Section 7.14 to 16).

43. Although a growing number of companies are turning away from collective bargaining and co-determination, this is not yet characteristic of the system of industrial relations in Germany as a whole. The trend does indicate, however, in which areas co-determination and its relationship to collective bargaining must be developed further. The connection between general collectively agreed provisions and customised solutions at plant level makes unusual requirements in practical terms of all participants. Both plant level co-determination and collective bargaining must provide a stable framework for performing such tasks (Section 7.17).

44. The responsibility of collective bargainers for co-determination consists above all else in designing collective agreements in such a way that they can be implemented and adhered to at plant level. When transferring regulatory functions to plant level, collective bargainers are also responsible for ensuring that the partners at plant level have the resources available to enable them to perform the additional tasks; this is particularly true with regard to small and medium-sized enterprises. It is to be hoped that collective bargainers will see it as a joint task to train and advise works councils and management on a case-by-case basis on how to deal with collective agreements that can and must be implemented in a differentiated way. They must have a common interest in treating plant level co-determination with due care and offering it their active support, as it constitutes an indispensable basis for the system of collective bargaining (Section 7.18 to 20).

45. The collective agreement can also be used as an instrument with which to adjust the statutory institutions of co-determination, in particular in the area of the works constitution, in appropriate ways to the specific conditions prevailing in individual industries or companies or to new forms of plant or corporate organisation not foreseen by the law (corporate networks, the disembodied factory) or to place options to this end at the disposal of plant-level partners. Conceivable would be provisions against an extension of co-determination rights with the help of labour disputes to areas not desired by government. Another instrument with which the two sides of industry can further develop co-determination and its scope for action at plant and company level in a direction considered desirable by both sides are "social partner agreements", with the help of which enterprises can be made aware of the scope for

an up-to-date organisation of co-determination and best practice recommendations can be made (Section 7.21).

Co-determination on the supervisory board

46. Co-determination on the supervisory board under the 1976 Act is now a firmly entrenched institution, accepted by all sides, a given fact of social life. Fears that it would prove irreconcilable with the market economic order have not been confirmed and are now seldom voiced. This is partly thanks to the experience that co-determination at company level is not implemented on a uniform pattern and that it is compatible with the establishment of cooperative corporate cultures and indeed can promote them. A further reason is the close link between co-determination on the supervisory board and the system of plant-level co-determination (Section 8.1, 5 and 6).

47. Co-determination on the supervisory board offer participants far-reaching information and consultation opportunities, of which extensive use is made in many firms with a view to the goal of consensus formation. In addition it enables workers to bring their interest in the company's pursuit of a long-term personnel management and human capital policy to bear. The vast majority of decisions on the supervisory board are taken unanimously (Section 8.2).

48. Within the framework set by the laws of 1951 and 1976, a diverse range of co-determination cultures have developed in which different branch and corporate cultures find expression. In a number of companies subject to the 1976 Act, proceedings do not differ much in practice from those in the coal and steel industry. Overall, particularly under the 1976 Act, the spectrum of the treatment accorded to the internal and external representatives of workers on the supervisory council ranges from a degree of incorporation exceeding that required by law to their practical exclusion (Section 8.4).

49. In many companies, particularly those with close links either to the public sector or the coal and steel industry, the practice of reaching contractual agreements on

co-determination has developed. Contractual co-determination regulations increase the diversity of forms of co-determination below and alongside the level of the statutory provisions. In addition they point to the scope for a situative adjustment of co-determination structures which could, in principle, be utilised in other cases, such as in new corporate forms and networks (Section 8.11 and 12).

50. Among the economic consequences of co-determination at company level, its proponents emphasise the productive effects of consensus and cooperation, the support for "social peace" and the contribution made by co-determination to a corporate culture based on trust, and to the greater understanding of the workforce for the needs and interests of the company. On the other hand, fears have been voiced that the presence and influence of employee representatives on the supervisory board could result in a preference for structurally conservative corporate strategies, shielding management from control by shareholders and the capital market and leading to technological immobility, excessive emphasis on personnel and employment-related aspects in German firms, and excessively consensus-oriented management. In response it is claimed, among other things, that the long-term orientation of corporate strategies creates advantages and that the problems of implementation are taken into account at an early stage of firms' decision-making processes. What is certain is that in the past co-determination has repeatedly adapted to difficult competitive conditions; there is much to support the view that it will be able to do so even in the face of the increased claims made by shareholders and investors (Section 8.13 to 18, 21).

51. German co-determination appears to be but one element in a national 'organisation culture' in which responsibility is typically divided and in which for this reason alone the costs of mutual information provision and coordination are high. The chairman of the board of a German joint-stock company, for example, is less omnipotent and omnicompetent than the Chief Executive Officer of most American companies; in most cases he is the primus inter pares of a collegial organ. This organisational culture has the disadvantage not only that it requires time-consuming consultation processes - the efficiency of which must be carefully cultivated - but also that it tends to generate conservative decisions. On the other hand it has the

advantage that crass errors of decision-making caused by "solitary decisions" are rather seldom. Co-determination is part of this culture of divided responsibility and coordination and shares both its advantages and its disadvantages (Section 8.20).

52. Neither the traditional German distinction between supervisory board and management board (Aufsichtsrat and Vorstand), nor employee co-determination at company level constitutes a barrier to the success of a company, as innumerable examples show. German supervisory boards are no less competent on average than corporate governing bodies in countries lacking co-determination. To the extent that in the past codetermined supervisory boards have taken decisions (or permitted them to be taken) that have inflicted economic damage on the firm, these are individual cases that can justify neither a reduction in the absolute or relative presence of employee representation nor the transition to an Anglo-American board system. Examples of incorrect decisions, mismanagement and personal failings can also be found in companies run by an integrated board. Where an improvement in the work of the supervisory boards is required, this can be achieved within the existing framework of corporation and co-determination legislation. There is no need to re-regulate co-determination in order to raise the effectiveness of supervisory boards (Section 8.22 and 23).

53. Co-determination has not left a uniform "stamp" on the work of supervisory boards. Fears that co-determination as such would be detrimental to the operations of supervisory boards and their control functions have not been confirmed in practice. Most German companies have found ways to make supervisory boards, even large ones, workable, not least within the framework of and with the help of a corporate culture based on trust. In many successful companies members of the supervisory boards are informed about the company and incorporated into its work to a greater extent than is required by law (Section 8.24 pp).

Internationalisation and Europeanisation

54. German co-determination will continue to exist within Europe as a national specificity. There is no reason to expect a European-wide harmonisation of the na-

tional systems of employee participation at plant and company level. This implies that co-determination will in future have to face up to the pressure of institutional and economic competition to an even greater extent than has been the case so far (Section 9.1 and 2).

55. German co-determination has not been an obstacle to an internationalisation of the strategic perspectives of German companies. In the longer run, however, the exclusive presence of German employee representatives on the organs of co-determination may become a problem in companies in which a substantial proportion of the workforce is employed in other European countries, not least for the legitimacy of co-determination as an institution (Section 9.5 to 8).

56. The emerging European legislation on plant and company-level employee participation has been conceived in a procedurally and substantively open fashion, and stresses voluntarism and subsidiarity. It strengthens the role of trade unions in plant-level interest representation and at the same time supports the maintenance of national traditions and structures. At the European level, it is leading to a particularisation of employee representation by company and national origin. At the same time, in its emphasis on the trade unions and on negotiation, it is in tension with the German tradition, which prefers "hard" statutory regulation. Having said that, the German system is also changing in the direction of plant-level solutions, internal differentiation and a greater role for agreements and bargaining; these trends will be reinforced by the influence of European law (Section 9.9, 16, 21, 23 and 24).

57. The establishment of European works councils that is currently under way calls on German co-determination - for the first time - to incorporate institutions that go beyond national borders into its existing, until now purely national, institutional framework. One of the most important tasks in Germany in the coming years will be to tie in the additional level of employee participation established in the form of the European Works Councils with the already existing levels, particularly the group-level works councils and the employee representatives in codetermined German supervisory boards, in such a way that neither demarcation disputes nor losses of efficiency occur. The fact that the creation of a system of European works councils has

so far proceeded virtually without friction shows that neither employers nor workers perceive them as a threat. The participation of the European trade union federations in the work of the European works councils does not appear to be causing any problems in practice. German companies and trade unions are using the European works councils not least in order to make the German system of co-determination known abroad and to incorporate the workforces in foreign plants belonging to German companies into the German model of uniform interest representation (Section 9.10 to 13).

58. The Europeanisation of German companies and their partial incorporation into a European works and corporate constitution would be accompanied by conflict if it were to lead to reductions in established co-determination rights (Section 9.18 to 20 and 22). On the other hand, the emerging contours of a European works and corporate constitution permit European firms and trade unions to transpose their specific national cultures, traditions and labour relations as part of their transnational development. As in the case of the European works councils, it is to be expected in the case of the European joint-stock company that co-determination practices will be largely determined by the national customs prevailing at company headquarters. This offers German employers and employee representatives the opportunity to anchor the fundamental principles of German co-determination in the international companies under German influence and to make co-determination a pillar of a transnational corporate culture and identity. In this way the comparative advantages of co-determination could be transferred to the European level (Section 9.25).

Foreword

At its sixth and final meeting on 22 April 1998 the Kommission Mitbestimmung (Co-determination Commission) unanimously adopted the following "Recommendations: Shaping the Co-determination of the Future". The Commission had been set up back in 1996 by the Bertelsmann Foundation and the Hans Böckler Foundation with the aim of collating the practical experiences gained with co-determination and of offering advice and making recommendations on the way it should be developed in future. The Commission consisted of leading figures from the business community, trade unions, collective organisations and politics; the accompanying social-scientific work was conducted under the leadership of Prof. Dr. Wolfgang Streeck, Director of the Max Planck Institute for Social research in Cologne¹.

The central task of the Commission, which had been proposed by the Foundations and accepted by the Commission members, was based on the conviction that co-determination constitutes one of the central pillars of Germany's economic order, and must be retained and developed further as an element of the social market economy. All the participants were in agreement that co-determination is oriented towards cooperation and is therefore incompatible with any form of confrontational ideology. Where it functions in accordance with the idea of cooperation, it is in equal measure a means of social integration and of effective corporate leadership, combining as it does social responsibility with economic reason. Modern leadership in a co-determined company does not rely on orders from the top, but rather on creativity from the bottom, by incorporating employees at all levels into the firm's processes and opening up opportunities for autonomous action.

This recognition, which had emerged not least from previous projects conducted by both of the Foundations on the subject of corporate culture, has certainly exerted a

¹ The full version of the concluding report of the Commission is available in German: Bertelsmann Stiftung and Hans Böckler Stiftung (eds.), *Mitbestimmung und neue Unternehmenskulturen - Bilanz und Perspektiven: Bericht der Kommission Mitbestimmung*, Gütersloh 1998.

not inconsiderable influence on the members of the Commission. And it led to the belief that a corporate culture oriented towards both the market and the workforce is an essential competitive advantage; in this co-determination is a central, and determining factor.

The Commission has made an extremely thorough study of co-determination in practice, in order to derive recommendations for those bearing responsibility in related areas, be it in companies, collective organisations, trade unions or the political sphere.

More than 50 experts were called upon to contribute their knowledge and experience of co-determination, including entrepreneurs and managers, trade unionists and works councillors. Comprehensive preliminary work was conducted in the form of numerous hearings with social scientists and on three committees. In addition, members of the Commission conducted a series of interviews with representatives of collective organisations and trade unions and with politicians and experts from the field.

Given the complexity of the topic and the unanimous view of the members of the Commission that the common core of their findings should not be obscured by differences of detail, each and every member of the Commission cannot be held to each and every formulation in the following recommendations. In the interest of reaching a joint position, members have in some instances accepted certain formulations even though they themselves would have preferred to have gone further or not as far. For the sake of the project as a whole, mutual concessions were and are always necessary on individual questions; it was only on the basis of this willingness to compromise that the concluding report and the recommendations could be unanimously adopted.

The atmosphere in the Commission was at all times businesslike, fair and characterised by mutual respect. Criticism was seen as evidence of devotion to the common task. The *esprit de corps* within the Commission proved extremely productive.

The Foundations have successfully shown that personalities from different interest groups are perfectly willing to act together. This is conditional, however, on clear recognition of the overriding goal and a strong commitment to achieving a result in an atmosphere of mutual tolerance. From this perspective, the Co-determination Commission constitutes an example of a trust-based culture.

The Foundations have sent a signal. They call on the "forces of optimistic reason" across all political and social boundaries to overcome tactical foot-dragging in all its forms and to come to the realisation that successful economic modernisation must incorporate interpersonal relationships, must, in other words, be based on a corporate culture that points to the future.

Prof. Karl-Heinz Briam

Chairman of the Co-determination Commission