

Biedenkopf Commission sees no need for fundamental reform of German codetermination

On 21 December 2006 the three independent academic members of the so-called “Biedenkopf Commission” on the modernisation of the German system of codetermination issued their report, which sees no need for fundamental changes to the German system of codetermination. In doing so, the independent report strengthens the German system of codetermination.

Composition and task of the Biedenkopf Commission

The Commission on the modernisation of the German system of codetermination was established by Chancellor Schröder under the previous German government in July 2005. The Commission consisted of nine members, with Kurt Biedenkopf as its chair – hence its name the “Biedenkopf Commission”. The three “independent” or “neutral” academic members of the Commission were Kurt Biedenkopf (former prime minister of the Land Sachsen), Wolfgang Streeck (Director of the Max Planck Institute in Cologne) and Helmut Wißmann (President of the Federal Labour Court). The employee side was represented by Michael Sommer (head of the DGB), Jürgen Peters (head of IG Metall) and Günter Reppien (chairman of the central works council at RWE Power AG). The representatives of the employers’ side were Dieter Hundt (President of BDA), Jürgen Thumann (President of BDI) and Manfred Genz (President of the International Chamber of Commerce Germany).

The Biedenkopf Commission was established with a view to assessing the strengths and weaknesses of the German system of codetermination in light of the challenges posed by intensified Europeanisation and globalisation. Against this background, the Commission was asked to develop suggestions for modernisation of the German system of codetermination so that it fits in

the wider European context. Both the task and the composition of the Biedenkopf Commission were confirmed by the newly elected Chancellor Merkel in November 2005. The new government also confirmed that “it will take up the – mutually agreed – results of the Commission and that it will – if necessary – carry out changes to the German system of codetermination”.

Social partners’ irreconcilable differences

However, it soon became clear that the two sides of industry could not agree on the most basic issues and that the formulation of “mutually agreed” recommendations would be highly unlikely. The major stumbling blocks which in the end led to the failure of the Commission to deliver mutually agreed recommendations were the diverging positions of employers and trade unions on the following issues:

- assessment of the practice of and experience with the system of codetermination;
- maintaining the rules of the Codetermination Act of 1976 as regards the composition of supervisory boards – that is, the question of parity representation;
- the interaction between the different levels of the German system of codetermination – that is, workplace-level representation and supervisory board representation;
- the introduction of a voluntaristic negotiating option in the area of codetermination.

Since it was not possible to come to an agreement on these issues, the representatives of the two sides of industry announced the failure of the Commission in November 2006. Biedenkopf, the chairman of the Commission, blamed the maximalist positions of the employers for the failure. According to the guidelines of the Commission, the three academic members of the Commission issued their own “independent” report. The report also contains two separate statements by the employers and trade unions.

Three main issues: flexibility, internationalisation and consistency

The main conclusion drawn by the academic members of the Biedenkopf Commission is that “they don’t see any reason to recommend to the government any fundamental revisions of the German system of codetermination”. However, they do emphasise a need to adapt the existing system of codetermination to changed institutional and economic framework conditions.

The report’s recommendations can be divided into three main areas: the first set of recommendations aims to increase the scope for more flexible solutions tailored to companies’ specific circumstances. The academic members of the Commission suggest that in future the two sides of industry should be allowed to negotiate not only on the intensity of codetermination rights at the various levels of the company but also on the size of the supervisory board and on the set of issues which need the approval of the supervisory board. The legal basis of such negotiated solutions would be a collective agreement concluded by the two sides of industry. Another recommendation aiming to reduce red tape is that the supervisory board members should be elected by the members of works councils rather than by a complex workforce election.

The objective of the second set of recommendations is to adapt the German system of codetermination to the ongoing Europeanisation of company law and the challenges posed by the internationalisation of company structures. The key recommendations are firstly, that employee representatives of foreign subsidiaries be included on the supervisory board, and secondly, that German limited companies be provided with the legal basis to introduce a monistic system of corporate governance.

The third set of recommendations tries to do away with a range of inconsistencies within the existing system of codetermination and corporate governance.

Since the academic members of the Commission see no need to replace the parity representation on supervisory boards granted by the Codetermination Act of 1976 with a one third employee representation – which was the employers’ core concern – it is not surprising that the employers’ representatives on the Commission reject the results of the report outright. In an attempt to question the academic validity of the report’s recommendations they even accused the academic members of the

Commission of being biased (*Süddeutsche Zeitung*: 21 December 2006). The trade unions welcome the report as a step in the right direction and emphasised in particular their openness to include employee representatives from foreign subsidiaries in the supervisory board and to find more flexible negotiated solutions through collective agreements.

Codetermination is about democracy, not economics

Since the German government explicitly stated that it would consider only “mutually agreed” suggestions, it is unclear whether any of the report’s recommendations will ever be implemented. The political significance of the report of the academic members of the “Biedenkopf Commission” goes far beyond the question of the implementation of its recommendations, however, since the report explicitly stresses that the intention of the Codetermination Act of 1976 was not to improve the competitiveness of German companies but to provide the employees with the democratic right to participate in decisions which affect them. In doing so, the report reminds the general public – and the employers in particular – that the logic behind the introduction of the Codetermination Act of 1976 and the German system of codetermination more generally was political: it granted employees fundamental democratic rights rather than economic rights. This long overdue clarification might help to turn the debate about the German system of codetermination and corporate governance from its (economic) head back onto its (political) feet.

The independent report delivers a further blow to the primarily economic logic of the public debate about the German system of codetermination. Employers in particular have repeatedly argued that codetermination hampers the competitiveness of German firms. The independent report disproves these arguments on both methodological and substantial grounds.

The report explores the methodical problems involved in attempts to analyse the economic implications of the German system of codetermination. It points out that the complexity and the multitude of variables that potentially influence economic success or failure make it impossible to single out the effects of codetermination. Based on a thorough analysis of the existing literature and hearings of experts, the report furthermore highlights the ambiguity of existing research findings. The report concludes that in light of the

ambiguity of the research results and the persistence of methodological problems, there is no clear empirical evidence of the economic implications of codetermination – neither positive nor negative.

If at all, the existing experience suggests that codetermination has positive consequences. For instance, the 1980s, when the Codetermination Act of 1976 unfolded its full impact, was a period of almost unprecedented economic prosperity in Germany. Obviously, the German system of codetermination did not impede the economic success of companies. The research review also finds that that codetermination does not hamper foreign direct investment in Germany. Other factors such as market dynamics, infrastructure and the qualifications of the workforce are seen to play a much more important role in investment decisions.

In conclusion, it can be said that besides its concrete recommendations to adapt the German system of codetermination to changing political and economic framework conditions, one important contribution of the report of the academic members of the “Biedenkopf Commission” could be to shed new light on the economisation of the public debate about codetermination in Germany and to draw the attention back to its real political core.

Dr Torsten Müller
European and Global Industrial Relations Research Group
University of Applied Sciences at Fulda, Germany