

Employment relations in an era of change

Multi-level challenges and responses in Europe

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Edited by

Valeria Pulignano, Holm-Detlev Köhler and Paul Stewart

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Contents

Valeria Pulignano, Holm-Detlev Köhler and Paul Stewart Introduction	7
Part 1 Global challenges and local responses	15
Holm-Detlev Köhler and Sergio González Begega Chapter 1 Tenneco-Gijón. A case of local worker resistance against a global player	17
Dragoş Adăscăliţei and Ştefan Guga Chapter 2 Coming apart or joining hands? The crisis and current dilemmas of the Romanian trade union movement	37
Nadja Doerflinger and Valeria Pulignano Chapter 3 Left alone outside? Works councils' responses to non-standard work in the German metal and chemical sectors	57
Lander Vermeerbergen, Geert Van Hootegeem and Jos Benders Chapter 4 'Waiting for heaven' or 'fearing a new hell': trade union opinions on the introduction of team-working in a food processing company	79
Gaëtan Flocco Chapter 5 Hierarchical relationships and conflicts in skilled sectors: the case of managers in French industry	97
Miguel Á. Malo Chapter 6 Collective bargaining reforms in Southern Europe during the crisis: impact in the light of international standards	117

Part 2 European multi-level governance	137
Mona Aranea	
Chapter 7	
Multi-level employment relations in the multinational company: evidence from Allianz SE	139
Sara Lafuente Hernández	
Chapter 8	
Uncovering the pitfalls of EU social dialogue from a multi-level perspective. The example of the electricity sector	159
Aline Hoffmann	
Chapter 9	
Still struggling to connect the dots: the cumbersome emergence of multi-level workers' participation	183
Miguel Martínez Lucio	
Chapter 10	
Unhinging social dialogue: a review of the politics of pacts and the diverse uses and transformations of the concept of social dialogue	207
Conclusions The practitioners' perspective	229
Introduction	230
Ben Egan	
Employment in Europe: mapping trade union challenges	231
David Wilson	
A question that cannot be avoided	241
Wolfgang Kowalsky and Peter Scherrer	
Democracy at the workplace in the 21st century	249
List of contributors	261

Introduction

Valeria Pulignano, Holm-Detlev Köhler and Paul Stewart

1. Employee and employer relations in an era of change: challenges and responses from a multi-level perspective in Europe

The future of employee and employer relations and their regulatory mechanisms and institutions are undergoing profound change in contemporary capitalist societies. In particular, globalization has created instability in the form of wage competition, the decentralization of collective bargaining and the deregulation of labour standards, thereby undermining relationships between employers, trade unions and the state at both sector and national levels. This has coincided with structural changes generating congruence in outcomes rather than convergence in patterns (Baccaro and Howell 2011) within (and across) different countries within the European Union. On the other hand, it can also be argued that, by opening up space for trans-nationalisation, Europeanisation has increased the complexity of the industrial relations map. New levels, players and institutions, new horizontal and vertical relationships and interdependences among company, sectoral, national and transnational public and private stakeholders have been created (Keune and Marginson 2013). The recent financial crisis has revealed deep ‘economic’ fissures within the complex European project, with profound dis-integrative implications for employment relations in Europe (Arrowsmith and Pulignano 2013).

Although several studies have examined the challenges and effects of the changing employment relationships on workers and unions within different countries, sectors and workplaces, their socio-political causes and dynamics as well as the trade union and employer (management) strategies adopted in attempts to come to terms with the changing situation remain weakly addressed from a multi-level empirical perspective (for an attempt to look at multi-level see Pulignano *et al.* 2016; Pulignano and Keune 2015).

This volume is an attempt to deal with this current deficit in industrial and employment relations research by providing an overview of the extent, dynamics and strategies of the social partners (unions and their representatives and employers and management) involved and affected by these transformations. Drawing on Marginson and Sisson's (2004) concept of 'multi-level governance' to capture the complex relationships between the transnational, national, sector and workplace levels of employment relationships, we provide wide-ranging empirical evidence illustrating why a multi-level approach is potentially the most suitable way to understand the current transformations together with their social effects. The various chapters also examine the difficulties facing social partners in developing multi-level strategies while at the same time coping with economic and political changes.

We first critically contextualise change, examining its main factors and forces at different levels within the European area. We then provide summaries of the further chapters, considering how a multi-level perspective helps better understand current changes and the challenges involved in studying industrial and employment relations practice and policy. Multi-level denotes the specific attempt to articulate across the different levels of the industrial relations structures, actors and processes (i.e. European, national, sector and local while at the same time coordinating across-countries). Finally, we present a number of lessons learnt on the ground, with a focus on trade unions: what can be learnt from efforts to provide a multi-level perspective in the study of social partner strategies and responses to the transformations in employee and employer relations in Europe?

1.1 Contextualizing change: the process of European economic integration

The origin of the European Union is the 1992 adoption of the Treaty on European Union in Maastricht, culminating a process initiated by the 1986 Single European Act. An important goal of the Treaty was to promote growth, employment and rising living standards not just by removing barriers to the movement of capital, goods and labour across internal borders, but ultimately by monetary union. The common currency, together with a single monetary policy, was introduced in 1999. This profound deepening of the EU was soon accompanied by a relatively swift widening (Arrowsmith and Pulignano 2013). The twelve Maastricht

signatories were joined by Austria, Finland and Sweden in 1995 and by ten new Member States (NMS) in 2004, mainly former Communist countries in Central and Eastern Europe (CEE). The EU has since grown to 28 Member States, with most (17) adopting the euro as their currency. In the course of a single generation, the EU thus became a collection of states diverse in terms of history and culture, economic development, fiscal regimes, and welfare and employment institutions, yet economically interconnected in ways never before seen on the continent.

The scale, pace and fundamental shortcomings of this process had major implications for the regulation of employee-employer relations. In particular, the bargaining power of organized labour was weakened by the combined effects of heightened competition (between companies in countries with very different labour costs and regulatory configurations), and increased capital concentration and mobility across (and within) countries. The internationalization and intensification of competition unleashed intense pressure on nationally-based industrial and employment relations systems, as seen in manufacturing, a sector which often sets the pattern for negotiations in other sectors and industries. Companies sought looser multi-employer arrangements to gain flexibility in determining employment conditions and restructuring. The governance capacity of national – usually sector-based – industrial relations institutions was also diminished by the spectacular growth of multinational companies (MNCs) which followed the integration of EU product and capital markets; the annual number of cross-border mergers and acquisitions soared from around 750 in 1992 to 3000 at the end of the decade (Garnier 2007). Collective bargaining agendas were increasingly dictated by competitive benchmarking between different workplaces within MNCs across (and within) countries and industries. This allowed MNCs to make more or less explicit threats to relocate production or investment abroad, a trend which intensified in the run-up to enlargement in 2004 (Arrowsmith and Marginson 2006).

1.2 When did European economic integration mutate from an integrative to a dis-integrative process for the employee-employer relationship?

In the European Union's first decade (post Maastricht, pre-2004 enlargement), several common features characterising employee-employer relationships in Western Europe could be identified: a high

degree of interest organisation; multi-employer collective bargaining with comprehensive coverage; a universal right to representation with an enterprise; information and consultation rights. Moreover, it can be argued that the evolution of the European social dimension, as seen by the establishment of structures for inter-professional and sectoral and transnational company-level social dialogue as well as information and consultation rights for employee representatives, was increasingly reflected at EU level. Almost ten years after its inception, the widening and further deepening of the EU shattered this convergence. Overall, three key disorganising elements affecting employer-employee relationships can be identified:

- A progressive corrosion resulting from pressure for decentralisation and flexibilisation, particularly evident in wage regulation;
- The European Court of Justice's judgements undermining national collective bargaining;
- Crisis interventions by the Troika in Southern Europe and European Central Bank pressure on Italy and Spain, all of which have led to disruptive changes in multi-level bargaining arrangements in those countries;

1.3 Salient developments and factors of change

The changing face of employment relationships over the last two decades in Europe can be explored in terms of a more or less incremental transformation of processes (and institutions) and especially outcomes which reflect a profound shift in the economic and political balance of power between capital and labour at particular levels.

In recent decades the traditional and different national, social and employment models in Europe – whether Nordic, Mediterranean, Continental, Anglo-Saxon or New Member States – have all faced similar 'reform' pressure in order to reduce costs and increase flexibility in their employment, welfare and labour market regimes. This has been marked by a shift from 'social' (such as quality of working life, social entitlements) to 'market' (such as participation rates, qualification indices) goals. Similarly, at sectoral level restructuring pressure (as seen in manufacturing) and the need to adapt to the new challenges imposed by international competition and market liberalization (as seen in private and public services) were present from the outset. The effects of these

changes affected companies and workplaces too, as witnessed by the rise in new forms of work (i.e. temporary, atypical and precarious jobs). This in turn posed new challenges for trade unions, particularly in terms of strategies for the collective representation of workers in precarious jobs.

In terms of the origins of these changes it is crucial to take stock of increasingly integrated and competitive product markets, financialisation and capital mobility, and tertiarisation. These developments have gone hand in hand with changing labour market demographics, the growth of new technologies, as well as new forms of work organization. All these factors have impacted the content and nature of employment relationships – and employment in general. Much of this has served to weaken organized labour, thereby accelerating the pace of change. In particular, as mentioned above, trade unions are now facing profound and reinforcing challenges. First, the continuing shift of employment from labour-intensive manufacturing to services means that national workforces are becoming increasingly diverse and dispersed. The gender and occupational re-composition of the labour force, together with the accompanying fragmentation of employment across smaller workplaces and atypical forms, presents profound problems for traditional forms of labour organization and contributes to declining membership density. Second, the digital revolution is increasing the pace of change and encouraging new forms of work that constantly challenge established norms. Third, labour management is increasingly influenced by the human resource management (HRM) philosophies and practices emphasizing employee flexibility and performance and showing less concern for traditional, collective forms of labour regulation. Fourth, in the political arena, a deregulation agenda influenced by neoliberal market ideologies has emerged, manifested by the removal of restrictions (such as those on shop opening hours) in the private sector, labour market and welfare reform, and by the privatization and commercialization of public sector organizations.

2. Structure of the book

The book consists of ten chapters divided into two sections. The first section, 'Global challenges and local responses', considers transnational and global challenges and their impact on local settings, including conflicts in the context of social change. It explores union and management responses to current transformations, their challenges and

outcomes. Overall, the focus is on country and company-based case studies. This section considers the problems facing social partners when linking transnational and local settings and coming up with meaningful responses to current transnational challenges.

Chapters one (Holm-Detlev Köhler, Sergio González Begega) and two (Dragos Adăscăliței and Ștefan Guga) examine local union power and responses to local restructuring, with both addressing the issue of improving working conditions during the current period of crisis. The case study of Tenneco Spain (Köhler and González Begega) illustrates in a very innovative way how a local workforce was able, in a process of collective learning and mobilization, to challenge a powerful MNC and reverse a decision to close a plant. In this case, the intelligent combination of mobilizing the local workforce and the community, political pressure at local, regional, national and European level, legal action, and presence in the mass media – i.e. the coordinated collective action at all levels of the employment relationship – was able to rebalance the highly unequal power relationship between capital and labour. Drawing on two case studies of Romanian automotive plants, Adăscăliței and Guga analyze the crisis-driven decentralization of industrial relations and its impact on trade union power resources. Without sectoral and national institutional support, even strong local trade unions find themselves weakened, condemned to rely entirely on their own organization and mobilization capacities.

Chapter three (Nadja Doerflinger and Valeria Pulignano) presents trade union strategies in relation to the increasing use of atypical forms of employment in multinationals in the metal and chemical sectors in Germany. It illustrates the manner in which unions and works councils strategically influence the use of atypical work in their local negotiations with management. This depends on how unions and works councils articulate macro- (institutional) and micro- (local) level capabilities. In particular, macro institutional settings, such as workplace representation and collective bargaining structures, can influence local discretion. This perception may help improve our understanding of the degree to which the extent and form of contractual diversity can be controlled at workplace level.

Chapters four (Lander Vermeerbergen, Geert van Hootegem and Jos Benders) and five (Gaetan Flocco) deal with changes in work organization in Belgium and France respectively. They problematize the effects of

organizational change on employee relations, examining its effects on maintaining social peace in a context of high-skilled workplaces. Gaetan Flocco's chapter illustrates that, despite traditionally conflictual French industrial relations environments, conflict can be overcome under specific local conditions. Particularly, he demonstrates how the class position of *cadres* allows them to both challenge top management but also to achieve a particular form of social compromise: while organized in trade unions they are in a position to embark on highly individualized responses to conflict. In Chapter six, Miguel Malo provides an up-to-date comparative view of collective bargaining reforms in Greece, Portugal and Spain during the Great Recession. The regulatory changes are analyzed in light of the framework set by international law, namely ILO Conventions and Recommendations concerning freedom of association and collective bargaining.

The second section, 'European multi-level governance', looks more specifically at the evolving system of multi-level employment relations in Europe (including social dialogue and worker participation systems), identifying its main components and its distinctive way of addressing the main challenges encountered during the recent crisis. Overall the focus is on the European level of industrial relations, with the aim of illustrating social partner "good practices" in dealing with current changes through examining how relationships are articulated between EU and national/local levels. In this vein, Chapters seven (Mona Aranea) and eight (Sara Lafuente Hernández) look at negotiations/dialogue between employers and employee representatives and trade unions at European level. Chapter seven focuses on transnational representation and negotiation structures in multinationals, while Chapter eight looks at EU sectoral social dialogue. Using a case study of the insurance multinational Allianz SE, Aranea analyses the conditions and strategies allowing the development of effective multi-level representation and bargaining structures in multinationals. Looking at the social dialogue in the European electricity sector, Lafuente examines the different meanings of *sector*, *representativeness* and *capacity to negotiate* across diverse levels and critically analyses the structural limits of sectoral social dialogue from a multi-level perspective, concluding with some policy implications for research and also for stakeholders interested in the future of EU sectoral social dialogue. In Chapter nine Aline Hoffmann analytically discusses the importance of articulation across levels within the broad area of transnational industrial relations, focusing on the manner in which multilevel industrial relations can help connect policy to strategy. Chapter

ten (Miguel Martínez Lucio) closes the section with a critical reflection on the question of transnational social dialogue as the European response to the challenges posed by European economic integration. The chapter argues that there has been a steady transformation of the concept of social dialogue and a weakening of its meaning in various public bodies, with the result that it has now become uncoupled from specific players, for instance trade unions, and redefined in new business-friendly terms. In this respect, the chapter calls for significant attention to be paid to the language of soft regulation and transnational market governance often influencing social dialogue. To this end it encourages us to think of ways in which the term can be reclaimed, for instance through linking it to a broader and radical emancipatory approach which fosters consensual social relations, concertation, negotiation and social redistribution.

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Part 1

Global challenges and local responses

Chapter 1

Tenneco-Gijón. A case of local worker resistance against a global player

Holm-Detlev Köhler and Sergio González Begega

‘The first thing I thought was that the guy had gone crazy. How could he say that there was still time to do something? Management had already told us that we’d been closed down. What were we going to do, when we’ve all already been fired?’

Interview quotation, local works council member
(TEN_CE09/26/10/2015).

1. Introduction

Analysing the local embeddedness of multinational companies (MNCs) is a worthwhile line of research when examining the growing detachment between labour and capital in the globalized economy. Corporate global restructuring impacts production, employment and incomes, leading to a new landscape of globalization winners and losers in the form of boom or bust districts and regions. The rupturing of an MNC's local embeddedness leads, in some cases, to the formation of incidental local networks of resistance to production relocation and plant closure plans. Such cases of reactive mobilization by workforces and local communities are the subject of much discussion and interest, as they reveal opportunities and constraints for effective local responses to relocation threats. Labour, civil and local public players engage in these *ad hoc* alliances in an attempt to gain influence over MNCs and reverse corporate decisions. Nevertheless, the actual effectiveness of such networks of resistance is low. The teleology of organization change is very difficult to break once a relocation decision has been taken and implemented throughout the production chain.

This chapter examines a successful case of local resistance to relocation. In early September 2013, the 221 employees of the American MNC Tenneco in Gijón (Spain) were informed that their plant was about to be

closed down. The workers immediately initiated collective action in the form of an unusual repertoire of protest and mobilization of support. The attempt to avert the closure was successful, and the plant was re-opened eight months later. A comparatively small workforce was able to reverse the decision to cease operations and relocate, unexpectedly stopping an ongoing process of global restructuring. Conventional theoretical approaches to organizational behaviour and change, corporate decision-making and transnational industrial relations were unable to provide an adequate set of exploratory instruments and explanatory tools to understand what had happened.

The structure of this chapter is as follows. The first section – on the MNC as a contested political complex – is devoted to presenting a conceptual framework which examines corporate decision-making as a political process in which various private and public players, internal and external MNC stakeholders become intertwined. An MNC is a labyrinth of interests, strategies and power resources pursued and deployed at local, national and transnational levels. Corporate decision-making is therefore much more than just the result of a rational quest for productivity and competitiveness gains, innovation, cost containment and efficiency improvements. It takes place within a multi-level political complex, under conditions of contestation, conflict and unpredictable change. The MNC is a political matrix structure, the legacy of struggles between different locations and decision-making nodes on a variety of scales.

The following section describes and analyses the case at hand, examining the successful resistance of the Tenneco-Gijón workforce to the corporate decision to relocate production and close down the plant. From September 2013 to April 2014, regular labour mobilizations were combined with a heterogeneous range of tactical collective actions to gain the backing of different civilian and public stakeholders, including (decisively) the European Commission. The workforce was able to build such a heterogeneous coalition through intensive strategic learning and tactical flexibility. Eight months of mobilization culminated in the re-opening of the plant and the reinstatement of the dismissed workers.

Concluding the chapter, the discussion revises the contested (i.e. political) nature of corporate decision-making. The production of social norms on relocation is the outcome of temporary and unstable power relations between different political stakeholders within and outside the MNC. The teleology of organizational change can thus be both avoided and broken.

Inventive and experimental collective action at local level is decisive to counteract and, in some cases even reverse, the most negative effects of corporate global restructuring on industrial relations and employment.

2. The MNC as a contested political complex

2.1 Perspectives for organizational change and industrial relations

The internal complexity of MNCs constitutes one of the most dynamic areas of research in the fields of organizational behaviour, corporate governance and industrial relations. The seminal studies conducted by Howard V. Perlmutter in the late 1960's led researchers to focus on the institutional, cultural and sectoral embeddedness of internationalized companies (Perlmutter 1969). The context in which the company itself operates, its competitive environment and changes in market patterns and regulation shape corporate practice. Global sectors, cultural environments and institutional arrangements, under different conceptual enunciations (i.e. varieties of capitalism, national and subnational business systems) define and help produce business models, governance structures and practices and organizational behaviours (Hofstede 1980; 1991; DiMaggio and Powell 1983; Boyer 1986; Maurice *et al.* 1986; Dicken 1992; Ghoshal and Westney 1993; Müller 1994; Whitley 1999; Hall and Soskice 2001, *inter alia*).

The preference attached in the literature to the isomorphism of corporate decision-making processes has caused certain shortcomings, including the de-politization of MNCs. This emphasis on a company's institutional, sectoral or cultural embeddedness has resulted in a blurring of other substantive aspects. The focus has been on structures (i.e. results) and not on the processes behind organizational change. Reproduction of environmental conditions, rational adaptation and efficiency-seeking are not the only principles guiding any reconstruction of corporate decision-making. Organizational change is also the temporary outcome of the power struggles, negotiations and arrangements of the different stakeholders and interest groups shaping the organizational context. Strategic egoism, partisan thinking, destructive competition and non-rationality are also decisive factors to be considered when looking into corporate behaviour.

New research on organizational change insists on the contested and contingent nature of MNCs. The establishment of social norms within an organization depends on the interrelation of institutional, cultural and sectoral contexts on the one hand, and collective action on the other. Corporate decision-making is more about power relations and strategic leadership processes not necessarily aligned with the rational quest for optimal, mutually beneficial and efficient arrangements on the part of those concerned (Streeck 2011; Becker-Ritterspach and Dörrenbächer 2011; Geppert and Dörrenbächer 2011; 2014).

MNCs are the incidental outcome of an institutional legacy of struggles, negotiations and contested decisions more in line with the conditions of uncertainty, ambiguousness and complexity than with the mechanistic and linear teleology of *rationality* and *efficiency*. As a result, MNCs are contested terrains spread across multiple institutional realities, such as varieties of capitalism, global fields of organizational competition and cultural topographies *à la Hofstede* (Kostova *et al.* 2008: 997).

The strategic positioning of an MNC is not an individual form of interest pursuit but rather a temporary result of the political balance among different stakeholders and interest groups. MNCs are highly complex configurations of ongoing micro-political struggles at different levels in which heterogeneous players interact socially to create temporary coalitions and balances of power (Köhler 2004: 128; Morgan and Kristensen 2006: 1473; Köhler and González Begega 2010b: 37).

The political analysis of an MNC reveals the biased reasoning of those perspectives suggesting the existence of predefined paths of organizational change. Global sourcing, production site benchmarking and the *de-territorialization* of economic activity are often presented as the inescapable results of globalization. Implicitly, this same narrative presents local resistance against corporate decisions as out of line with global rationality and consequently futile and ineffective. While labour is systematically harmed by such corporate practices, the mere suggestion of collective action and protest is often ruled out *ex ante* in the face of the assumed *impossibility* of altering the course of an already-taken decision to disinvest and relocate. The politization of corporate decision-making makes for an understanding that organizational change is neither unrestrainable nor utterly unmanageable by labour and other local stakeholders. MNCs are multi-level contingent constructions. Corporate decision-making is historically grounded and path-dependent, but it also

opens up multiple windows of opportunity and feasible options to be carried forward by those players and interest groups with enough power resources to pursue them (Tapia *et al.* 2015; Albarracín Sánchez 2015; Marginson 2016).

2.2 Power dimensions in MNCs. The production of social norms on corporate restructuring and relocation

MNCs are social intersections of power, interests and divisions between capital and labour in which it is possible to re-address the relationship between structure and collective action from a micro-political perspective (Crozier and Friedberg 1977).

In this definition, corporate decision-making is based on the always precarious and contingent arrangements reached by those players with a stake in the organizational field. The power resources available to these internal or external, local or de-territorialized, private or public stakeholders are not simple possessions to be exerted at will. Rather, in a genuinely *foucaultian* sense, power resources constitute the very grounds on which the different forms of social interaction within an MNC take place. Power is not therefore a mere disputed asset, utensil, advantage or prize but the cornerstone upon which social reality is constructed: in our case, organizational reality (Foucault 1975; 1993).

Three interconnected power dimensions are identifiable in MNCs. Social norms regarding organizational change and relocation are both contested and/or negotiated through these power dimensions. An MNC's social system, on which corporate behaviour, governance structures and disciplinary schemes depend, is built upon them. These power dimensions involve corporate discourse, corporate decision-making processes as well as their material outcomes in the form of rewards and sanctions for the different players and interest groups with a stake in the MNC (see Table 1).

- (1) Power dimension 1: Corporate discourse reflecting shared beliefs, values and understandings of organizational objectives which legitimate the means to attain them. Political struggles within this power dimension refer to the contest for hegemony and symbolic legitimacy among different players, which confers greater desirability and rectitude on certain corporate practices while others

are shown to be (and assumed to be) irrational, counterproductive, non-efficient or dangerous.

- (2) Power dimension 2: Corporate governance procedures and the mechanisms for assigning rewards and sanctions. This dimension relates to the political struggles over decision-making procedures and discourse rationalities in a constant evaluation process for individuals and groups. This includes both the discretionary assignment of the corresponding rewards and sanctions to these individuals and groups; and the organizational routines, designs and rites that legitimize certain players to participate in corporative decision-making or deny others access to it.
- (3) Power dimension 3: The actual distribution of material rewards and sanctions. This dimension refers to the political struggle for material compensation and penalties, including investment vs. disinvestment; hiring vs. dismissal; promotion vs. demotion, etc. Competing interests around this power dimension determine which individuals and groups (i.e. plants, workforces, subsidiaries, management levels) maintain, improve or worsen their status within the MNC.

Table 1 Power dimensions in the MNC

Power dimensions	Contested areas	Character
Discourse	Shared beliefs, values and understandings of organizational objectives that legitimate both governance procedures and the allocation of rewards and sanctions.	Symbolic
Governance structure and procedures	Routines, designs and rites of corporate decision-making. It includes legitimation of certain individuals and mechanisms for assigning rewards and sanctions.	Procedural
Rewards and sanctions	Actual distribution and access to financial, technological and knowledge assets. It includes the effects on the workforce of investment and disinvestment decisions (i.e. corporate restructuring and relocation).	Material

Source: adapted from Ferner, Edwards and Tempel (2012).

The production and institutionalization of social norms on corporate restructuring and relocation traverses the three power dimensions: symbolic; procedural; and material. The political struggles over the actual distribution of compensation and penalties are reflected in forms of organizational behaviour and corporate change. Power balances and

competing interests within an MNC shape organizational preferences for particular choices and development paths, while others are rejected as out of line (i.e. non-rational) with the hegemonic and prevalent corporate discourse (Ruigrok and Van Tulder 1995).

The corporate discourse on corporate restructuring and relocation is based on a specific rationality which aligns the work of the MNC as a whole with the objective of creating shareholder value. The interests of local stakeholders (including workforces) and territories are subordinated to this objective. The *financialisation* of corporate discourse marginalizes alternative forms of value distribution. As such alternatives are ignored, other options for the organization of global chains and, consequently, other possible paths of globalization, remain hidden (Hirst and Thompson 1996).

Financialisation transforms corporate governance routines, designs and tools. Decision-making procedures are de-territorialized, increasing the disconnection between transnational capital and local environments (Ruigrok and Van Tulder 1995; Köhler and González Begega 2010a; Becker-Ritterspach and Dörrenbacher 2011).

On the one hand, financialisation concentrates corporate power at the transnational level. With its direct links to shareholders, central management is strengthened to the detriment of subsidiary and local management, including the management of suppliers and sub-contractors. Concentrating power around central management reinforces hierarchical and vertical disciplinary lines. Business units and local production sites are expelled from corporate decision-making and instead placed under tight monitoring and intense pressure. Furthermore, any relationship between local units is based on strictly competitive terms, with units systematically benchmarked for efficiency and profitability by central management. The MNC becomes an internal market whose units, along with their associated internal and external interests, compete under conditions of short-term commitment, production volatility and the continual threat of disinvestment (Blazejewski and Becker-Ritterspach 2011; Marginson 2016).

On the other hand, the concentration of corporate power prevents the representation of non-transnational interests in corporate decision-making, such as site workforces or local and national public authorities. In the absence and/or weakness of appropriate institutional structures,

local stakeholders are excluded both from the elaboration of corporate discourse and from corporate decision-making on material rewards and sanctions (González Begega 2011).

The production and institutionalization of social norms on corporate restructuring and relocation are fed by a plethora of symbolic discourses, procedures and material resources with a powerful disciplinary impact. Public authority and trade union responses to relocation plans often go along with the implicit financialisation rationality, favouring the avoidance of resistance and the generation of consent. Corporate restructuring is socially reproduced (i.e. constructed, presented and perceived) as necessary, strictly unavoidable and *fair* (Eurofound 2013).

Empirical research demonstrates, however, that the allocation of material rewards and sanctions does not always comply with patterns of corporate rationality. In some cases, relocation decisions do not correspond to efficiency criteria but to partisan thinking, egoistic interests and disputes between different management groups. When such a rupture of corporate rationality occurs, the fragility, dynamism and specific political character of organizational change are revealed. The following case study tells a rare story, that of a successful worker mobilization disrupting the teleology of organizational change.

3. The case study. Worker resistance and public mobilization at Tenneco-Gijón

3.1 Methods

As stated in many research publications, in-depth case studies are necessary to deal with the complexity of multi-level power relations and micro-political arenas. The internal fragmentation of MNCs in different contested terrains at various overlapping levels generates a huge variety of possible strategies and stakeholder constellations (Ferner *et al.* 2004; Almond and Ferner 2006; González Begega 2011).

Ferner, Edwards and Tempel (2012: 182) argue that case studies 'are better suited than surveys to developing nuanced operationalizations and unpicking the complexities of power, how different kinds of power capabilities are deployed by different actors in the transfer process, and how configurations of interests are constructed around different transfer

cases.’ As flexible bundles of research instruments and analytical tools, case studies offer a series of advantages for analysing organizational change and the social production of norms and values in MNCs.

First, case study approaches allow flexible adjustments of different research methods and the combination of various sources of information when facing the difficult challenge of simultaneous explorative and explanatory objectives. Second, case studies are able to tackle fundamental theoretical research problems such as the ontological gap between structure and agency. Collective action, corporate decision-making and struggles over norms and rules at different organizational levels can be analysed taking societal contexts into consideration. Third and finally, case studies are particularly suitable for recovering the normative aims of a renewed public sociology approach, re-aligning sociological analysis with the study of current social realities (Eisenhardt 1989; Yin 1994; Burawoy 2005).

Our fieldwork, covering the period from October 2013 to March 2016, included: (1) 18 semi-structured interviews with employees, works councillors, trade unionists, employees and political representatives at local, national and European levels. A number of additional semi-structured interviews were also conducted with corporate managers and political representatives but were not registered and documented due to confidentiality requirements; (2) the analysis of the documented interviews with Tenneco employees available at AFOHSA (Archive of Oral Sources for the Social History of Asturias); (3) a survey of 130 of the 216 employees (November 2013; 60,18% of the workforce covered) asking 53 questions on their employment conditions and their perception of the situation after the closure decision; and (4) an exhaustive analysis of secondary sources, particularly company documents and the regional and local press and media; and observations made at workers’ assemblies and mobilizations.

3.2 The case. Avoiding the unavoidable, breaking the teleology of organizational change

On 5 September 2013, local management at the Tenneco production plant in Gijón (Northern Spain) presented to the works council the corporate relocation decision which entailed the closure of the facilities and the dismissal of its 221 employees. The reasons given for moving the plant’s

production to other factories in Spain and Eastern Europe and for closing down production at Gijón were economic: the plant's reduced profitability and impaired competitiveness.

The corporate decision to relocate production came as a complete surprise for the workforce. Both workers and their representatives in the local works council were shocked, as the plant had recently received recognition for product quality and technological know-how. It had never reported losses on operating activities and, after a period of temporary restrictions (agreements on working time reduction with corresponding wage cuts) between 2007 and 2010, the plant had been working at full capacity since early 2013.

Tenneco had decided to relocate its Western European operations to Eastern Europe, shifting shock absorber production to Poland (Gliwice) and Russia (Togliatti), where a new production facility had been planned and would soon become operational. The closure of the plant in Gijón was in fact just a minor element of an overall plan restructuring Tenneco's entire European shock absorber manufacturing division (Project ICARUS), to be implemented immediately and tailored for the MNC by the international consulting firm Ernst & Young. Project ICARUS entailed the relocation of work-intensive manufacturing facilities with a view to lowering labour costs and achieving substantial tax reductions. It was bound to put Tenneco sites and national authorities in Western and Eastern Europe under great pressure. As a result of ICARUS, 221 employees in Tenneco-Gijón and a similar number in another plant in Belgium (Sint-Truiden) were to be laid off. However, the only production facility to be closed in Western Europe in the first implementation phase of ICARUS was Tenneco-Gijón.

Tenneco-Gijón was actually a brownfield plant. It was founded in 1967 by two local families who soon formed an alliance with the British component manufacturer Armstrong to produce shock absorbers for the automotive industry. BMC, the assembler of the well-known Mini, was one of the main customers of the small local company. In 1976, Armstrong acquired full ownership of the plant and started to expand production. In 1989, Tenneco Inc., an American MNC which was already one of the world's largest designers, manufacturers and marketers of clean air, ride performance and automotive system products, acquired several Armstrong plants in Europe, including Gijón. Tenneco Inc. established its Monroe brand of shock absorbers and exhausts and

boosted its position as one of the automotive industry's main component suppliers in Europe.

Relocation threats cropped up several times in the following years, in particular following the inauguration of a larger and more modern *greenfield* plant just 300 kilometres to the east, in the Basque town of Ermua. However, Tenneco-Gijón was able to survive due to its higher product quality in original equipment and to the innovative solutions applied to manufacturing processes and to reducing production costs. Its accumulated engineering know-how was one of the main assets of the old brownfield plant.

What happened after March 2013 dramatically changed the picture. Although the actual date of the corporate decision to implement ICARUS is unclear, the story started for the Tenneco-Gijón workforce when the local director was replaced by the head of the Ermua plant, who subsequently took managerial control of both factories.

The plant closure announcement led the workforce to react. The local works council, composed of four different trade unions (the traditional USO, UGT and CCOO and the more radical and grassroots-oriented CSI) rejected the intervention of trade union federations and other external interests. Trade unions were left out and the design of the strategy to counteract the corporate decision to relocate production and transfer the machinery to other plants (Ermua, Gliwice and Togliatti, once operational) was kept under the exclusive control of the works council and the workers' assembly.

The workers occupied the factory and organized 24-hour watches to prevent management from dismantling the plant. The local and regional administration soon sympathized with the workers, who kept violence under control and started to call for political and civilian support. The case was also depicted as unfair by the local and regional media. A global MNC was crushing a bunch of workers for no economic reason. As the plant was not loss-making, what was the rationale behind the corporate decision to relocate?

The regional administration did its best to reverse the closure decision. The plant had received several public subsidies for modernization as well as for research and development. Between 2007 and 2011, Tenneco had received almost 3 million Euro from the Spanish Ministry of Industry and

the regional government. A lawsuit was filed by the local works council with the legal support of the trade unions to have Tenneco repay the state aid in case it proceeded with the closure.

The workers rejected the negotiation of redundancy packages. They also demanded an external viability report, an information and consultation right stipulated in the Directive on European Works Councils. The management of Tenneco Europe did their best to avoid having the report compiled, but were finally forced to cover the cost. In late November 2013 an audit by the international consulting firm Secafi-Alpha was published, dismissing all technical and economic arguments for closing down Tenneco-Gijón. The report attested the plant's full viability and suggested minor job cuts and investments for modernizing the premises and machinery.

Behind this very effective utilization of the legal resources available to the European Works Council of Tenneco was a local representative in the European Parliament, who became involved in the case right from the start in early September and whose personal contacts in Strasbourg and Brussels proved to be exceedingly effective in presenting the workers' case at a European political level. He not only proposed a European solution to the conflict but also eased the way for the workers through his own social capital and personal contacts within the European Commission.

The conflict exploded at local level, with workers receiving impressive support from the local community when some 10,000 people attended a demonstration against the closure of Tenneco-Gijón on 16 October 2013. Local and regional political parties also expressed their solidarity with the workforce. The attitude of trade unions was more ambivalent. While they gave legal support to the workers in their demands, they also strove to gain prominence, suggesting negotiations over a redundancy package and stopping resistance to the closure. The workforce resisted the attempts of local management to divide them through offering generous early retirement and redundancy packages to older employees. Starting in November 2013, the workforce achieved several court judgements against the closure. In March 2014 Tenneco was forced to reinstate the dismissed workers.

Despite the legal victories, it was political pressure by the European Commission on Tenneco management that changed the teleology of organizational change. In late 2013, a decisive public player stepped into

the conflict. The Vice-President of the European Commission and Commissioner of Directorate-General Enterprise and Industry (DG ENTR) received a workforce delegation in Brussels and took a personal stake in the process. After a meeting with Tenneco European management in which he was informed that relocation was unavoidable, a press release heavily criticizing the plant closure was issued by the European Commission. The Commission Vice-President contacted the company's corporate headquarter in Illinois (US) and started personal negotiations with the president of Tenneco himself.

In March 2014 the Crimea crisis broke out. The commercial conflict escalated between the EU and the US on the one hand, and Russia on the other, and Tenneco decided not to proceed with the opening of the Togliatti plant. Whether this was relevant or not for the introduction of changes in the implementation of ICARUS is contested among respondents.

On 15 April 2014, Tenneco announced that the plant would be re-opened for a transitional period of two years at a reduced size. The local works council negotiated the conditions for reopening the plant on the basis of the viability report issued by Secafi-Alpha. An agreement between the parties was reached in early June 2014. It avoided dismissals, established early retirement and voluntary redundancy schemes for older workers and fixed the reopening of the plant for 28 July 2014. Tenneco-Gijón restarted operations with 117 employees. When the Vice-President of Tenneco and Chief Operating Officer visited the plant in early July he expressed his surprise that Gijón was a seaside city with important port facilities which could help in the global distribution of local production.

A new management team was appointed in August 2014 to run the plant for the transitional period until a new investor was found. In March 2016, after almost two years, Tenneco finally rid itself of the rebellious workers. The plant was sold to the German investment fund Quantum Capital Partners A.G. (QCP), through its subsidiary Vauste Spain S.L. The new owner has undertaken to develop a five-year production plan shifting specialization from shock absorbers to injection-moulded parts for the automotive industry.

3.3 Analysis of the case. Stakeholders, interest strategies and micro arenas of political contestation, alliance formation and negotiation

The Tenneco-Gijón workforce was able to demonstrate that the arguments for the unavoidable closure of the plant were actually an alibi to cover up managerial struggles. The intensive and successful mobilization of labour, civilian and public power resources enabled the workers to act simultaneously at social, political and legal levels in a very effective way. After eight months of plant occupation, self-management, self-organization and negotiations at different local and transnational levels, the tenacity and solidarity of a small workforce of 221 people paid off. A relocation decision taken by the corporate management of an MNC whose top managers didn't even know the actual location of the plant to be closed was cancelled. The teleology of organization change was altered through collective action, political contestation and *soft* pressure on the company by EU institutions.

The case illustrates a complex interplay of individual players and groups and interest strategies in a multi-level political complex. Table 2 summarizes the main players, interests and micro-political arenas for contestation, alliance formation and negotiation in the Tenneco-Gijón case.

Table 2 **Players, interests and micro-political arenas in the Tenneco-Gijón case**

Players and interests	Level	Micro-political interplay
Workers and local management	Local	Conflict and negotiation
Workers and civil society	Local	Alliance formation
Workers, trade unions, local and European management and the judiciary	Mixed	Conflict
Workers, trade unions and public authorities	Mixed	Alliance formation
European Commission and European headquarters (HQ) management	Transnational	Negotiation

Source: own elaboration.

- (1) The first micro-political arena in the case developed along the traditional lines of interest struggle and confrontation between capital and labour and took place in and around the place of work - the plant and its premises. The replacement of local management in March 2013 opened up a new scenario. Tenneco-Gijón played no

role in the managerial struggles at European level over the implementation of ICARUS and the allocation of rewards (i.e. gains in production capacity) and penalties (i.e. closures and/or loss of production capacity and lay-offs). The local management had no real say in the closure. In early September 2013, when the corporate decision was communicated to the workforce, Tenneco-Gijón employees faced two options: to surrender and delegate the negotiation of a redundancy package to the trade unions, or to oppose the closure, organize themselves and start fighting for their jobs. They opted for the latter, occupied the factory and started to weave a network of contacts with a range of civilian and public stakeholders and interests.

- (2) The second micro-political arena was the local community. From early September 2013 onwards, the media paid great attention to the conflict and took a stance in clear favour of the workforce. The workers gained broad support from the population, political parties at local and regional level and civilian organizations and NGOs. The alliance, symbolically *glued together* through demonstrations, festivities and information campaigns, was highly effective in boosting workers' morale and tenacity during the struggle.
- (3) The third micro-political arena was the judiciary and the information and consultation rights available to the Tenneco European Works Council. The successive court rulings in favour of the workers, first preventing the removal of machinery by management and finally ruling the reinstatement of dismissed employees, were important assets for mobilizing additional political power resources. The local management committed several formal errors in the closure process. While the European Works Council was unable to stop the implementation of Project ICARUS, it played a decisive role in forcing European management to have an alternative report on the plant's viability compiled.
- (4) The fourth micro-political arena was actually a heterogeneous mixture of local, national and European alliances with public authorities and trade unions. The local and national political levels turned out to be ineffective. Public authorities at these levels of the administration did not even gain access to local management. Trade unions were, for their part, unable to present the case at national and European levels. No energetic initiative by the European Trade

Union Confederation (ETUC) was taken with regard to Tenneco-Gijón. The workforce had to develop their own strategy to put management under political pressure. They gained access to the European Commission in the person of its Vice-President and the DG ENTR Commissioner through the informal and selfless support of several local public representatives in Brussels and Strasbourg.

- (5) The fifth and final micro-political arena was activated in late 2013 and did not entail employee participation. The European Commission itself initiated negotiations with management. As European management refused to discuss the closure, the Vice-President of the European Commission took a personal stake in the conflict and put pressure on corporate management in Illinois (US) to reconsider the relocation plan. The geopolitical context did its part, although labour, trade union and public sources differ with regard to its impact. In spring 2014, Tenneco decided to amend ICARUS and not to proceed with the opening of the Russian plant (Togliatti). In mid-April, the reopening of the Gijón production plant was announced.

4. Discussion

The Tenneco case illustrates several general issues concerning the analysis of MNCs. First of all, it confirms the need and utility of case studies as a method to tackle the complexity of transnational business and industrial relations processes. Traditional workplace surveys or statistical data are unable to reveal the often hidden and subtle decision-making and bargaining processes in an overall company complex. Second, we support the political bargaining arena approach to analysing MNCs which rejects isomorphism on the basis of rational economic or functionalist models in favour of micro and meso-political power games that shape the social order of a transnational business organization. A third issue is the need for sector-specific analyses, as the particular conditions of the automotive and component sectors explain at least in part the business strategies of the companies and differ clearly from other sectors such as non-manufacturing industries. Finally, our approach allows a more fine-tuned analysis of the interplay between political deregulation, *financialisation* and the growing internationalisation of companies and markets. The structural hegemony of neoliberalism in the ongoing globalisation process becomes visible as a complex puzzle of political games and players.

From a more concrete perspective, we identify a trend or further step towards the internationalisation of MNCs. The headquarters of MNCs have learnt to act as global managers in global contexts, moving assets and resources from developed and often saturated to fast-growing emerging markets. Their strategic capacity is increasing as states tone down their regulatory powers. Labour seems unable to develop effective transnational collective action structures. The EU as a potential substitute for the fading national regulatory capacities is unable to constitute itself as a powerful and integrated political institution.

Relocation decisions in sectors like automotive components follow a simple and by no means rational logic. They start as an intra-headquarter debate on strategic action under the constant pressure to act and present something to shareholders and corporate control markets. In this process a consulting firm is brought in to underpin the new strategy with pseudo-rational arguments. The degree of regional headquarters involvement depends on the organization and power structures within the corporation, but there is a general trend towards concentrating power and decision-making in corporate headquarters without taking regional or local interests into account. Alternative production facilities are installed, technology and know-how transferred and local managers replaced. In the affected plants a discourse of crisis, competitiveness problems, the need to cut costs, etc. prepares the ground for plant closures. Transfer pricing and intra-group benchmarking leave the plants in an unfavourable competitive position. Public subsidies for new facilities in new locations are further relocation incentives. Finally, local players are shocked by a short-term closure announcement.

Paradoxically, the workforce and local stakeholders never questioned the dominant shareholder value discourse and efficiency logic respectively related to the MNC's symbolic and procedural power dimensions. Instead they questioned the break with this rationality on the part of corporate management. The workforce's motivation and resistance stemmed from a deep feeling of injustice and incomprehension of a management decision which went completely against the logic of the proper managerial discourse without questioning the material power dimension of the MNC.

The Tenneco case thus opens several research pathways for the future. In general, our knowledge of MNCs as multi-level political complexes has to be expanded through theory-based comparative case studies. A further aspect is the institutional political context which still matters, as it

conditions the power and bargaining relations within an MNC. The neoliberal reforms and EU attitude, such as the recent Labour Market Reform Act in Spain (2012) weakening collective bargaining and facilitating collective redundancies, are outbalancing the power relations and leaving the company headquarters without contesting political and union forces. Finally, the revitalisation and internationalisation of trade unions are urgently needed in times where individualised workers and local communities are left without power resources to fight strategic corporate decisions.

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Chapter 2

Coming apart or joining hands? The crisis and current dilemmas of the Romanian trade union movement

Dragoş Adăscăliţei and Ştefan Guga

1. Introduction

Romania stands out in the landscape of the Eastern European countries where crisis-driven austerity has in recent years resulted in a loss of trade union rights at local, sectoral and national levels (Varga 2015). From a country with a centralized industrial relations system where unions enjoyed extensive powers to negotiate collective bargaining agreements, Romania has shifted to a highly decentralized system of industrial relations that prioritizes company-level agreements and at the same time imposes considerable limitations on the powers that company-level trade unions used to enjoy. This decentralization of labour relations was particularly sudden, as the legislative changes were enforced unilaterally, without consulting the social partners and leaving virtually no temporal and organizational leeway for trade unions to adapt to the new institutional framework (Guga and Constantin 2015).¹

In this chapter we analyse the impact the decentralization of industrial relations had on Romanian trade unions from a multilevel perspective. We show that their loss of power experienced as a result of the 2011 legislative changes hit all levels of collective bargaining simultaneously.² Furthermore, we argue that enterprise-level collective bargaining has now officially become the most important source of protection for workers. To analyse the effects of the decentralization at the local level we discuss two cases of union organizing in two automotive plants: Dacia and Ford. These two cases exemplify the dynamics of industrial relations in one of the major new 'leading sectors' (Greskovits 2008) in Romania

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1. Our research for this chapter included in-depth interviews with trade union representatives from all organizational levels conducted in 2015 and early 2016.
 2. The Romanian trade union movement has a three-tier structure: company-level unions, sectoral-level federations whose affiliates are company-level unions from the same economic sector, and national-level confederations to which federations can be affiliated.

and in the entire Central and Eastern European region. By selecting two car assemblers with significantly different trajectories, our aim is to nuance the relatively well-known story of improving employee welfare following investments in such leading sectors (Jürgens and Krzywdzinski 2009). We show that, in the absence of national or sectoral institutional resources, local unions have to rely solely on their own organizing and mobilizing capabilities. In this context, although the two plants are similar in terms of both institutional context and production activity, union power in the two companies varies substantially. Whereas in the case of Dacia the local trade union has remained powerful in spite of the decentralization of labour relations, at Ford the union is in a significantly weaker position and lacks the capacity to influence management policies. We argue that this variation in union power between the two plants is explained by the associational and structural resources available to each of them.³

2. The economic crisis and the crisis of the Romanian trade union movement

Until relatively recently, the Romanian trade union movement was commonly described in ambivalent and sometimes in even unusually positive terms for a country from Central and Eastern Europe, a region where, with the remarkable exception of Slovenia, post-socialist 'labour weakness' (Crowley 2004) otherwise seemed to reign supreme. Indeed, some observers of the Romanian trade union movement (e.g. Varga 2014) were prepared to reject this hypothesis altogether, highlighting the comparatively high level of militancy among Romanian unions. Though far from setting the tone of policy (see Kideckel 2001), the unions' capacity to muster the rank and file for threats and street protests, together with the comparatively high union density and collective bargaining coverage (Bernaciak 2015: 375), seemed convincing enough to set Romania apart from countries like Hungary or Poland (Bohle and Greskovits 2006: 184ff). Other analyses (e.g. Trif and Koch 2005)

3. We use Wright's (2000: 962) distinction between workers' 'associational power' — understood as 'the various forms of power that result from the formation of collective organizations of workers' — and their 'structural power' — understood as 'power that results simply from the location of workers within the economic system'; power 'that results directly from tight labour markets or from the strategic location of a particular group of workers within a key industrial sector would constitute an instance of structural power.'

stressed that, despite the heavy-handedness of the state at the national level and the weakness of employer associations at the sectoral level, things were heading in the right direction, with ‘partnerships’ becoming increasingly attractive (and available) for all sides involved in bipartite and tripartite bargaining. Still others pointed to the growing influence of Romanian trade unions, describing the overall impact of EU accession on Romanian collective labour relations as decidedly positive, though here as well the positive aspects were nuanced by highlighting the possibility of declining labour standards and the abuse of and disrespect for existing labour laws with which employees were more or less commonly confronted (Trif 2007). The adoption of a new Labour Code in 2003 was widely regarded as a major victory for the Romanian trade union movement as a whole, with the national confederations flexing their muscles in backdoor political deals and managing to quickly push the law through Parliament despite consistent outcries on the side of employers.

Fast-forward to the early 2010s and the picture looks radically different, with recent analyses (e.g. Trif 2016) overwhelmingly highlighting the disastrous state of Romanian industrial relations in the wake of the onset of the crisis and the adoption of an extremely harsh austerity package by the Romanian government, which included the revamping of laws on both individual and collective labour relations. At the national level, the most severe and immediate impact of the new legislation was the elimination of the possibility of signing a collective agreement applying to all companies and employees in the country. Negotiating such an agreement previously constituted the main task of trade union and employer confederations and the agreement was considered crucial, especially for setting a national minimum wage. The negotiation process was, however, fraught with tension, as trade union confederations whose membership came mostly from the public sector negotiated with employer associations representing the private sector. This disequilibrium produced constant tensions between private and public sector trade unions, since the latter dominated national-level strategies; it also produced tensions between trade union confederations and employer associations, as the latter contested the *de facto* representativeness of the former (Guga and Constantin 2015). For this second reason, in 2010 the disequilibrium decisively contributed to the failure to sign a new agreement. In the absence of a national-level agreement, trade union confederations were left with few effective instruments of interest representation, as the functioning of Romania’s various tripartite bodies was and still is typically ‘illusory’ (Ost 2000).

These changes led to problems of legitimacy for trade union confederations, who have had to face increasing hostility from union federations and shop-floor membership. According to the ICTWSS database, the number of trade union members decreased from approximately 2.24 million in 2008 to around 1.23 million in 2012. As a result, union density fell from 35.6% to 19.8% during the same period and has most likely decreased further since 2012 (see Guga and Constantin 2015). Repeated pushes by confederations to change the labour legislation in order to regain at least part of their previous prerogatives met with resistance from both government and employers, as a result of which they all failed. It is not just that confederations' legitimacy vis-à-vis federations and company-level unions has been dwindling, but confederation leaders themselves have been openly criticizing the activity of lower-level organizations, blaming union leaders for self-interest and lack of solidarity (e.g. Trif 2016: 429).

Multi-employer collective bargaining has also practically disappeared as a result of the legislative change. The extent of this is obvious from the number of agreements signed from 2011 onwards (see Table 1). Only 4 sectoral contracts were signed between 2011 and 2015, all in public sectors or in sectors such as healthcare where public companies constitute the vast majority of employers; this compared to the 47 agreements signed between 2007 and 2010 — a number in which the private sector was more or less on a par with the public sector. The major reason for this sudden drop was the new obligation for employer associations signing a sectoral agreement to cover at least 50% + 1 of total employment in the respective sector. Given the well-known weakness of employer associations in Romania, in many economic sectors this effectively rendered the signing of an agreement impossible. In the few sectors where the existing employer associations were able to meet this stringent criterion, it was common practice for employers to voluntarily withdraw from them precisely in order to prevent the signing of an agreement (Guga and Constantin 2015; Trif 2016).

Table 1 Multi-employer collective bargaining agreements for sectors of the national economy and for groups of companies, 2005-2015

	Sector	Group of companies
2005–2010	47	44
2011–2015	4	31

Data source: Romanian Ministry of Labour, Family, and Social Protection.

Compounding the problems faced by union confederations at the national level, federations have also had to cope with the disappearance of their primary focus of activity. Despite being representative, the majority of trade union federations find themselves objectively unable to engage in collective bargaining. Even though some federations have managed to maintain a good relationship with the company-level unions that make up their membership through becoming increasingly involved in securing company-level agreements, many have faced acute problems maintaining their membership. While finding it increasingly difficult to keep up with their own membership requirements in national confederations — e.g. payment of confederation membership dues becomes quite difficult once a federation starts losing members and in turn has trouble collecting dues from the remaining ones —, federation leaders have been particularly frustrated by confederations' failure to change the legal provisions blocking multi-employer collective bargaining.

According to the ICTWSS database, as of 2011 just 2% of Romanian employees were covered by multi-employer agreements, down from 63% in 2010. Correspondingly, the total post-2011 collective bargaining coverage dropped from 98% to just 35% of the total number of employees entitled to coverage. At the same time, the percentage of employees covered by single employer bargaining increased from 25% in 2010 to 33% as of 2011. Overall, an extremely rapid shift has taken place from a relatively coordinated and centralized system of wage setting, in which national and industry-level bargaining had considerable weight, to a system in which wage setting is uncoordinated and takes place mostly at the level of individual companies. No matter how excessive the decentralization, it has not been accompanied by a relaxation of the conditions under which company-level bargaining can take place. On the contrary, the new legislation introduced, among other things, stricter criteria for bargaining eligibility and a severe curtailment of collective action, which can now only legally take place during the bargaining period and only if the two sides are not bound by an already-existing agreement.

Decentralization and the more stringent regulation of collective bargaining took their toll on already hard-hit company-level industrial relations. The onset of the crisis and the adoption of extremely harsh austerity measures had a severe impact on collective bargaining at this level even before the change of legislation in the spring of 2011. The number of collective agreements signed annually dropped from a peak of over 12 000 in 2007 to under 8 000 in 2010 (see Table 2). And while the

Table 2 Enterprise-level collective bargaining agreements, 2005-2014

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total	10936	11602	12206	11729	10569	7718	7473	8783	8726	9477
Private sector	9400	9341	-	8789	-	6290	6281	7540	7336	8329
Public sector	1298	2066	-	2668	-	1256	1025	1092	1219	1006

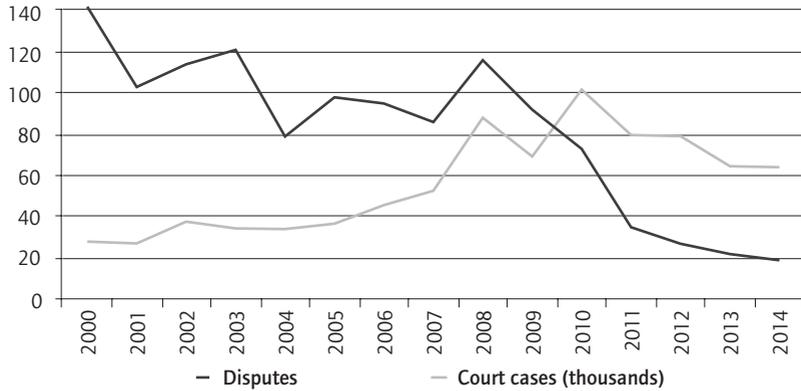
Data source: Romanian Ministry of Labour, Family, and Social Protection.

new regulatory framework seemed to have impacted the relatively highly unionized public sector most severely, the upward trend witnessed in recent years in the private sector is rather deceptive. The new collective bargaining legislation introduced an alternative mechanism of employee interest representation to union organization: the so-called ‘employee representatives’ – individuals elected in the employees’ general assembly and tasked solely with negotiating a collective agreement with management. These representatives have become an alternative to union representation in companies without trade unions or where none of the existing trade unions can reach the membership threshold of 50% + 1 of the company’s total workforce. Among trade union leaders, this representation mechanism is widely seen as an instrument for undermining the strength and even the purpose of collective organization at the level of individual companies. Considering that it was only introduced in 2011, the impact of this change has been as massive as it has been rapid: between 2012 and the first half of 2015 over 80% of company-level agreements were signed by such representatives and only 15 - 18% by trade unions, with the latter faring particularly badly in the private sector (Guga and Constantin 2015: 130).

Therefore, in a quite similar fashion to federations and confederations, company-level unions have also been under considerable pressure since the onset of the crisis and the change in legislation. Largely deprived of the protection of upper-level organizational structures, many company-level unions have also had to deal with new existential threats coming from their immediate organizational surroundings. To make things even worse, trade unions have not been able to respond in force, as the strict conditions for initiating labour disputes and the legitimacy problems faced by union organizations have led to an unprecedented drop in the number of labour disputes (see Figure 1). With this avenue of action closed, going to court has become an increasingly important channel for

expressing employee discontent, though union representatives also speak of growing court hostility toward employees and unions over the past five years.

Figure 1 Labour disputes and court cases on labour issues, 2000–2014



Data source: Romanian National Institute of Statistics.

In short, the ‘frontal assault’ on collective labour relations in Romania after the onset of the crisis comprised both an attack on individual organizational levels and the dismantling of the institutional infrastructure regulating relations between levels. While problems with maintaining vertical relations were undoubtedly exacerbated by the new legislation, they were far from new. And while the trade union movement as a whole had been repeatedly attacked by the political establishment during the 2000s (see Varga and Freyberg-Inan 2014), several other major weaknesses led to the 2011 debacle. At the sectoral level, low union density and absent or weak employer associations were known problems during the 2000s, leading to the signing of agreements that were regarded as largely useless and illegitimate not just by individual employers, but also by increasingly powerful business associations and even by national employer confederations whose declared object of activity was multiemployer and tripartite collective bargaining. These weaknesses were topped by accumulating tensions between organizing levels, which became obvious as the repeated calls to protest made by confederation leaders during 2010 and 2011 met with an at best lukewarm response even from the public sector strongholds. Though massive in size (Varga 2015: 320-1), the protests were short-lived and failed to inflict any visible harm on the government, which was able to

push through draconian cuts in wages and benefits without flinching and subsequently adopt new labour laws that were overwhelmingly unfavourable to both employees and trade unions.

Therefore, explanations stressing the violent manner in which the Romanian government adopted a series of vicious austerity and labour market reforms are misleading, since the question remains as to how it was possible for the government to pursue this avenue of action without fear of trade union reprisal. And even if the threats voiced by the union confederations proved to be a bluff, the question of why this was so cannot be swept aside simply by once again pointing to the insidiousness of those in government. To be sure, attacking confederation leaders with corruption charges was obviously a tactic employed by government in order to weaken the position of the unions during those critical months, as were the less overt — and admittedly rather few — divide-and-conquer attempts (Varga 2015). But why was it so easy to dissuade the lower ranks of the confederations' bureaucracies, the leaders of federations, those of individual unions, as well as the rank and file from mobilizing against policies that were predictably going to inflict unprecedented harm? Surely, these two tactics belonged to a long series of anti-union struggles waged by government (Varga and Freyberg-Inan 2014), but even this cannot explain how quickly, how quietly, and how unqualifiedly the Romanian trade union movement lost a battle whose stakes clearly resembled those of a war. Adding to the hostility of government and to the growing preference of employers' representatives for backdoor lobbying instead of bipartite or tripartite bargaining came the fragility of vertical and horizontal relationships within the union movement.

3. From solitary resistance to pressures for reaching out: the Automobile Dacia trade union in the post-2008 era

Profiting from the immense success of its low-cost range of cars during the crisis, Dacia–Renault has risen to the status of Romania's largest company in terms of both turnover and exports; in the process, it has also become one of the most remarkable cases of post-1989 industrial upgrading accompanying the wave of automotive foreign direct investment in the former socialist countries in Central and Eastern Europe (see Jürgens and Krzywdzinski 2009). At the national level, it is common knowledge that Dacia also boasts the strongest trade union in

the country, not just when it comes to the number of members — approximately 11,000 just at Dacia, and around half that in several of Dacia's first-tier suppliers located in direct proximity to the plant — but also when it comes to militancy, as the union has been regularly organizing protests against either the employer or the government (see Adăscăliței and Guga 2015: 13).

Undoubtedly, the Dacia union — 'Sindicatul Automobile Dacia' (SAD) — has been able to stage serial protests because of its large membership base and vice versa. It has achieved both, however, on a particularly favourable terrain: a plant operating at full capacity and a somewhat ambiguous position of Dacia workers on the local labour market. The union has been able to capitalize on this and has obtained significant wage and benefits increases over the years, at the price of heightening the pace of production. Although this has led to a weakening of workers' labour market position (Adăscăliței and Guga 2015), thus forcing the union to be increasingly concerned with defending job security, there is no question that the employer has also been keen on not implementing labour flexibility policies that might eventually inflict more harm than good on the fulfilment of output targets.

The other source of SAD's success has been its own capacity to maintain its organizational strength over time and grab whatever opportunities became available once Dacia's trajectory on the automobile market shifted and once labour market conditions became favourable for taking action. Even though more than one-and-a-half decades have passed since its privatization, the company has maintained a stable union density of around 75-80% — very high in comparison to industry standards in the region (see Drahokoupil *et al.* 2015: 227; Jürgens and Krzywdzinski 2009: 484) and quickly becoming extreme in a national landscape witnessing an accelerated decline in unionization (see above). While at the time of privatization there were five different trade unions at Dacia, the smaller unions were eventually either absorbed or disappeared as they became irrelevant. As noted by Renault officials at the time of privatization (Debrosse 2007: 288, 320), SAD was particularly strong in controlling the shop-floor, had a considerable capacity to mobilize the rank and file, and had an explicit policy of co-administering the labour force together with company management; all this while maintaining a high degree of autonomy from national union structures, which were at the time also quite strong (Varga and Freyberg-Inan 2014).

In terms of strategy, SAD has tried to use both institutionalized collective bargaining and regular strike threats to its advantage. The union was directly involved in the pre-privatization discussions between the Romanian government and Renault, though bargaining relations with Dacia's management had by then long become standard practice. Since privatization, the union has negotiated and signed annual agreements with management regulating wages, working conditions and all other major aspects concerning the welfare of the labour force on and off the job; in exchange, SAD has contributed to the fulfilment of specific management goals – personnel restructuring, productivity gains, quality targets etc. When bargaining proved ineffective – which, especially in the first half of the 2000s, was openly admitted to be the case – the union shifted to a more confrontational strategy. Since strikes were unheard of before privatization, when SAD secured its objectives peacefully, this required substantial strategic and tactical changes, as proved by a failed attempt to organize a general strike in early 2003. Having learned such a painful lesson, in 2008 SAD staged a general strike that lasted no less than three weeks, proving the tremendous force of the union not just to the management, but to national and international publics alike (Delteil and Dieuaide 2008; Descolonges 2011: chapter 4). Since then, union leaders have routinely resorted to strike threats during the annual negotiations and have managed to consistently and largely peacefully improve the welfare of their constituency.

Although SAD has not had to resort to strike action since 2008 (as strike threats alone proved effective enough), the successful general strike was a watershed for union militancy, and SAD has since then staged several protests against the government and promised to continue to do so if its demands are not met. The first threats of protests against the government came in 2009, when the collapse of the domestic car market resulted in declining sales for Dacia; as the spectre of downscaling production and cutting jobs became more and more menacing, the union threatened to strike if the government did not keep to its promises of stimulating sales of new cars and hampering sales of imported second-hand ones. The company's virtually total reorientation toward exports turned things around and, with the sales crisis averted, the union backed down on its threats. A major protest was nonetheless organized at the beginning of 2011 against the adoption of a new Labour Code meant to provide a more 'flexible' legal framework for individual labour relations. Since the trade union movement as a whole had been defeated just a few months earlier (see above), SAD was one of the few unions that actually

backed up its threats with a large-scale protest against the changing of labour laws.

Neither the austerity measures nor the new law on collective labour relations adopted in May 2011 took any direct major toll on SAD or Dacia employees. The disappearance of the national collective agreement and the failure to sign a new sectoral agreement after employers' voluntary exit from the employer federation with which unions had signed previous agreements (Trif 2016: 418-9) did not mean much for SAD, as the importance of the company-level agreement and of its company-level bargaining power vastly outweighed that of sectoral or national agreements. At the time, it was the new Labour Code that brought the most immediate danger, as it facilitated the signing of fixed-term contracts and relaxed conditions for hiring and firing employees.

The union continued to organize street protests demanding the change of the Labour Code in 2014, 2015 and 2016. However, this demand now became secondary, as the situation at both the plant and the union had changed in the meantime. In 2012, Renault opened a new plant in Morocco, meant to produce the same range of low-cost models as the Romanian one, with which it allegedly entered into direct competition. Attempting to tone down the wage demands of Dacia workers, the management began to threaten relocating part of production to Morocco, where labour costs were said to be several times lower than in Romania. The union's response to management's aggressive push for maintaining or even increasing 'competitiveness' was twofold: on the one hand, making more significant concessions in the annual wage negotiations; on the other hand, championing the company's cause in front of the country's government. Indeed, the protests of 2014-2016 were primarily concerned with this latter task, as the union was calling for the government to build a highway between the cities of Pitești and Sibiu and thus significantly reduce transportation costs for assembled vehicles.

While it is too early to tell if it will pay off, the union's strategy has apparently shifted again: while the demands made during the protest organized in March 2016 focused only on the highway, on the need for a revamped system of vocational education, and on the Labour Code, they now also focus on the need to sign a sectoral-level collective agreement. Openly denouncing the 'betrayal' of trade union confederations for having allowed the government to impose collective bargaining restrictions that were practically impossible to circumvent, SAD representatives called for

a bottom-up reconstruction of multi-employer collective bargaining. It was only at this late point in time that the legal framework of collective bargaining gained a place among SAD's main demands, with explicit reference made to the dire situation at Ford's Romanian plant. Just as importantly, the Piteşti–Sibiu highway was singled out as another common point of interest, and reason enough for trade unions to immediately join hands, since it would serve both companies through reducing transportation costs and increasing competitiveness. Even though SAD's leaders are thus seeking much-needed allies in dealing with pressure from management, it remains to be seen whether these allies are strong enough to be able to contribute to a joint effort of the kind envisioned by the Dacia trade unionists.

4. Surviving privatization in silence: the case of the Ford trade union

Ford took over the Craiova automotive factory in 2008 following a prolonged period of uncertainty about its future. Although after the takeover Ford promised to restore the plant's production capacity, it soon became clear that the company could not deliver on its promises. The plant was temporarily assigned the assembly of Ford Transit models, a utility vehicle manufactured in very small numbers that could not turn the factory into a profit-making unit. Hence, Ford operated with significant losses, assembling just a few thousand vehicles a year – well below its productive capacity. During this period, the local representative trade union (Sindicatul Automobile Ford) maintained a low profile and avoided entering into conflict with management.

The only exception to this soft-footed approach was a claim to 5% of the company profits for 2007 based on the collective labour agreement signed for that year at the sectoral level. The agreement required companies in the engineering sector to pay their employees a share of annual profits ranging from 5 to 10 percent, dependent on the decision of the general assembly of the shareholders. However, since ownership of the factory remained unclear in 2007 and 2008, the sectoral collective agreement was not applied. As negotiations with the Romanian state and the former owners of the factory over the payment of the minimum 5 percent of company profits for 2007 led to no result (Gazeta de Sud 2008a), the trade union sued Ford over the enforcement of the sectoral collective labour agreement. The lawsuit lasted two years and was lost by the trade

union. In its ruling, the court argued that since the general assembly of shareholders had not decided to share company profits with workers and the local collective labour agreement did not include the profit-sharing clause from the sectoral agreement, there were no grounds for workers' claims to a share of profits.

Unlike in the case of Dacia, where the trade union had maintained a strong position ever since the plant's privatization, at Ford, privatization was a two-way deal between the Romanian state and the new employer. The local representative trade union played no role in the privatization negotiations. Furthermore, after privatization the labour force remained relatively fragmented, with two trade unions merging, while the other two smaller unions continuing to contest the new representative trade union and perceiving it as an ally of management. The lack of cooperation between the three local trade unions became evident in 2014 when the leaders of the two smaller unions were suddenly fired by the company on the grounds that their jobs had been eliminated as part of the company restructuring (Gazeta de Sud 2014b). While the representative trade union remained silent over the issue, the two leaders were reinstated a year later, after they sued the company and won in court. The consequence of fragmentation was that even though the representative trade union continued to negotiate annual collective agreements that included moderate pay rises, its legitimacy remained contested among a substantial part of the labour force.⁴

The structural weakness of the local union also resulted from the production shortfalls which persisted even after Ford announced that a new car model was to be produced in Craiova. Compared with the Dacia factory, where the success of its low-cost model allowed the union to obtain important concessions in terms of pay and working conditions, at Ford the situation of the labour force remained dire, in spite of the company's attempt to match the success of Dacia by opting for a low-cost approach. Although the B-Max model, for which production began in 2012, was relatively successful on export markets, it never even came close to matching the success of the Logan. As a result, the plant continued to operate far below capacity while remaining dependent on highly volatile export markets.

4. Although there are no official data available regarding membership levels in each of the unions in the plant, interviews revealed that the two smaller unions organized between 25 and 35 per cent of the labour force.

This lack of sustained demand left the union with little room to bargain for higher pay or better working conditions. The factory's poor performance and its continued failure to meet the targets set down in the privatization contract in terms of production and employment ultimately resulted in a renegotiation of the initial contract, giving management much greater flexibility to adapt production levels and abolishing the requirement to maintain employment levels. Concomitantly, at the sectoral level, Ford succeeded in pushing through a very vague collective agreement that gave management more power to negotiate local working conditions including pay and overtime work (Trif 2016). These changes were reflected in the policies promoted by management at the local level. In 2012, the company began its first program of 'voluntary dismissals' by announcing that it aimed to eliminate 250 factory jobs by offering employees approaching retirement age up to 24 months' wages, depending on their seniority level. The program continued in the following years, with around 1000 workers of all ages leaving the factory between 2012 and 2015. The result of the voluntary dismissal program was that by the end of 2015 the factory employed just 2500 workers, down from 4000 in 2008 when Ford took over the factory.

Importantly, the dismissal program was not put up for negotiation with employees' representatives and was unilaterally enforced by management with no substantial opposition from any of the local trade unions. In fact, in 2014, the announcement of the need to dismiss 680 workers took the representative union by surprise, and led for the first time to negotiations over the extent of the program (Gazeta de Sud 2014d). With negotiations taking place while the implementation of the dismissal program was already under way, the union had little power to oppose management. The outcome of the negotiations revealed the weak position of the union as well as its limited capacity to defend workers' interests: out of the initially planned 690 dismissals, a total of 520 were carried out. Furthermore, in order to keep on the 170 workers planned to be dismissed, all workers had to take an 8 percent wage cut.⁵

Apart from allowing management to make substantial cuts in the labour force over a very short period of time, the renegotiated privatization agreement gave managers full flexibility in deciding production targets.

5. As the leader of the representative union noted in an interview, the local union negotiates with the employer using only its own resources with no significant support from national confederations or from Ford's European Works Council (EWC).

In practice this meant that the factory could stop production and send workers home temporarily, depending on fluctuations in demand. The effect of this very flexible arrangement was that, between 2012 and 2016, on average the plant did not operate for around a month each year, with workers receiving only 80 percent of their net pay and no bonuses for the days lost. The loss in income for the days not worked varied between 20 and 40 percent of total wages since workers did not receive bonuses while production was stopped. While work stoppages had become an increasingly pressing issue ever since the plant had been taken over by Ford, the unions could do little to negotiate a more favourable situation. In fact, the collective labour agreement negotiated for 2015 resulted in a 2 percent cut in pay for days not worked as well as in bonuses accounting for up to 5 percent of wages which depended on meeting production targets as well as on individual employee appraisals. Moreover, the collective labour agreement negotiated for 2016 and 2017 includes wage increases of 1 and 1.5 percent respectively, amounts that will merely offset the expected inflation rates in the two years.

In short, the Ford trade union is in a much weaker position both structurally and with regard to its legitimacy resources amongst the rank and file. The use of protests instead of bargaining to underpin wage demands remains unavailable to the Ford workforce, since production levels do not even remotely reach target levels as it is the case at Dacia. In this case, strikes might have even harmed the interests of workers since management would not have been obliged to pay wages during the days lost and was anyway interested in reducing losses by cutting back on the number of days worked. Although it remains to be seen how plant-level industrial relations will unfold in the coming years, it is unlikely that they will be radically transformed in spite of the announcement of a new car model to be produced in Craiova from 2017 onwards (Barza and Mitrea 2016). Instead, the collective labour agreement signed for two years in 2015 suggests that workers will have to cope with increased employment flexibility in a context of low levels of employment protection at sectoral and national levels. In the absence of institutional support at these levels, the local union had little power to negotiate better pay and working conditions for the upcoming years.

5. Conclusions

In this chapter we have shown that the crisis-driven changes in Romanian industrial relations have led to a shift towards a highly decentralized industrial relations system, as the national and sectoral collective bargaining institutions have been practically eliminated. All this occurred in conjunction with cuts in the rights granted to plant-level unions. Unlike the existing literature, we explain these recent developments not in terms of a sudden change that weakened a still somewhat powerful union movement, but as the consequence of the pre-crisis deterioration of the strength of Romanian labour — a process that affected trade union organizations across the board well before the onset of the crisis in 2009.

Our two case studies show that the decentralization of national and sectoral labour relations has led to the polarization of local industrial relations. In the absence of institutional support from national or sectoral collective bargaining institutions, local trade unions have had to resolve conflicts by relying entirely on their own capacity to organize workers. As a result, while powerful local unions did not initially suffer much from the decentralization of collective bargaining, already weak ones have been further weakened by the institutional changes adopted during the recent economic crisis. The case of the local trade union at the Ford factory suggests that in the absence of supportive institutional resources and without the capacity to pose a significant threat, the union found itself at a considerable disadvantage when negotiating with management and had ultimately to accept policies that went against the interests of its constituents. This stands in stark contrast to the case of the Dacia factory, where the local union has used its strength to improve wages and working conditions. Even so, recent pressure to reduce production costs at Dacia have made the trade union more aware of the necessity of having a sectoral collective agreement and of the need to influence central government policies.

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Chapter 3

Left alone outside? Works councils' responses to non-standard work in the German metal and chemical sectors

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1. Introduction

Standard employment contracts were the paradigm in many industrialised countries after World War II; however, in the last two to three decades, standard employment has come under pressure (Stone and Arthurs 2013). The globalisation of markets has generally increased market competition and thereby pushed companies into using non-standard work as a form of flexibility, though also a form often associated with instability and insecurity. At the same time, protective regulation has been eroded, and new types of mostly temporary contractual relationships have been created. This development has led to a decline in the number of workers covered and protected by standard contracts; and to a growth of those employed on non-standard contracts and possibly experiencing insecurity in their working lives. The use of non-standard contracts has caused controversy in the academic and public debate, because they frequently mean lower wages, a lack of security and restricted access to fringe benefits and training (Banerjee *et al.* 2012). Therefore, non-standard workers tend to be vulnerable.

The erosion of the standard work paradigm is a challenge not only for non-standard workers, but also for workplace employee representatives. While companies are increasingly resorting to non-standard contracts, employee representatives' possibilities to influence the conditions of using such contracts are constrained by a regulatory regime focused on standard employment. The following questions arise: what can local employee representatives do with regard to non-standard work? How can they shape their regulatory interventions? And how can they influence the working conditions of different groups of workers? To study these questions, we examine the workplace and corresponding bargaining processes as

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embedded in the regulatory context. We argue that an employment contract as a regulatory institution is not sufficient to explain the potentially different working conditions across groups. Instead, these conditions are mainly created in the workplace itself (via workplace bargaining between management and employee representation), which is in turn embedded in a particular regulatory context (Osterman 1987; Beynon *et al.* 2002). The criterion for (non-) standard work is employment contract duration, i.e. workers employed on permanent (open-ended) contracts are considered as standard, and those on temporary contracts as non-standard.

We compare wages, training and job security for standard and non-standard workers. When wages are low, job security is lacking and no training is provided, temporary workers tend to have a vulnerable status. Yet, although embedded in the regulatory context, workplace representatives have a certain amount of discretion in negotiating these 'hard' working conditions in Germany, the country studied. The liberalisation of employment in Germany since the 1990s has created scope for companies to use temporary work and differentiate the working conditions of contractual groups (Hassel 2014). This has altered the labour market's structure, with rising numbers of temporary workers and growing inequality.

As regulatory mechanisms exist at national, sectoral and workplace levels, the chapter is based on four cross-sectoral comparative case studies in similar workplaces in the metal and chemical sectors to show up possible intra-country variations and to show how sectoral regulatory provisions can be used in workplace bargaining to protect workers on (non-) standard contracts. Overall, studying how the aforementioned working conditions of different contractual groups are produced is not only theoretically, but also practically relevant in the face of growing (labour market) inequality in Germany.

We start by briefly explaining relevant features of the German context. We go on to develop and explain the underlying research approach. Before focusing on the four cases, we look at our research design and methodology. The article ends with a discussion of the observed variations and a conclusion.

2. Relevant features of the German context

The deregulation of temporary work via the Hartz reforms at the beginning of the century facilitated and encouraged its use, leading to higher levels of contractual diversity (for an overview of the German liberalisation trajectory, see Eichhorst and Marx 2011). While the regulation of permanent work remained relatively stable, deregulation focused mainly on what were then marginal forms of employment (ibid. 2011). One major consequence of the reforms was bargaining decentralisation, shifting power from the sector to the workplace level (Hassel 2014).

As regulatory mechanisms exist at national, sectoral and workplace levels, this causes variations between sectors and workplaces. Generally speaking, the investigated metal and chemical sectors have always been characterised by high internal flexibility, but the use of contractual flexibility has grown. This has had repercussions on sectoral bargaining, with flexibility becoming rooted in collective agreements, and plant-level derogations facilitated through flexibility provisions and opening clauses (*tarifliche Öffnungsklauseln*)². As illustrated in Table 1, the chemical sector offers more derogation possibilities than the metal sector. While the metalworkers' union IG Metall has sought to limit opening clauses, the chemical union IG BCE has been open to integrating them in collective agreements. Explaining sectoral variation, these different approaches may stem from union traditions: while IG Metall has a history of militancy and is prepared to engage in conflict if necessary, IG BCE is moderate, pragmatic, and cooperative when negotiating with management (Behrens *et al.* 2002).

The available flexibility provisions and opening clauses (Table 1) are not confined to temporary work, and employers are relatively free to use them. IG Metall put agency work (as one form of temporary work) on the agenda of the 2012 bargaining round and successfully included it in its sectoral agreement (WSI Tarifarchiv 2012a). Specifically, works councils are encouraged to negotiate local agreements on agency work, making use of their co-determination rights. Agency workers receive wage

2. Opening clauses in sectoral agreements give workplace negotiators the possibility of concluding workplace- or company-specific agreements under the condition that management and works council (and in some cases, the union) agree to the derogation from the sectoral agreement.

premiums on a sliding scale after working six weeks in the same user company and are offered a permanent contract after two years, thereby partially closing the pay gap and offering employment prospects. Shortly afterwards, the chemical industry implemented similar pay premiums (WSI Tarifarchiv 2012b).

Table 1 Selected flexibility provisions and opening clauses

Metal sector (IG Metall)	Chemical sector (IG BCE)
<ul style="list-style-type: none"> - General opening clause (Pforzheim agreement): allows temporary deviations from the sectoral agreement for companies in economic difficulties if jobs are guaranteed - Flexible working time: allows deviations from the 35-hour week; a certain share of staff can work 40h a week; working time can be reduced for companies in economic difficulties; working-time corridors and (lifelong) working-time accounts can be negotiated - Wages: temporary deviations are possible if a wage increase endangers a plant under the condition of safeguarding employment and negotiating a restructuring plan 	<ul style="list-style-type: none"> - Wage corridor: wages can be lowered by 10% to safeguard employment - Competing collective agreements: if units are not competitive and may be covered by collective agreements of another sector (e.g. catering, logistics), other provisions can be negotiated - Lowering of collective bonuses: lump-sum payments can be lowered/delayed at companies in economic difficulties - Optional clause: the annual bonus can be linked to business performance, ranging from 80%-125% - Qualification: Agreements can regulate the cost distribution of training, i.e. employees 'pay' for training courses with time from their working-time accounts - Two-tier wage system: New staff/former apprentices can be paid lower starting wages in their first year - Flexible working time: Possibility of negotiating flexible working-time, working-time corridors, (lifelong) working-time accounts

Source: own illustration based on WSI Tarifarchiv (2005, 2012a, 2012b), IG BCE (2011) and IG Metall (2014).

While unions negotiated the aforementioned agreements at sector level, workplace employee representation is ensured via elected works councils in Germany. While the latter already have a high degree of discretionary power due to their co-determination rights, the derogation possibilities foreseen in the sectoral agreements increase their autonomy (Deppe 2012). As a result, they can cope with challenges like temporary work through workplace bargaining. In doing so, they not only serve workforce interests, but also those of the company by ensuring the workplace's competitiveness and viability, even when this entails labour cost reductions (Müller-Jentsch 1997). However, a works council's interest in maintaining high wages and good working conditions may be difficult to align with competitiveness considerations. This ambiguity is reflected in the literature: while some studies see works councils protecting the entire workforce (e.g. Doellgast 2010), others emphasise that they contribute to

creating segmentation (e.g. Eichhorst and Marx 2011). The works council's dual role – representing the workforce and ensuring a workplace's viability – may thus influence its regulatory interventions over non-standard work.

3. The research approach

To compare how the working conditions of different groups of workers are produced, the workplace – key to shaping the local terms and conditions of employment – is studied as embedded in the sectoral regulatory context (Osterman 1987; Beynon *et al.* 2002). As a basic regulatory institution, an employment contract alone is not sufficient to explain the working conditions of different contractual groups.

Osterman's (1987) employment subsystem framework looks at how jobs in an organisation's internal labour market (ILM) are shaped, identifying two major factors. Firstly, organisational objectives relating to cost-effectiveness, predictability and flexibility as well as technology matter. 'Cost-effectiveness' refers to designing ILMs in a way reducing costs as much as possible, 'flexibility' means using a design allowing for flexible adjustments (e.g. during production peaks and falls) through the varying deployment of labour. 'Predictability'-oriented organisations aim at high levels of stability based on planning future costs, labour supply and product prices. The use of non-standard workers is attractive for organisations pursuing cost- and flexibility-oriented objectives, helping them to cut costs and increase flexibility in reaction to changing market conditions (Lautsch 2002). However, technology – relating to skill levels and the specificity of skills – can constrain the use of non-standard employment, because the higher the demanded (specificity of) skills, the more difficult it gets to find such workers on the labour market. Secondly, ILMs are influenced by 'the role of the government in organising and regulating labour markets' (Osterman 1987: 63). This refers to the impact of national regulation on the terms and conditions of employment. This chapter goes one step further, incorporating sectoral regulation due to its importance in Germany.

The Osterman model is combined with crucial insights created by Beynon *et al.* (2002) when studying employment change. They advocate the use of an 'integrated approach' because 'the ways in which corporations are embedded in broader social and economic institutions have a deep effect

upon the very form of their internal labour markets' (Beynon *et al.* 2002: 25). This 'embeddedness' stresses the dynamic relationship between the workplace and its context, as explained in the following sections.

The selected research approach adds to the aforementioned frameworks in three ways. Firstly, it is not based on the standard-work-paradigm and thus incorporates contractual diversity by comparing standard and non-standard workers. Secondly, it takes a nuanced view of the context by also investigating the sector level, due to its importance in Germany. Linked to this, the approach also incorporates workplace negotiations between management and works councils shaping the working conditions of different groups of staff. Finally, the selected approach is empirically-driven and comparative. In this respect, comparative refers to the study's cross-sectoral research design and its comparison of standard and non-standard workers.

4. The regulatory context

Legislation plays a major role in shaping ILMs and the working conditions of different groups of workers because it defines the principal framework for employment (Doellgast *et al.* 2009). For example, Mitlacher (2007) analysed agency work in Germany and the USA, concluding that differences mainly stem from regulation and employer strategies, whereby the latter were contingent upon the former. While clear patterns were absent for US employers, their German counterparts used agency work to circumvent dismissal protection for permanent employees, leading to different working conditions across groups of staff. Regulatory systems not only encourage or discourage the use of non-standard work, but also affect job quality. Connell *et al.* (2013) studied agency work in Australia, Singapore and Germany, arguing that Germany's extensive regulation and protection created the best working conditions. In a similar vein, Doellgast *et al.* (2009: 354) refer to 'inclusiveness of labour market institutions' as the extent to which legislation and collective bargaining cover the entire or parts of the workforce. Differences between standard and non-standard workers could thus result from varying levels of 'inclusiveness'. Moreover, regulation is also established in sector-level collective bargaining, which may lead to distinct sectoral rules (Marginson 2005). Bechter *et al.* (2012) indicate that sectoral variation is higher than cross-national variation and therefore, suggest incorporating the sector when studying employment.

Overall, the regulatory system affects ILMs because it sets the general framework for employment and opens up space for or constrains local players' regulatory interventions. It also encourages or discourages the use of non-standard work, and thus influences strategic choices (Doellgast *et al.* 2009).

5. The workplace and its internal labour market

The workplace is key to understanding how the working conditions of different groups of workers are produced, because 'companies choose in a conscious manner among different alternatives for organising work' (Osterman 1987: 53). While the regulatory context and organisational goals influence such choices, Osterman (1987) identified three additional relevant factors.

Firstly 'physical technology' refers to skills and risks. When production requires high company-specific skills for processes associated with a high risk of error, then the use of non-standard work is unlikely because training investments would be needed to minimise risks. In such a case, organisations tend to focus on a high-skilled, loyal, permanent workforce. Secondly, 'social technology' – referring to the production process – determines whether work can be divided into key and peripheral tasks. Where such potential exists, two workforces – as in Atkinson's (1984) flexible firm model – may be employed under differing terms and conditions, with non-standard workers being segmented into the periphery. In this case, the working conditions between groups of workers tend to differ. When peripheral tasks are scarce but non-standard work is used, standard and non-standard workers would have to perform similar tasks, working side-by-side. If working conditions in this situation are not the same, conflicts may arise (Connelly and Gallagher 2004; Bergström 2001). Thirdly, the 'nature of the labour force' determines possible 'supply constraints'. Organisations demanding specific skills could have difficulties recruiting workers, and such workers might not accept non-standard contracts. At the same time, organisations may be interested in permanent arrangements to retain skills. In turn, companies seeking general skills can more easily recruit workers, possibly with the help of work agencies (Vlandas 2013).

Osterman (1987) also acknowledges the role of power in shaping ILMs and operationalises it as potential struggles between employers and employ-

ees (individually or collectively). Osterman's (1987: 63) model says 'little about the role of unions', instead focusing on managerial decisions on the design of ILMs. However, in Germany many policies and practices governing ILMs result from workplace bargaining and are thus not the outcome of unilateral management decisions. Therefore, workplace bargaining processes are key to the research approach, because local players have discretion to shape employment locally. However, their choices for one option rather than another may be influenced by company-internal (physical and social technology, nature of the workforce) and company-external (regulatory system) factors. As neither the regulatory nor the workplace context alone can explain how working conditions of contractual groups of workers are produced, both dimensions should be examined.

6. Research design and methodology

We applied a cross-sectoral intra-country comparative research design to explore how the working conditions of standard and non-standard workers were produced in two sectoral contexts, and how works councils coped with the challenge of non-standard work locally. This is because companies are likely to organise work according to sectoral particularities, emanating from workforce characteristics, technology and collective agreements. We compare metal and chemical sector workplaces because both sectors are important pillars of Germany's export-oriented economy and the labour market, employing several million people. Furthermore, both sectors have undergone restructuring in the past two decades due to the globalisation of markets and the subsequent need for greater flexibility (e.g. via temporary work), forcing the sector- and workplace-level social partners to negotiate on such issues. Finally, trade union presence in both sectors is high, with metal sector collective agreements having a trailblazing effect on other sectors.

In each of the two sectors, we study two workplaces using similar physical technology and whose workforces have a similar nature to capture intra-sector variation (see Table 2). These workplaces are at R&D-oriented multinationals, employing a predominantly high-skilled workforce. The chemical companies use the same production techniques to manufacture almost identical products. The metalworking companies share a similar level of technological sophistication to offer customised products, highlighting the need for a multi-skilled workforce. Finally, all workplaces employ a mix of standard and non-standard workers.

The data was collected between 2012 and 2014. The analysis is based on 26 semi-structured interviews (about one to two hours) in the workplaces (n=21) and with sectoral union officials (n=5). Interviews involved strategic and operational HR managers to understand workplace practices and the way they were negotiated, and works councillors to comprehend their positions in local negotiations. Interviews at sector level focused on overall developments in both industries. Field notes resulting from site visits and observations as well as documentary material (e.g. company- and workplace-level agreements, annual reports) were also analysed to draw a comprehensive picture of the cases. NVivo was used to systematically code and analyse the data.

Table 2 Plant characteristics

	Metal1	Metal2	Chem1	Chem2
Product	Customised high-tech products for the aerospace industry	Customised high-tech products for the transport sector	Wide range of different (petro-) chemical products	Wide range of different (petro-) chemical products
Total workforce (rounded)	70,000	90,000	110,000	120,000
Workforce (plant)	4,300	2,800	35,000	10,000
Skill profile	High	High	High	High
Union membership in the workplace	25%	75%	60%	40%
Country of origin	France	France	Germany	Germany

Source: own illustration based on interview data.

7. Evidence from the four workplaces

7.1 The case of Metal1

Metal1 employed about 95% of its staff on permanent and 1.5% on fixed-term contracts. The remaining 3.5% were agency workers. Three interrelated reasons explain the small percentage of non-standard workers: 1) *Metal1's* company policy focused on skill retention; 2) the workplace faced recruitment problems because of a skill shortage

regarding the demanded profiles (e.g. radio frequency engineers; 3) the required profiles were practically unavailable in work agencies.

‘We have huge problems recruiting the highly-skilled workforce we need; we have more than 200 vacancies. To succeed, we offer attractive packages –in terms of salary and training – and focus on permanent employment to tie employees to *Metal1* as early as possible.’ (European HR Manager, *Metal1*)

In the face of this skill shortage, management and works council negotiated various workplace agreements covering standard workers that were more favourable than the sectoral collective agreement in order to increase *Metal1*’s attractiveness as an employer. The company offers higher salary levels, lifelong working-time accounts and a generous occupational pension scheme; employees can buy company shares at a discounted price; and childcare facilities are available. An in-house ‘university’ offers training programmes, and a well-developed foreign assignment programme enables employees to work abroad. Former apprentices can go on to study at university or technical schools, receiving a monthly stipend while studying. Job security is high and employees often spend their entire working lives at *Metal1*. However, rising orders and recruitment difficulties were causing problems in arranging work internally. Working time was thus increased in two ways via a sectoral opening clause. Firstly, the number of 40-hour contracts (instead of 35 hours) rose from 18% to 30%. Secondly, 30 hours (instead of 20 hours) overtime per month were allowed. In view of management’s ongoing recruitment efforts, the works council agreed not to jeopardise shipments. However, they rejected demands for an even higher 40-hour contract quota.

Some 1.5% of the *Metal1* workforce was made up of fixed-term workers, mostly replacing employees on parental leave. Though their working conditions were practically the same as those of standard workers, their job security was lower. However, in many cases, skilled fixed-term workers were offered permanent employment after their initial assignment.

Metal1 used two groups of agency workers (3.5%): The larger group of low-skilled workers performed logistics tasks, not working side-by-side with standard workers and mainly hired for cost reasons; while a smaller group of skilled agency workers working together with standard workers were considered a ‘recruitment pool’.

'Since we have problems recruiting staff, we started hiring agency workers with potentially suitable profiles to train them for a career here. However, numbers are very low because we hardly find such workers in agencies.' (Works councillor, *Metal1*)

Both groups were covered by the sectoral agreement for work agencies (setting lower wages and working conditions compared to the metal agreement), but treated differently in the workplace. While low-skilled agency workers merely received on-the-job training and had few job prospects, skilled agency workers were likely to stay on with the company after a 'trial period' of six to twelve months. Furthermore, they were able to take courses to broaden their skills.

Overall, standard workers had good working conditions due to the shared interests of management and the works council. Potential (skilled) standard workers – employed on fixed-term or agency contracts – could take training and had good chances of being hired on a standard contract. Low-skilled agency workers, however, had worse working conditions and hardly any job prospects, and works councils showed no desire to change this as they worked separately from the standard workforce.

7.2 *The case of Metal2*

Metal2's 2,800 staff consisted of 80% permanent workers, and 10% respectively of fixed-term and agency workers, in line with a workplace agreement.

Standard workers had good working conditions established through the many workplace agreements negotiated over the past years; e.g. above-average wages, an annual performance bonus, and working-time accounts with varying durations and giving employees control over their working time. Training and development programmes were widely offered by *Metal2's* global 'university', and apprentices were given the opportunity to go on to further education, receiving monthly stipends when studying at technical college or university. *Metal2* stressed retention and job security, as formalised in an employment guarantee for standard workers.

Metal2 also employed fixed-term workers (10%) to replace employees on long-term leave and for project work. These employees had almost the

same working conditions (salary, working-time accounts, training) as permanent staff, but did not receive bonuses.

‘There is no restriction on training employees with fixed-term contracts. As such contracts can be extended, we benefit when they participate in training. If it is necessary to train an agency worker, we will do so, too. Regarding training, we do not group employees into agency, fixed-term and permanent categories.’ (HR Manager, *Metal2*)

Agency workers (10%) were mostly hired for assignments of at least one year, and many worked side-by-side with core workers, performing the same tasks. Since they were covered by the work agencies’ sectoral agreement, they earned about a third less than standard workers before the 2012 introduction of wage premiums through the metal sector collective agreement. Furthermore, they had no working-time accounts, no performance bonus, and lower Christmas and holiday allowances. The gap between standard and agency workers made the works council reconsider its initially passive strategy by limiting agency work to 10%, and by negotiating an agreement on training to retain a high-skilled workforce. Moreover, while we were collecting data, negotiations on employment paths were taking place with a view to giving contractual upgrades to skilled agency workers.

‘It was a learning process. At first, we were against agency work. Then we saw that their numbers were increasing. Their qualifications are good and the company saves a lot of money by hiring them. We learnt that they are part of the workforce and we now try to integrate them in our processes. The more regulation we agreed on, the less agency work was asked for.’ (Works councillor, *Metal2*)

The 2012 metal sector agreement helped the works council close the (pay) gap between standard and agency workers through empowering them to negotiate local agreements and introduce wage premiums, thereby increasing the price of agency work.

‘Our leeway has been considerably reduced since the 2012 agreement. Agency workers have become quite expensive. In fact, it no longer makes any sense to use them.’ (European HR Manager, *Metal2*)

In sum, standard and fixed-term workers had similar working conditions, but there was a gap compared to agency workers. Therefore, the works council engaged in closing this gap by strengthening regulation on agency work.

7.3 *The case of Chem1*

Chem1 employed about 31,000 standard workers (mostly permanent, but also some fixed-term staff waiting for a permanent contract), 3,000 trainees, and 800 fixed-term employees working for *Chem1*'s internal work agency (IWA). While these workers had contracts with *Chem1*, there were two additional 'external' layers of 1,700 agency workers and a fluctuating number of staff from contractors (between 1,000 and 10,000).

Standard workers had good working conditions in line with a series of workplace agreements, including (but not limited to) flexible working-time models, working-time accounts, initiatives to improve health and safety at work, work-life balance (e.g. company-run childcare facilities), extensive training and development opportunities (e.g. a foreign assignment programme to enhance international experience), an annual performance bonus and a generous occupational pension scheme. Moreover, there was a site agreement including an employment guarantee and a commitment for future investments. As a condition for renewing the site agreement, the works council demanded better regulation of fixed-term work, clarifying that the use of such contracts should be the exception and not the norm.

'Flexible employees secure the jobs of the core workforce. Market developments are forcing us to restructure; technically, we sometimes needed to make employees redundant. But we can do so without dismissals because the fixed-term and agency workers provide us with a buffer.' (HR Manager, *Chem1*)

Fixed-term workers were mostly hired by IWA on one- to two-year assignments; however, a sectoral opening clause enabled four-year assignments if the works council agreed. IWA was set up a decade ago to pool temporary functions in one unit to increase flexibility. The works council agreed to its establishment under the condition that IWA staff was covered by the chemical sector agreement. Working conditions were thus similar to those of standard workers, but employment prospects depended on management's headcount requirements. Previously,

production workers were more likely to get contractual upgrades than employees in commercial functions.

‘The salary is the same. But fixed-term employees are not entitled to bonuses, occupational pension provisions or profit-sharing. There is no agreement regarding training. Nevertheless, their situation is much better than that of external agency workers.’
(Works councillor, *Chem1*)

Most workplace agreements did not originally cover fixed-term staff, but the works council worked to have them extended to other legal entities within the group, such as IWA. As a result, IWA staff became able to enjoy working-time accounts, and an agreement on training was being envisaged by the works council while we were collecting our data.

Chem1’s 1,700 external agency workers had two profiles: high-skilled staff for project work, and low-skilled workers for the logistics and catering units. As already mentioned, agency workers were not covered by the chemical industry’s sectoral agreement. The high-skilled agency staff had specific skills, leading to high salaries and good working conditions. Conversely, low-skilled agency workers had to cope with lower wages, worse working conditions and less job security. Since these workers were deployed to cut costs, the works council struggled to protect them. Agency workers mainly worked in logistics and catering. These units were still in-house, as the works council had successfully opposed outsourcing, fearing deteriorating working conditions for the workers concerned. Hence, permanent staff in both units were covered by the chemical agreement, setting higher standards than the logistics and catering sector agreements. The outsourcing of both divisions was avoided in three ways. Firstly, on the basis of a sectoral opening clause, catering and logistics employees had to work 40 instead of 37.5 hours a week without wage adjustment. Secondly, new staff hired for both departments got lower wages in accordance with another opening clause. Thirdly, the use of agency workers increased in both departments.

‘*Chem1* could easily have decided to outsource the logistics and catering sections. We could have protested, but this wouldn’t have stopped management. That’s why we need to compromise. But the employees feel awful. They still have their jobs, and despite the reduction in salary they still come under the sectoral agreement and this is definitely something to be happy about.’ (Works councillor, *Chem1*)

Catering and logistics workers with a *Chem1* contract had better working conditions than if they had been outsourced. Yet, the concluded compromise established different working conditions between them and other standard workers. Moreover, the agency workers in catering and logistics suffered from worse working conditions, and employment prospects at *Chem1* were virtually non-existent.

Finally, a fluctuating number of workers were hired from contractors. Most of them were highly-qualified specialists who sold their services at a high price, coming along with good working conditions.

Overall, the employees' working conditions depended on the layer they belonged to. While those of the core workforce were good, they deteriorated from layer to layer. This complex layered and internally fragmented approach of organizing work constituted a challenge for the works council, which faced difficulty in protecting staff in the outer layers.

7.4 *The case of Chem2*

Chem2 employed about 10,000 standard workers, 660 trainees, 200-300 fixed-term staff and approximately 100 agency workers. Generally, about 5% of workers were hired on non-standard contracts. *Chem2* underwent restructuring in the early 2000s, transforming itself into a group consisting of several affiliates and service agencies.

The sectoral agreement's provisions were complemented by a series of workplace agreements covering standard workers. Agreements covered flexible working time, working-time accounts, a generous occupational pension scheme, various health and safety initiatives, bonus payments, extensive group-wide training and development programmes, childcare facilities and 'caregiver leave' (for employees caring for a sick family member). Job security for standard employees was high, but *Chem2's* process of fragmentation was ongoing, leading to a threat of outsourcing. As a result, the works council had negotiated an employment guarantee, which was important during the outsourcing of the CAB division in 2014.

'Management wanted us to agree to the outsourcing, so we presented our conditions: job security as negotiated in an earlier agreement, including a ban on dismissals for operational reasons; a higher number of trainees and a better system for employees

whose jobs were lost but needed prospects in Chem2.’ (Works councillor, *Chem2*)

The works council proactively accompanied the outsourcing, ensuring job security for the affected employees and negotiating a one-year transition agreement, which contained arrangements similar to those in *Chem2*’s workplace agreements. The ongoing restructuring resulted in a high employee turnover, with 50% of staff leaving despite a stable headcount in the past. Outsourcing also fragmented labour power, because each new legal division founded its own works council.

Chem2’s two service divisions had faced outsourcing threats for ten years, but the works council convinced management to keep them in-house. Based on a sectoral opening clause, service divisions were covered by separate workplace agreements with a more performance-driven wage policy.

‘Faced with the threat that 200 jobs would be lost, we agreed to alter the labour agreement. We preferred to retain 200 jobs at this site under less favourable conditions rather than making 200 employees redundant. We even preferred using opening clauses rather than seeing the company making our colleagues redundant.’ (Works councillor, *Chem2*)

Chem2 also employed 200-300 fixed-term workers covered by the chemical sector agreement and by most workplace agreements (except for those on occupational pensions, bonus payments and childcare). An earlier workplace agreement stipulated mandatory two-year contracts; and most workers received permanent contracts thereafter. Consequently, differences between permanent and fixed-term employees were limited.

Furthermore, *Chem2* used 1-3% agency workers, mainly to cover peaks in demand, especially in the packaging department. Skill requirements were low, and assignments hardly exceeded six months. Due to their worse working conditions (coverage by a different sectoral agreement) the works council attempted limiting their use and negotiating better regulation. One agreement specified that only staff from work agencies respecting the German Trade Union Federation’s (DGB) collective agreement were to be used. Another one granted pay premiums exceeding those in the sectoral agreement to partially close the pay gap

between agency and standard workers. While we were collecting our data, negotiations were taking place on limiting the number of work agencies to be better able to control them, and the works council envisaged an agreement on contractual upgrades for skilled agency workers to enable transitions.

In sum, standard and fixed-term staff had good working conditions, but faced an imminent risk of outsourcing. The small share of agency workers had worse working conditions, but the works council engaged in negotiations to improve their situation.

8. Explaining the observed diversity

The empirical part illustrates that permanent and fixed-term workers mostly enjoyed good working conditions, whereas agency workers had worse conditions (Table 3). The main reason for the latter was their coverage by a different sectoral agreement, setting worse standards than those in the metal and chemical sector agreements. However, there were differences in working conditions across workplaces resulting from works councils' regulatory interventions.

Works councils across workplaces were challenged by the use of non-standard contracts. The ongoing restructuring in the chemical sector has led to higher fragmentation, with non-core functions being outsourced and the affected workers no longer being covered by the chemical sector agreement, for the most part leading to a deterioration in working conditions. Works councils in both workplaces thus sought to avoid the kind of outsourcing producing downward pressure on working conditions, and to keep as many workers as possible within the chemical sector agreement. Specifically, the sectoral opening clause on 'competing collective agreements' was used by both works councils to keep non-chemical functions in-house. Based on the opening clause and some concessions, *Chem1*'s logistics and catering divisions were kept in-house. Although working conditions deteriorated, the affected workers were still better off than if outsourced and covered by worse sectoral agreements. Similarly, *Chem2*'s works council negotiated a separate collective agreement subject to a different pay scale for its two service agencies to keep them within the chemical sector's representation domain. The workplace agreements based on the sectoral opening clause made the outsourcing of non-core work less attractive and ensured that the affected

Table 3 Working conditions of different groups of workers

	Metal1	Metal2	Chem1	Chem2
Contractual breakdown	95% permanent, 1.5% fixed-term, 3.5% agency workers	80% permanent, 10% fixed-term, 10% agency workers	93% permanent, 2% fixed-term, 5% agency workers	95% permanent, 5% fixed-term and agency workers
Core workforce	Very good	Very good	Very good	Very good
Fixed-term staff	Good, transitions likely for skilled staff	Good, training provision	Good, but no training, medium job security	Good, transitions likely
Agency workers	Worse, but transitions possible for skilled staff	Worse, but (envisaged) workplace agreements on employment paths, training	Worse, hardly any job prospects	Worse, but workplace agreement on pay
Others			Catering/logistics employees covered by different agreements (lower pay)	Service division employees covered by different agreements (different pay system)

Source: own illustration.

workers remained covered by the chemical collective agreement. In contrast to *Chem1*, *Chem2*'s works council did not generally oppose outsourcing and actively accompanied such processes for entire business divisions. On the one hand, such divisions remained within the chemical sector agreement, and on the other hand, the works council could push through certain demands (e.g. a higher number of trainees) in exchange for its consent. In doing so, the works councils pursued a strategy of 'controlled' outsourcing on the condition that coverage by the chemical agreement was maintained. Differences were also manifest regarding agency work. While *Chem1*'s works council tolerated the relatively high use of agency work at worse conditions in exchange for keeping non-chemical functions in-house, its counterpart in *Chem2* engaged in better local regulation.

Fragmentation between core and non-core functions was less of an issue in the metal workplaces. In *Metal2*, works councils' regulatory interventions focused on agency work. As a growing number of agency workers worked side-by-side with permanent staff, the works council reacted, avoiding potential conflicts by limiting and better regulating the use of agency work. However, the relatively large gap between the

provisions of the metal and agency work sector agreements made it difficult to achieve equal treatment. Furthermore, sectoral resources such as those found in the chemical industry were not available at the time of data collection, since the corresponding collective agreement focused on protecting standard workers. However, the 2012 metal sector agreement gave institutional support to works councils: wage premiums limit the use of agency work as they increase the price of agency labour, and co-determination rights have been strengthened by encouraging the negotiation of corresponding workplace agreements. In contrast to *Metal2*, *Metal1*'s works council remained passive on the issue of agency work. The fact that the 'social technology' allowed the small percentage of agency workers (3.5%) to be separated from standard workers did not induce the works council to act.

Overall, the sectoral regulatory context played a role in shaping the differences between contractual groups of workers, though without determining their working conditions. The way works councils used their available resources in their regulatory interventions was at least equally important. Hence, local players shaped the ways institutions worked in practice (Mahoney and Thelen 2010). The observed intra-country variations stress the added value of cross-sectoral comparisons and emphasise that institutional change can occur below the country level.

9. Conclusion

This study illustrates works councils' responses to the challenge of non-standard work in the German metal and chemical sectors. Inter- and intra-sector differences in the working conditions of standard- and non-standard-workers were observed, and explained with the help of the selected research approach, studying the workplaces as embedded in the regulatory context.

The study highlights that working conditions are not simply a function of an employment contract or the regulatory context, but that works council interventions matter. Intra-sector differences illustrate that works councils use their discretion differently in local negotiations in similar companies. In the chemical workplaces, works councils' main concern was to limit the ongoing fragmentation and to keep as many workers as possible in standard employment, covered by the favourable chemical sector agreement. To do so, a sectoral opening clause was used as a

resource (in combination with some concessions in *Chem1*) to make outsourcing less attractive for management. Fragmentation and keeping standard workers within the sectoral agreement was less of an issue in the metal sector. *Metal2*'s works council successfully limited the growing use of agency work and negotiated better regulation to avoid potential conflicts between contractual groups. The 2012 sectoral agreement encouraging workplace regulation on agency work may help the introduction of further workplace regulation in the future. *Metal1*'s works council, however, remained passive because production technology allowed a separation between standard workers and a low number of agency workers, making conflicts between groups unlikely. Such inter- and intra-sector differences emphasise the benefits of studying the workplace as embedded in its (sectoral) regulatory context.

The study has one major limitation. It only involved high-tech, market-leader companies, where works councils have a high degree of power, facilitating their role in local bargaining. This could be different in contexts of pressure and exposure to competition, reducing their power. Future empirical research should therefore also deal with such company contexts.

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Chapter 4

'Waiting for heaven' or 'fearing a new hell': trade union opinions on the introduction of team-working in a food processing company

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1. Introduction

Working in autonomous teams is a contested topic, both in society and academia. Teamwork advocates extol its benefits, with a whole body of literature viewing autonomous teams as beneficial for both employee well-being and company performance (Delarue *et al.* 2008; Pot and Koningsveld 2009). More concretely, autonomous teams give employees greater job discretion (Gallie *et al.* 2012), thereby decreasing the risk of job-related stress. This in turn leads to fewer mental health problems such as burn-out (Häusser *et al.* 2010), fewer physical health problems such as high blood pressure (Clays *et al.* 2007) and improved individual performance (Pflanz and Ogle 2006), commitment (Mathieu and Farr 1991) and motivation (Brough *et al.* 2013). Because employees in healthy and motivating jobs are able to work longer as well as meeting increasing organisational demands, autonomous teams might be part of the solution for simultaneously boosting an organisation's performance and employee well-being.

In the advocate's view, both parties are or should be happy with this win-win situation. Completely at odds with this utopian view is the dystopian view, as exemplified by the following quote:

'The central argument put forward in many of the critical studies is that teamwork, while apparently empowering employees, generates new forms of control which assist management in extracting labour from employees via work intensification... Critical accounts almost invariably make employee experience of teamwork absolutely central to their analyses and explicitly question the unitarist assumption that positive employee experiences and improved organisational performance are necessarily natural partners.' (Harley 2001: 725)

Operating in this contested terrain can be difficult, especially for employee representatives. Whom are they to believe: the advocates promising heaven, or the antagonists fearing a new hell? While a few radical ideologists may be convinced that the world is either black or white, most people are more comfortable with a shade of grey. Employee representatives are therefore unlikely to blindly follow either the utopian gospel or the dystopian view, although such images will influence their views of what teamwork means or will mean for those they represent.

Against this background, we investigate the views of two Flemish unions in a concrete case: a program to implement autonomous teams in the Belgian subsidiary of a French multinational. Before going into it, we discuss possible consequences of team-working for employees. As background to the case, we then present certain features Belgium's employment relations system. The next sections look respectively at the methodology and the case itself. We conclude in the conventional way by discussing our findings.

2. Team member interests and experiences

There is an extensive literature on team-working in general and autonomous teams in particular. The latter have been portrayed as the acme of direct employee participation: team members themselves are meant to take decisions on how their work is to be performed. This is traditionally portrayed against the background of a 'command-and-control' model, where employees merely have to follow orders from their superiors. The command-and-control model has been criticized for humanistic and economic reasons. It was seen as dehumanizing and leading to alienation, likely to result in employee apathy towards their production tasks. This in turn leads to the economic dimension: disinterested employees are unlikely to make quality products and/or work effectively and efficiently. In addition to this effect on an employee's psyche and consequently his behaviour, it is generally impossible to foresee all working contingencies and thus to prescribe in detail what employees are supposed to do. Trying to do so may lead to considerable losses, as military commanders found out at least as early as the nineteenth century. In the course of the twentieth century this insight was repeatedly rediscovered and extended. Significantly, socio-technical theorists developed insights into the importance of how teams are embedded in organisational structures. Although it is widely acknowl-

edged that teams do not necessarily function smoothly, a consensus seems to have developed in managerial literature that team-working is good for people and organisations.

For employees participating in team-working, the picture is a more complex. Whilst a fair degree of job discretion is in most cases welcomed, other aspects give reason for concern. Implementing team-working tends to have consequences for such aspects as job content, employee control, work intensity, required competencies and thus additional training and/or instruction, career possibilities, inter-personal and power relations, and payment. Employee representatives may try to influence these aspects. In addition, headcount may well be at stake, especially when autonomous teams are implemented as part of a larger change project to boost an organisation's performance. If these teams increase performance as intended, such productivity gains may lead to redundancies. In that case, 'fewer but better jobs' may be the motto. Managers often use the argument that performance needs to go up to legitimate proposed changes, including implementing team-working. An organisation's survival may be claimed to be at stake if performance does not exceed a certain threshold level, thereby creating pressure on employee representatives to agree with organisational changes. Somewhat paradoxically, unions may even fear for their survival if teams are successful. Relatively autonomous team members working to pursue their employer's goals may lead to their normative identification with that employer, thereby turning their backs on unions. Teamwork may then even be seen as a substitute for unions (Pulignano 2002; Bryson 2004).

Yet another issue are the possibilities to influence managerial decision-making. In general, trade unions behave in two ways when confronted with organisational changes (Huzzard *et al.* 2004). Unions opposed to the change will see themselves and the employers as two boxers in the ring, behaving accordingly when employers plan to introduce autonomous teamwork. They might for instance hit out against the plan or persuade employees with descriptions of what will go wrong when the change is implemented. By contrast, unions in favour of the change will put themselves in a dancing arena with the employer, participating in internal meetings and discussing common interests. Irrespective of basic attitudes towards cooperation, timing matters as well. When employee representatives are involved early on in the decision-making process, their potential to mould the change process is much greater than when they are involved later on and/or confronted with *faits accomplis*.

To summarise, in this study we are interested in examining whether trade union representatives follow the believers or opponents of team-working. Valid arguments are to be found in the literature for both believers and opponents. This study looks at why union representatives in a Belgian case organisation chose to oppose or support the implementation of team-working in a specific organisation. Did they follow the utopian or dystopian view on team-working?

3. Employment relations in Belgium

The Belgian employment relations system is rooted in the Social Pact of 1944, in which employer organisations and trade unions recognised each other and specified both the way of bargaining and the main topics for discussion. The Belgian employment relations system is characterised by a three-level collective bargaining system: company, sectoral and inter-sectoral. Agreements at lower levels are tied to agreements at higher levels. At each level employer organisations and trade unions are represented. Every two years a national-level agreement on wages and working conditions is established between trade unions, employer organisations and the government. This agreement forms the basis for agreements at sectoral and company level. Moreover, a high number of Belgian employees (some 55 percent) belong to a trade union. One important explanation for this is the strong institutional embeddedness of trade unions in Belgium. Trade unions are for instance involved in providing unemployment benefits under the so-called Ghent system (Van Rie *et al.* 2011).

Belgium has three main unions: the Confederation of Christian Trade Unions (ACV), the General Federation of Belgian Labour (ABVV) and the General Confederation of Liberal Trade Unions of Belgium (ACLVB). Every four years a nationwide social election is held for works councils and workplace health and safety councils. In 2016, ACV was the largest trade union with about 52% of votes, followed by ABVV with 36% and ACLVB with 12% (Federal Public Service Employment, Labour and Social Dialogue 2016). Election results have been stable over time.

Most of the time, the three unions work together. However, different historical roots lead to them having differing explanations and interpretations of societal and economic problems, as seen in the following short historical overview. All Belgian unions are rooted in the weaving and

spinning unions which developed in 1857. These unions were shaped as pluralist and politically neutral unions. However, in 1865 members of the weaving union developed a socialist-inspired reading club. In the following years, the union became a member of the First International and the Flemish Socialist Labour Party. ABVV thus has its roots in this socialist weaving union. As a result of this move towards socialism, liberal and Christian members of the weaving union established a new union: the anti-socialist cotton processing union (what is now the ACV). After a while, Christian members took the lead in this new union, prompting liberal members to leave the union in the 1880s and found the liberal workers' protection union (what is now the ACLVB). We thus see that the three representative unions were originally established in the 19th century due to ideological differences between union representatives.

Hyman (2001) defines three typical union identities. The first is an anti-capitalist or class identity, under which the unions concerned use socio-political mobilisation to create militancy around class interests. The second sees unions as an instrument for increasing social integration and introduces a more societal identity. The third argues that unions should only represent occupational interests during collective bargaining periods. Hyman (2001) relates these three typical identities to historical developments embedded in different national and regional contexts. This study relates these identities to differences between various national unions. In Belgium all three unions are strongly embedded in institutions and are therefore to be positioned between the class and societal identity form. However, while the first form is more related to socialist trade unions (like the ABVV), the second form is more related to Christian-inspired unions (like ACV). The liberal ACLVB can be positioned between the ACV and the ABVV.

4. Belgian trade unions and change programs

Workplace innovation was long ignored by Belgian trade unions. This relates back to the Social Pact of 1944, which states that employees should not be involved in the way work is organised in their company. Hence, unions were for long just focused on such issues as employment contracts and wages. In 2015, at the annual conference of the European Workplace Innovation Network, a Flemish trade unionist said for instance: 'How production is organised was for long out of our focus' (EUWIN 2015). The implementation of autonomous teams thus did not belong to the core

business of Belgian trade unions. This has however changed in recent years, and an increasing number of trade unionist are now being confronted with workplace innovation programs such as autonomous teamwork. Between 2011 and 2014, four percent more organisations have been restructured in Flanders, the Dutch-speaking part of Belgium (Notebaert 2016).

5. Features of the investigated company and the data collection process

Located in the Flemish part of Belgium, the company studied is a Belgian subsidiary of a French food-processing multinational with a worldwide workforce of about 100,000 employees, 400 of whom are employed in the Flemish subsidiary. In 2008, the subsidiary started a change program intended to implement autonomous teams in its production plant. The program is scheduled to finish in 2020.

We chose this food-processing company after observing that two of the representative unions in the subsidiary behaved differently with regard to the proposed team-based change program. In interviews with five union representatives we wanted to find out (1) the unions' views on the potential benefits of the team-based change program, and (2) the reasons why the unions chose to adopt different roles during the change program. The research team interviewed the national trade union officials respectively responsible for workplace innovation practices within the Christian and the socialist unions (i.e. ACV and ABVV) in January and February 2016. In the same period three union representatives – two from the ACV and one from the ABVV – from the subsidiary itself were interviewed.

A draft version of this chapter was sent to the union interviewees in June 2016. The union representatives made a number of comments on this preliminary version, which were then included in this final version.

6. Findings

In the next sections we outline the unions' views on the potential benefits of the team-based change program as well as the union motivation to support or oppose the change program.

6.1 Unions views on the potential benefits of the team-based change program

The unions disagreed on whether the change program had the potential to increase (1) the quality of working life, and (2) the organisation's performance. First, the Christian union representatives argued that the program led to an increase in the quality of working life, stating that the team-based change program created multidisciplinary production teams in which employees were more engaged, as they were required to fulfil more demanding and diverse tasks. Employees are no longer assigned to just one or a few production tasks but to a more complete task. Similarly, job control increased: for instance, when a machine was not functioning properly, employees were supposed to repair it. Christian union representatives argued that the combination of more demanding work and higher job control led to more committed workers with a higher quality of working life. Their argument is exemplified by the following quote:

'We now work differently. In the past, we had just one production line. If something went wrong, we just called a technician. (...) In the past we had one specific task. (...) They [the managers] wanted to change that structure (...) [so] that people [employees] could do more. When they [the employees] know how to operate different machines, they can do more. (...) The idea is for instance that an operator will get out his screwdriver and tighten a reflector. These are just small things. People [employees] can do more than before.'
(Union representative)

For the Christian union, the change to autonomous teams was backed by two important aspects: a training program and a revamped pay scale. On the one hand, the training program gave employees competences that helped them cope with increased demands from their more diverse tasks, while at the same time helping them reduce the risk of stress from feeling incapable of performing a range of production tasks. An essential side note for the Christian union is that employees were not obliged to follow the training programs. On the other hand, a revamped pay scale was implemented which took account of the new team-based approach. The Christian union representatives argued that before the change program employees had few possibilities to earn more. With the introduction of the new pay scale employees could achieve higher wages by learning more tasks. The following two quotes illustrate this:

‘[during the financial crisis] (...) there was a surplus capacity of employees. And we made good use of this by internal training. At that time, we had the opportunity to have people work in pairs on one machine.’ (Union representative)

‘Our pay scale was at its peak. 80 percent of workers were on the top scale and could not grow anymore. Not even financially. And people were asking questions: ‘I’ve had my appraisal, what now?’ (...) If a new way of working is introduced, and work is restructured, this has to be related to a revamped pay scale.’ (Union representative)

The socialist union representatives argued that the proposed program could lead to a deterioration in the quality of working life. Although the representatives acknowledged the positive aspects of autonomous teamwork, they argued that the change towards autonomous teams was driven by management’s cost-cutting objectives, to be achieved through rationalising production. An important aspect of this was to reduce the number of employees to an understaffed level. One representative argued that they were also against the change because such understaffing would lead to higher workloads and therefore increased work stress for the remaining employees. The following quote underlines this argument:

‘I do not say that autonomous teamwork has no positive effects. But, when you have to do everything [tasks] with less people [employees], work gets more stressful. We have nothing against the system [of team-working], but you should also be adequately staffed to do work in a workable way. (...) They [the managers] should not only look at annual profits but also at people [employees].’ (Union representative)

The socialist union did not, in contrast to the Christian union, believe that management would create decent training programs to accompany the team-based intervention program, leading to higher stress for employees, as they would not all have the competences to perform their new tasks. The socialist union feared that: (1) older employees who were satisfied with their work and did not feel any necessity for training would be fired or side-tracked; and (2) management would only recruit high-skilled employees because such employees would need no further training. Such a selection strategy might however encourage a segmented labour market in which the subsidiary only worked with high-skilled employees, with low-skilled employees squeezed out. Their argument is underlined by the following two quotes:

'We have always said, "beware, this is a lie [of the management]". (...) So much attention to training, while I (...) always heard that there was no time for that. All of a sudden, the same management has to provide an education and training system (...). How is that possible from one day to another, such a metamorphosis in a company? (...) We just couldn't believe it.' (Union representative)

'In itself, it is a positive story. Training and coaching. You cannot deny that. But (...) what does it mean? What are the motives? It is important to make sure that everyone has sufficient chances. (...) You will need highly-educated workers here (...). And that we find a fundamental (...) aspect to be highly sceptical. (...) There must be a place for everyone in the production plant.' (Union representative)

Second, the Christian union representatives argued that the subsidiary's economic performance was important because European restructuring was forthcoming. They supported the change program because it could increase the subsidiary's performance: flexibility, quality, innovativeness and productivity. The subsidiary would therefore, in their view, be more protected against such a European restructuring program, planned by European headquarters. In other words, the job security of employees in the subsidiary was of prime importance for the trade union. Their argument is exemplified by the following quote:

'It was an economic crisis (...) so we had to be ready (...) to be the best in the class. (...) A number of factories would be closing and others would be greatly downsized. We now see that many additional volumes are coming our way [to the subsidiary]. So, the group [multinational] has decided to fully invest in our subsidiary. Within the group [multinational], they also say that because we have good training, we are ready for new products and new volumes. For us, this is the proof of the pudding. (...) We are glad we got here.' (Union representative)

The socialist union representatives did not follow the view of their Christian union counterparts, arguing that it is risky for trade union representatives to think like managers, because one can never be sure which criteria management will use to close a subsidiary or to keep one open. The following quote illustrates this:

‘They [management] wanted to have a very efficient company. (...) But you never have any real job security. (...). If they take a decision at headquarters, they always take a broader view. And you never know whether you fit in it or not. Even when you’re very efficient and profitable. (...) We must take care when following such [management] thinking. (...) We must (...) view the changes from a worker’s role. Is it doable? Is it workable? (...) Because you never have job security.’ (Union representative)

Table 1 summarises the unions’ views on the benefits and disadvantages of the change program. We see that the Christian trade union (ACV) representatives followed the utopian view on teamwork, stating that the implementation of team-working leads to less job stress for employees, jobs with higher demands and greater control, more training opportunities and a revamped and better pay scale. In their view, teamwork benefits both the subsidiary’s employees and its performance, increasing production flexibility, quality, innovativeness and productivity. This in turn was seen as protection against European restructuring, creating greater job security for subsidiary employees. By contrast, the socialist trade union (ABVV) representatives followed the dystopian view on teamwork. In their view, employees had a lower quality of working life, while the subsidiary’s performance was not deemed that important. In particular, the ABVV representatives stated that the implementation of teamwork created higher workloads, more job stress, acute understaffing, and required

Table 1 Union views on the potential benefits of team-working

Consequences of team-working	View of ABVV	View of ACV
For employees	<ul style="list-style-type: none"> – Higher workload – More job stress – Obligation to follow training programs – Acute understaffing – Employers hire mostly high-skilled employees. Fewer jobs for low-skilled employees 	<ul style="list-style-type: none"> – Increased employee commitment through greater job control and higher demands – Less job stress – Increased training opportunities – Adapted and better pay scale
For the subsidiary’s performance	<ul style="list-style-type: none"> – Unclear, as criteria keep changing (which criteria will be used by managers to close a subsidiary in any European restructuring program) 	<ul style="list-style-type: none"> – Increase in flexibility, quality, innovativeness and productivity – Better positioned against European restructuring, higher job security

training courses for employees. Moreover, jobs remained insecure. In summary, the representatives of the two unions seemed to have completely different views on the benefits and disadvantages of teamwork. The following section looks at union motivations for these different views.

6.2 Union motivations for these differing views on team-working

The union representatives gave two main reasons why their unions had differing views on the outcomes of the change program for the subsidiary's employees and performance. First, the union representatives stressed the importance of the unions' historical roots, as seen by the following two quotes:

'ABVV [socialist union] has more historical roots in (...) class struggle and they see it as less of their responsibility to think along with an employer. And that's just a historical difference. (...) We, instead, are grateful when an employer creates jobs. (...) In our view, team-working programs will come anyway. You'd better make the best out of it, influencing them instead of standing on the side-line while they're being implemented (...) The most important thing (...) is to create a win-win situation. What is important for the employer and what is important for the employee. I think we have reached that situation.' (Union representative)

'ACV [Christian union] often goes more along with change. Historically, we [socialist trade union] are more combative against employers.' (Union representative)

A second reason mentioned was the involvement of the unions in the development of the team-working program. Union representatives agreed on the following aspects of implementation: (1) the employer came up with the idea of implementing teams, (2) meetings with the unions were held by management to inform them about the change, (3) separate meetings on this topic as well as follow-up meetings were held, and (4) meetings to discuss the upcoming changes were officially held with the social partners. The unions and management were invited to sign an agreed document on what the program involved after the first meetings.

The unions disagreed however on certain crucial aspects, leading to different views on the program's consequences. A representative of the socialist union stressed that the trade unions were only informed about the change after the most important decisions had been taken. The consequence was that the union could only suggest minor changes, as no major changes were possible. Yet in the view of the interviewee the latter was crucial for gaining union support for the change program. As the employer only involved the union to a minor degree, the socialist union was against the program and refused to sign the document.

The Christian union representatives confirmed that the unions were involved in shaping the content of the team-working program too late. They however stressed that the unions had still been able to change certain aspects of the program: the unions were not merely informed about the change but could also influence the content. Moreover, the employer had in their view listened to the unions and integrated some of their demands. For instance, training programs had for long been requested by the unions, and were now implemented as a part of the program. The representatives also argued that the Christian union supported the program because this allowed them to influence the content of the program and let them know what the employer planned to do. These were the main reasons why the ACV representatives signed the document on the proposed content of the change program. The following quotes reflect the views of representatives of both unions:

'We [ABVV] are slightly more conflictual than the ACV [Christian union]. That's the way things are. It is for sure an important aspect. However, it's a nuanced story. (..) If you want to do something together (...) you also have to negotiate together. As equal partners. Otherwise, you cannot call it a joint project. The overall picture was already set by the employer and we just added colour to it.' (Union representative)

'A commission was set up to take care of the change program. As union officials, you can do two things. You support or you don't support the program. But if you don't support it, you have to know that management will decide everything and you will have no control. (...) You will also not encounter anything unexpected. I thought that was important, to know where the employer aimed to go.' (Union representative)

7. Discussion

The implementation of autonomous teams in organisations is a contested topic. Views differ from it benefiting employees and employers alike, to a focus on the disadvantages for employees and/or employers. This variety of views is also reflected in the opinions of union representatives. When organisations decide to implement team-working, unionists have to decide what position to take regarding the pros and cons of the proposed changes. Representatives have to decide whether they oppose, constructively influence or just accept moves towards team-working within their organisation. This is evidently no easy process, as this study shows. Based on a case study in a food-processing company, it concluded that the variety of views on teamwork found in academic papers and policy papers is reflected in the views of union representatives. Both benefits and disadvantages for the quality of working life or a company's performance are mentioned by the interviewed union representatives. For instance, while some representatives argued that team-working reduced stress for employees, others stated the opposite.

When asked about the motivations for the different union views on the implementation of team-working, the representatives explained that the different beliefs mainly stemmed from the unions' historical roots as well as from the extent of union involvement in implementation. First, the historical roots explained why one union was more critical of the chances offered: it had always been more combative than the other union, which preferred to look for a win-win situation for both employees as employers. Second, union representatives clearly argued that the involvement of union representatives in the early stages of a team-based work program was important. Union representations needed to have the opportunity to bring in constructive suggestions right from the start. Interestingly, views on whether unions were involved early enough seemed to depend on a union's historical roots, with representatives of the one union saying that union involvement was 'too late', while the others adopted a 'better late than never' attitude.

7.1 Research implications of study findings

We see four main future research directions. First, this study only interviewed union representatives working within the same institutional context. The main benefit of this is that the union representatives studied

came from the same institutional field, i.e. differences between union views could not therefore be explained by institutional differences. Hyman (2001) shows that union identities differ between countries. In this study, we looked at how union identity differs within a country. However, institutional differences between countries may also lead to different union identities, in turn leading to differing union views on teamwork programs. Although we acknowledge that there are already studies on this topic (see for instance: Pulignano 2002), research on union representatives' views on the relationship between teamwork and the quality of working life should be enhanced. Studies could for instance compare research findings in a specific country with our single-country findings. Studies can also compare union representative views in different countries. Because of differences in the institutional context, it may be that in some countries most unions have a dystopian view of team-working programs, while in others a utopian view dominates.

Second, studies could look deeper into the factor of unions' historical roots (and ideological orientations). We suggest that more studies look into whether workers joined a union because of their societal view or whether they adopted a specific societal view on joining a union. Workers' views on team-working may differ between those who gained a specific societal view from their union and those holding views independent of their union.

Third, this study examined the views of union representatives on a team-working program in a local subsidiary. More research is needed on social bargaining levels other than the local company level when studying team-working. We outline two future pathways: (1) The influence of the central and sectoral social bargaining levels on the views of local representatives was not looked at. These views may however be influenced by the team-working views of sectoral, national, European and international union representatives. Future studies could look at how different levels influence representatives' views. (2) The introduction of team-working programs may be triggered at levels other than the local company level. Social bargaining at these higher levels may influence the motivation of union representatives to support the introduction of team-working.

Fourth, this study looked solely at one organisation within the Flemish region in Belgium. Five union representatives were interviewed. The findings could be deepened by interviewing a larger number of representatives or increasing the number of organisations studied. It would be good to know whether the findings also hold true in other

organisations or when a larger number of representatives are interviewed. However, the uniqueness of the case at hand was the fact that representatives from two different unions in the same company were interviewed about the same program, allowing the motivation for different views on team-working to be investigated and compared in detail.

7.2 Policy implications of study findings

We see three main policy implications. First, this study found that unions do not necessarily agree on whether the team-working is beneficial or harmful for employees and organisations. One main reason for this was that the unions disagreed over whether they had been sufficiently involved and had had adequate time to suggest changes to the program. We suggest that trade union practitioners look into whether it is possible to create a list of requirements regarding union involvement in the introduction of team-working. What is a minimum standard of union participation? At what stage should employers have to involve trade unions? What factors lead to union involvement being considered high, medium or low? What are best and worst practices regarding union participation in such programs?

Second, the study findings suggest that employers wanting to avoid problems when introducing team-working should involve unions in its implementation. It is in practice not yet that clear how employers should do this. We suggest that employers and employer associations look into strategies for involving unions in such programs. These could include the creation of criteria and guidelines.

Third, unions need more knowledge on the benefits and disadvantages of team-working, potentially leading to a harmonised union vision on the topic. Such a vision and knowledge would help local union representatives make a conscious decision on whether to oppose or support such a program in their organisation. This could be done by means of a checklist of the relevant benefits, disadvantages, do's and don'ts of team-working programs, helping local union representatives to easily identify their pitfalls and potential strengths.

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Chapter 5

Hierarchical relationships and conflicts in skilled sectors: the case of managers in French industry

Gaëtan Flocco

1. Introduction

France has a specific socio-professional category of managers called *cadres*. These are qualified employees with experience (Desrosières and Thévenot 2000) and include, among others, lower management in private and public companies, as well as ‘experts’ working in such areas as marketing, quality assurance, communication, etc., or engineers in various technical and scientific areas. This category of employees is very heterogeneous. Strongly shaped by France’s socio-political history, the category is also structured and organised by different institutions including trade unions, non-profit professional associations and specific retirement funds which give this group a certain social unity (Boltanski 1982). Yet the status of *cadres* is greatly ambivalent. Symbolically, they are on the side of capital, given their ideological proximity to top management which in turn draws on *cadres* to keep companies running. But, objectively, *cadres* are on the side of labour, given that they are employees (Lordon 2010). This raises questions with respect to the ways in which hierarchical relationships and conflicts function within this group, especially given the way large companies have been operating in the turbulent globalised financial environment of recent decades.

The analysis is based on the empirical investigation of four large companies operating in the oil, nuclear, aerospace and electronics industries in France. Access to these companies was mainly gained through personal contacts with employees or with the assistance of trade unionists and consultants. This assistance facilitated contact with human resource managers and works councils with a view to gaining permission to conduct a survey within their organization. Fifty interviews were held during the first half of the 2000s with high-skilled employees such as line managers, different types of engineers (research, computer, sales, etc.), in addition to functional managers in communication and marketing. The sample included 19 women. As regards age, 36 *cadres* were between 25

and 44, and 16 over 45. Half of the sample had graduated from an engineering school, while the rest were from business schools and universities (various levels of tertiary education including Masters and PhD).

Based on this survey, the research illustrates how conflicts within the group tend to be neutralised, even though this does not prevent criticism from being expressed. To explore this observation, the chapter examines various socio-economic levels. It starts by presenting the overall economic context of neo-capitalism, before moving on to examine various strategies these companies have adopted for their *cadres*. Hierarchical relationships and union practices are then examined in the third and fourth sections of this chapter. Finally, a fifth section deals with informal criticism *cadres* have been able to express concerning the various dimensions of their work, their company and the globalised economy in general.

2. The emergence of neo-capitalism

Since the 1980s, global capitalism has embarked on a new era, characterised by profound changes in the ownership of companies, their internal management, and even their mutual relationships. High-qualified employees have been affected by this new situation. This era was preceded by several distinct economic and historical configurations, beginning with mercantilism through to the Industrial Revolution; followed by the Great Depression of the 19th century to the crisis years of the 1920s and 1930s; and ending with the exceptional prosperity of the post-war period. When the latter came to an end in the 1970s, the international economy entered an unprecedented phase which has been given many epithets by French economists: 'financial globalisation' (Chesnais 1996); 'financial capitalism' (Gréau 1998; Batsch 2002; Aglietta and Rebérioux 2004); 'globalisation' (Michalet 2002); 'total capitalism' (Peyrelevalde 2005); 'neoliberalism' (Duménil and Lévy, 2000), etc. Each of these designations has something to offer, though the expressions 'neo-capitalism' (Dockès 2002) and 'new capitalism' (Duménil and Lévy 2000) will be used in this chapter. They have the advantage of stressing the unprecedented developments of the global economy since the 1970s, without focusing on the single issue of 'financialisation'. Taken as a whole, three key trends appear to characterise this new type of capitalism.

To begin with, forms of company financing have changed in recent decades, shifting from a regime largely based on conventional bank loans

to a regime based on issuing securities, associated with bank disintermediation (Plihon 2004). To obtain capital, companies now issue predominantly two types of securities – shares and bonds – on financial markets, with the aim of finding investors expecting to increase their capital. As a result, the supply of securities has risen considerably, due both to the overall increase in the number of publicly listed companies and to the greater number of shares issued. The second way companies acquire capital is through self-financing, a method which has also increased substantially since the 1990s. This record rise is the result of both increased company profits, allowing substantial reserves to be accrued, and the slowdown in investment volumes. Overall, the significant rise in profits over the last twenty-five years has turned out to be a *sine qua non* for the accumulation of equity and bond finance by companies and their use as the primary sources of finance. Higher profits have made stocks more attractive in financial markets, providing investors with significant returns. They have also favoured self-financing by allowing companies to build up reserves.

The privatisation (of the capital) of large previously nationalised companies is a second trend typical of neo-capitalism. In France, and more generally in Europe, these transfers of property took place from the mid-1980s onwards. They occurred in many sectors ranging from energy to capital equipment, via transport, telecommunications, insurance and even banks. In most of these areas, large companies brought into public ownership in the various phases of nationalisation between 1935 and 1983 were subsequently transformed into private companies exposed to the constraints of international competition. In the early 1980s, the so-called economic policy of ‘competitive disinflation’ in France reshuffled the cards in terms of capitalistic appropriation (Lordon 1997). The subsequent privatisations took place in waves from 1986 onwards, reflecting successive changes in government, whatever their political persuasion. These upheavals did not spare the companies studied here, and provide an initial concrete illustration of manifestations of neo-capitalism at the level of production organisations.

As an example, the aerospace company researched here, whose majority shareholder is still the French state, transferred a portion of its assets to the private sector at the end of the 1990s. The oil company also saw the state selling off a large portion of its shareholding during the 1990s, reducing the government stake progressively before finally selling off all shares. The nuclear engineering company studied here benefitted greatly

from state support during the 1970s, which allowed it to expand, though subsequently saw government intervention decline sharply. As of the 1980s, the market became the main force driving the overall regulation of its operating framework: one of its main corporate shareholders had been the state-owned champion of France's electrical industry, today a private company. The nuclear engineering company has become a multinational, and the rationale of privatisation led to its stock market flotation in 2011. As regards the electronics company, its corporate progress has been marked by mergers and acquisitions as well as the sale of shares to competitors since the late 1970s. In fact, at the time of the survey, many of its current employees had actually spent time working for the state-owned electronics company. As of 1999, it was fully privatised, after having been part of a series of industrial consortia and shareholdings. Moreover, the nuclear engineering, electronics and aerospace companies studied here have also had to deal with the privatisation of their clients, such as France's leading electricity companies or telecommunications operators.

The private sector is therefore now seen as the sole driver of growth, in contrast to state intervention, which is seen as guilty of leading to major financial disequilibria. The privatisation of the economy is also associated with the growing competitiveness of national companies and the development of exports within the framework of globalisation. This opening up of previously nationalised companies has provided opportunities to invest in new activities that are deemed to be more profitable (Michalet 2002).

The advancing internationalisation of companies and stepped-up competition are the third characteristic of neo-capitalism. The companies investigated here have all been driven by expansion strategies and the internationalisation of their activities. These are both characteristics of contemporary capitalism. Three of them employ between 70,000 and 100,000 employees across the world. Their subsidiaries operate in 120 countries, and some are active on all five continents. These subsidiaries function as devolved and autonomous profit centres, allowing the groups to diversify into different sectors, as has been the case at the oil industry company surveyed. Its subsidiaries are active in three different areas: upstream in the exploration and production of energy; downstream in refining, as well as in marketing and sales; and finally in the petrochemicals sector, along with the processing of synthetic rubber. The aerospace company is smaller than its counterparts, with only 380

employees today. Yet it is still highly internationalised. More than 70 engineers are based permanently at the rocket-launching site in French Guyana, while the marketing department dispatches engineers throughout the world in search of launch contracts. To support international prospecting, the company has opened up offices in Washington, Singapore and Tokyo. Lastly, the international nature of the company is reflected in the way its shares are held by about 40 European firms based in Germany, Italy, Spain and Belgium.

These examples of huge international corporations illustrate the trends analysed by Michalet (2002). According to this economist, there has been an unprecedented development of networked companies since the 1960s, within a context of the multinational configuration of globalisation. The model of 'extended companies' (Durand 2004: 34) is based on the principle of creating subsidiaries or production unit satellites orbiting around a parent company, often referred to as a holding company or investment company. Veltz (2000) goes as far as to talk about a 'smallisation' process emulating small- and medium-sized enterprises in terms of their externalisation practices and division into autonomous units directly targeting specific markets.

Increased competition and the imperative of competitiveness are corollaries of such a company's growth strategy, playing out along borders and cultures. Competitiveness has become a watchword drummed into the *cadres* of the four companies studied here. While previously they may have benefited from captive, national markets or been aided by state interventionism, these large groups are today increasingly faced with international competition from new Russian, American, Japanese or Chinese entrants to the market. These are highly competitive and will, without hesitation, cut prices for goods and services of equal – if not higher – quality. All four companies studied have decided to meet this challenge by conquering new markets, such as South Africa, South Korea or China.

3. Companies' neo-capitalist strategies

To this end, companies have implemented new and specifically adapted strategies. One of the most striking strategies concerns the power granted to shareholders. Paradoxically, though it is a well-known component of neo-capitalism, this strategy is also one of the least visible for employees,

as well as for outside observers. This is because identifying networks of atomised and distant shareholders is difficult. Whatever the case may be, within a few decades, the world's main economies have shed the *stakeholder* model, in which companies were seen as a community of interests including shareholders, senior executives and employees. In its place, the *shareholder* model gives precedence to the interests of shareholders (Plihon 2004). Their power has been further enhanced by the development of the collective management of funds linked to the rising power of institutional investors. Previously, financial assets were often distributed across a range of individual shareholders. Today they are concentrated in the hands of a minority of institutional investors. These include pension funds, mutual funds or investment firms, as well as insurance companies (Batsch 2002).

The shareholder model in turn has led to corporate governance emerging as a principle for orchestrating control, company behaviour and managerial practices (Pérez, 2003). It is largely geared to maximising the stock market value of companies or shareholder value (Lazonick and O'Sullivan 2000). The creation of shareholder value has had quite an impact on major companies in recent years, being formalised as economic value added (EVA) (Morin 2006). Despite the opacity of its many definitions (Lordon 2000), the ratio refers to the surplus left over once providers of capital – loans and equity – have been remunerated. The actual rhetoric and the real practices surrounding this indicator may not constitute a kind of implacable logic weighing on all firms. It nevertheless has a real influence. EVA is one of the criteria legitimating the existence of the stock market convention imposing double-digit returns on investment – the famous return on equity (ROE) (Plihon 2004). In a context of heightened international competition and under the influence of corporate governance, companies have been reduced to simple assets whose stock market value must be increased (Fligstein 1993).

The reign of shareholder capitalism assumes that companies can adopt policies and strategies that can overcome constraints on competitiveness and the profitability of capital. This has been observed in the companies studied here. For example, they have all been targets of mergers and acquisitions (M&A) activity, albeit to varying degrees. The aerospace company and more directly, the electronics company went through several mergers and acquisitions which led to the privatisation of a longstanding French industrial company which today belongs to a multinational company originally from Sweden. At the time the survey was

conducted, the oil company had just completed an important merger with another French company in the same sector, having teamed up with a Belgium company a few months earlier. Lastly, the nuclear engineering company experienced an identical trajectory, having merged with a large German firm at the end of the 1990s.

These examples bear out a strong trend marking global capitalism since the 1990s. In France, these practices concern many sectors, ranging from energy, to insurance, via chemicals, telecommunications, banking and large-scale retailing. The arguments put forward by policy-makers seem unstoppable in the face of the rationale instituted by shareholder capitalism: companies must achieve a critical mass, allowing them to conquer new markets and face up to international competition. Synergies have to be achieved through mergers and acquisitions (Coutinet and Sagot-Duvaurox 2003).

Restructuring and workforce cuts are further strategies commonly practiced by companies. For instance, in the early 2000s, the aerospace company shed 3,000 jobs to deal with a particularly difficult economic situation, according to its top management. A host of reasons were given to justify these deep cuts: the telecoms crisis and the slowdown in satellite orders, the extreme competitiveness of US and Russian manufacturers, along with cuts in French and European public investment in their space programmes. The nuclear engineering company, for its part, went through successive rationalisation programmes every two years during the 1990s and the 2000s. Here too, the company's top management put forward the same arguments: the company had incurred substantial losses in terms of replacement orders for generators. The choice had been made to cut the wage bill significantly in order to meet cut-throat international competition. Lastly, while the investigations for this study were being conducted with *cadres* and engineers of the electronics company, it announced 10,000 job cuts globally, including 5,000 in Sweden and 191 in France.

These restructuring measures are often accompanied by companies concentrating on their core business, and are in line with the goals of creating shareholder value, as well as the need to face up to international competition. Such refocusing usually concentrates on activities which offer a substantial competitive advantage. By contrast, activities facing deteriorating business conditions – falling demand and/or tougher competition – are simply abandoned (Palpacuer *et al.* 2007).

Following a similar logic, most companies resort to subcontracting, or re-engineering as it is sometimes called. The aerospace company, for example, cooperates with a myriad of European industrial companies, which the employees interviewed euphemistically referred to as 'partners'. These subcontractors are responsible for the design and development of space rockets, as well as the manufacture of some of their modules. Moreover, while the survey of the electronics company was being conducted, the latter was in the process of outsourcing services deemed to be non-strategic, such as purchasing, document management, and IT support and assistance. This strategy of subcontracting was overtly publicised and justified within the company. The explicitly communicated aim was to shed the company's 'hard' activities, in other words its physical production. Along similar lines, a US company took over the company's manufacturing of mobile telephones in the early 2000s, so that it could concentrate on its 'soft' business, including design and marketing, as well as the commercialisation of fixed-line and mobile telephone networks. Such production disengagement continues the processes of internationalisation by companies that began in the 1960s.

Sociologists and economists are unanimous in observing the shift from large company factories with large workforces, a feature characterising mass production with little diversification, towards major corporations with a plurality of small production units, broken down into subsidiaries and sub-contractors. Again, for capital holders, the advantages of resorting to subcontracting are far from being negligible. Resorting to supplier markets in which competition is strong helps cut costs substantially when it comes to carrying out key activities. Subcontracting does away with the need for production management structures and provides opportunities for adapting rapidly to fluctuating demand (Clerc 1999). Ginsbourger (1998) also recalls that outsourcing is used by companies to shed low-skilled and high-risk work. He points to the example of how dangerous work in the steel industry is subcontracted. Such practices engender a degree of opaqueness concerning casual labour, giving the impression that it no longer exists within the company, thus enhancing the latter's image. Lastly, subcontracting may also have a political objective in as far as it breaks up organised labour unions and associations, or helps companies rid themselves of difficult management activities. Specific hierarchical relationships are deployed in neo-capitalist companies within this economic and strategic framework.

4. The mutations of hierarchical authority

The hierarchical relationships between different *cadres* are characterised by relatively conciliatory cooperation, even if occasional conflicts may occur, along with individual tensions. In the past, *cadres* maintained a professional identity based on hierarchical authority. Often promoted in-house, they were imbued with a strong working-class culture. Though experienced, they were historically relatively low-qualified (Trouvé 1996). The spread of managerial ideology and its practices, the expansion of training and education and the increase in qualifications changed all this. Intermediate *cadres* have become younger, compensating their lack of experience with skills learned at university. This has favoured management based on technical competences rather than authority and traditions, a type of management deemed to better suit younger generations. Managerial competence complements technical competence, allowing *cadres* to manage the teams they are in charge of motivating (Pillon and Vatin 2003).

These mutations were well summarised by Francis (57 years old, section head, in the nuclear industry), who had worked for his company for 24 years. He explained that the large number of engineers and the transformation of their social characteristics no longer allow a command-chain style of operating, referring to persons who were 'so advanced'. Although clumsy, this expression conveys many meanings. Francis argued that 'people don't manage today as they used to several years or even several decades ago'. Nowadays, a manager is 'someone who listens, who tries to lead, and whose behaviour should not be arbitrary in any way'. Francis also emphasised the need for 'collegiate management', which 'includes putting issues on the table, listening and examining different possible solutions'.

The slow change in authority, driven by the spread of management principles, is reflected in the expression of everyday management practices. *Cadres* often find these satisfying. But interestingly and paradoxically they also frequently complain about the lack of direction they receive in their own work from higher management. They feel that their tasks are poorly defined. They deplore a certain absence of structure, as pointed out by Franck (26 years old, a design and development engineer in the nuclear industry):

‘There’s little management sometimes. I don’t really know how to define it. It’s a compromise between letting people be (*laissez faire*), but without really giving them, let’s say, the status ... they are given some responsibilities, but this is not properly officialised. It’s quite blurred. It is true that management is not strong, and in conclusion, we are not really managed. Finally, I don’t know whether it is because people believe us to be capable of steering ourselves or if it’s just the law of the strongest, or whatever. I don’t know. Personally, I believe there is a real job to be done in this area’.

Some people go as far as to regret this lack of definition, or even a precise description of what they should be doing during their working week. Or at least, they express a desire to have their own responsibilities more clearly managed. In practice, the responsibilities they have, together with the limited number of directives concerning their work, give them the impression of having a lot of control over their workflow, while being exposed to setbacks: such a form of organisation weakens the formal and official definition of their workload, exposing them to moments where they are overloaded with work. This observation illustrates the trend towards giving individuals greater responsibilities in industrial companies, obliging them to permanently take decisions to solve problems for which they are not prepared (Jorda 1999). Such increased responsibility may then become a real burden.

A design and development engineer in the nuclear industry, Véronique (43 years old) also admitted that the lack of precision concerning tasks and the blurred nature surrounding them led to difficulties. She admitted having been relatively lost when, during a meeting prior to drawing up an assessment of business in progress, new activities were decided without there being any hierarchical framework defining and allocating responsibilities between the various colleagues present. She also did not know whether it was up to her to take responsibility for one of the new activities – at the risk of suffering from overwork – or whether she should do it together with another engineer, so vague were the discussions on allocating responsibilities. She felt guilty about this and wondered if the problems were not of her own making. In such circumstances, where engineers are left to themselves to allocate their work, she questioned her capacity to take the initiative and appropriate the work of her own supervisor. Last but not least, Yves (45 years old), a section head in the nuclear industry, gave his own interpretation of the enhanced individual responsibilities *cadres* had in companies:

‘I think there was less pressure before. Indeed, there was... well I don’t know if there were filters, but in any case, there was no willingness to push forward, saying to everyone that: ‘you, as employees, are responsible for company profits at the end of the year’. Whereas now, there really have been operations – no banging on the table, because they prevail over time – aimed to get it into everybody’s heads that they are responsible. I think that has surely made it possible to make everyone more profitable, so to speak. Of course there is abuse, there always was and always will be, but overall I think that the message has been understood’.

Given such sanitised hierarchical relationships, *cadres* have adopted a particular view of union action.

5. An individualistic approach to unionism

French union membership has fallen substantially over the last forty years. Since the late 1990s, it has been at about 8% of the total workforce, compared to 25% in the 1950s (OECD).¹ In this context of de-unionisation, *cadres* are not laggards in union membership. In fact, they are more unionised today than employees or workers. In 2010, 13% of *cadres* were unionised, compared to 9% of workers and 11% of employees (Insee, 2010). Another decisive trend is that *cadres* are joining unions traditionally open to all employees (including workers), such as the CFDT² and the CGT.³ This is occurring at the expense of more corporatist unions, such as the CGC,⁴ which has been going through a crisis of representativeness in recent years (Béthoux *et al.* 2011). The studies for this research show that *cadres* join unions when they are directly confronted with working situations which they find difficult, such as a worsening of conditions or the fear of losing their jobs. This was the case with Jacques, a 52-year old department head in the aerospace industry, who explained why he joined the CGC:

1. Organisation for Economic Cooperation and Development.
2. The Confédération Française Démocratique du Travail was created in 1919. This union is generally politically reformist, and defines itself as being neither ‘left-wing nor right-wing’. It seeks to represent all employees, whatever their socio-economic category.
3. The Confédération Générale du Travail was founded in 1895, and is one of France’s main union organisations. It too strives to cover all categories of employees, and is generally seen as being more confrontational.
4. The Confédération Générale des Cadres is a French union created in 1944, and which specifically represents the cadre category of employees.

‘I got a union card because I was 52, and you get to an age at which if something like restructuring takes place then you are not necessarily among those people who will be kept on as a priority. And the company did announce staff cuts here... So it is better to be protected and have serious discussions. If you get made redundant, it is better to have the support of a union. It’s easier’.

The extent of *cadre* unionisation compared to employees and workers, as well as their preference for unions covering all professional categories, are two of the symptoms of a crisis of confidence. These phenomena reveal the emergence of employee consciousness, ‘in other words, a feeling of closeness and solidarity with other employees’ (Bouffartigue 2001b: 65) and the opening up of a divide vis-à-vis top management. Indeed, researchers have identified sporadic cases of collective action by *cadres* challenging decisions taken by top management (Mispelblom Beyer 2006). Nevertheless, such mobilisation clearly remains unusual within this professional group, and does not have much impact, as indeed does strike action more generally. Care must therefore be taken in interpreting the importance of *cadre* unionisation and the industrial action *cadres* may resort to (Bouffartigue 2001a). Nothing so far suggests that they can be viewed as a ‘new working class’ (Bensoussan 2010).

In fact, there are many arguments qualifying the scope of protest resulting from the unionisation of *cadres*. First, the unions to which they belong do not confront corporate management head-on, in contrast to the image that non-unionised *cadres* may have. In the companies studied here, the CGC acts less in opposition and more as a mediator and discussion partner with top management. In some companies, the latter even encourages *cadres* to join unions. This lack of clear opposition between top management and the CGC can be explained by the ideological orientations of the union, which has an apolitical view of unionism. This stance supposedly poses very limited ideological demands, something that *cadres* often criticise other unions for. The CGC prefers to support professional unionism, oriented towards expertise and entrepreneurial humanism. It supports values that are similar to those put forward by management ideology, such as sustainable development, ethics, professionalism, responsibility and skill development (Delmas 2011).

Moreover, *cadre* membership of general unions should be considered with care. Rather than reflecting any proletarianisation of this group of employees, its recent rapprochement with unions may also reflect the way

the latter have become more attractive for *cadres* compared to others (Benguigui 2001). For example, the CFDT and CGT have expanded their services for *cadres* by supporting wage claims, the recognition of qualifications, and providing legal aid in the face of redundancy (Pech, 2008).

This new relationship to unionism reflects the more individualistic position of certain *cadres*, leaving aside exceptional cases of open conflict. The union representatives interviewed frequently complained about the difficulty they face in sensitising non-unionised colleagues and getting the latter to look to union support more often. According to these representatives, the main obstacle lies in the way *cadres* tend to solve their problems individually through contacting their own managers directly. Being a *cadre* dissuades them from looking to unions for help in settling individual disputes within a company, as explained by Michaël, a 31-year old engineer in the aerospace industry: 'I don't have any specific demands. And if I did have one, I wouldn't wait for the unions'. Gabrielle, a 39-year old IT engineer in the oil industry, mentioned her motives for union membership, stressing how little time she had to be involved, which again expresses a form of individualism:

'I have not properly asked myself the question. I suppose that like many people, it's a bit selfish. I mean as long as you haven't needed union support, you don't really think about it. That's one issue. By contrast, from an ideological point of view, I think it's very good. But I just don't take the time to do it because I know that if you want to do it properly, it takes time'.

While Gabrielle stressed the time-consuming nature of union action, many other *cadres* often deplored the strong ideological positions of unions, which they saw as 'extreme', as well as the links between unions and political parties whose political orientations they condemn. *Cadres* hold these to be generally incompatible with their status and with company goals. They rarely identify with the public discourse of union leaders, which they find 'a little outrageous' and often 'a bit quaint, hackneyed and harking back to another age' (unnamed interviewee). That said, they do not rule out union action. They recognise the undeniable usefulness of unions, especially in the way unions circulate information in companies. *Cadres* view the presence of unions as highly legitimate, and that every power should face some countervailing power – including the power of employers which *cadres* may see as excessive. There have to

be safeguards to support the democratic nature of companies. This view was very clearly put by Paul, a 49-year old head of department in the electronics industry. Though not a member of a union due to his senior management responsibilities ('it would be a political contradiction'), he nevertheless pleaded in favour of unionism:

'I think it is a dramatic problem that French unions are so weak. I regret that they are not more powerful. Not to grab things, but in terms of social dialogue, on a daily basis, they are essential. It's as if there were no longer any political parties. Whatever you think, and whatever they have done, if there are no more political parties in a country, then it's a dictatorship, it's no longer a democracy. I think it is the same thing in companies.'

Sporadic collective action by unionised *cadres* cannot be denied. But this is not synonymous with opposition to business rationale. Collective action and employee solidarity are relatively limited among *cadres*, a professional category which lives its relationship to work in an individualist manner. *Cadres* exhibit, for example, quasi-mercenary behaviour when it comes to switching companies to obtain higher pay. Such behaviour is encouraged by HRM policies and practices: compensation partly indexed to individual performance, individualised work assessment, career development increasingly dependent on an employee's visible commitment and availability, etc. Everything is done within the neo-capitalist company to dissuade them from uniting, from manifesting employee solidarity and subscribing to collective demands. That said, they are not unmoved by the transformation of their work, company strategies, top management practices or economic change.

6. The critical capacities of *cadres*

Outside their institutional, political and union contexts, *cadres* today express a multitude of informal criticisms, either as complaints or as condemnations. These reflect a way of reacting to the contradictions and difficulties they face in their work. One of their criticisms is the lack of time they have. A majority of *cadres* feel that they have too many functions, and that they are constantly being solicited by clients, suppliers or simply other colleagues (Dupuy 2005). Moreover, some *cadres* disapprove of managerial measures, such as training seminars regularly organised by top management and held by outside consultants. These

training sessions are aimed at promoting company products in the eyes of *cadres*, at boosting their motivation or even at providing them with tools to facilitate their own managerial work. They cannot but fail to view such seminars as communication tools, if not as manipulation orchestrated by top management. *Cadres* participate in these seminars, but with suspicion, believing they are not fooled by the real objectives of such sessions: reducing conflicts within the organisation, getting *cadres* to accept certain strategic decisions, or raising productivity.

These management techniques are also frequently criticised for being too costly, in terms of pay during the time spent attending seminars, as well as the high fees for specialist consultancy and seminar management. Such expenditure contrasts with the cost-cutting *cadres* face in their own work. On the one hand, *cadres* are required to respect departmental budgets, while on the other hand, companies spend supposedly astronomical sums of money on such training, which seems to be of little direct use for their work.

Another criticism concerns the lack of clear vision about long-term strategy. *Cadres* have the feeling of living day-to-day the decisions taken by top management. Some take a stand on their company's strategy. In doing so, they criticise the practices of today's large corporations, condemning the fact that top management, according to one interviewee, 'spends its time stepping on the accelerator and the brake in quick succession'. *Cadres* say that they are finding it increasingly difficult to deal with the alternation – within very short periods of time – between 'euphoric discourses' promising development (Paul, a 49-year old head of department in the electronics industry), and 'depressing discourses' demanding austerity and budget control. Given such swings of the pendulum, they get the feeling of being permanently wrong-footed when financial decisions sanction or block the growth of an activity that had been encouraged only a few months earlier. Such trends, which they contest, mean that *cadres* are faced with contradictory situations in which they, as departmental heads, have to apply measures (such as budget cuts or suspensions of temporary recruitment) in which they do not believe. They condemn the way certain corporate decisions are dropped onto them 'like fine rain', obliging them to suddenly scrap activities on which they are working, in favour of other tasks.

Furthermore, by often equating finance and speculation, *cadres* denounce the 'mimetism' characterising financial markets, as well as the fashion

trends affecting business strategies. They feel that the financial sector is disconnected from industry and nothing more than a threat. The interviewees were aware that their daily work was dependent on the sustainability of the industrial sector and not on financial marketplaces. For instance, 44-year old section head Michel (electronics) said that he had ‘reservations today about the financial shape of the planet’, worrying in particular that ‘the financial interests of shareholders’ will ‘outweigh the added value of labour’. Lastly, *cadres* castigate the top management of large companies who pay themselves astronomical salaries via bonuses, stock options and golden parachutes, etc. While these various criticisms were expressed verbally during confidential interviews, they may also lead to concrete measures within a company.

These criticisms show up first of all in isolated discussions between *cadres*, in silent protests, disengagement with work and their company, and even collective action, though this is rare. Criticisms are often voiced at coffee machines, or during lunch breaks or over a drink after work. They may seem banal and anecdotal, but that does not mean they are inconsequential. According to some of the *cadres* interviewed, senior executives and top management are not indifferent to collective disapproval, in particular if *cadres* hold a union position. The ruling strata are indeed concerned about maintaining social peace within a company, and the slightest sign of discontent, especially among *cadres*, triggers alerts. Collective discussions take place more frequently when measures or decisions leading to discontent are widely resented.

The survey also identified several occasions in which *cadres* adopted a stance of withdrawal in relation to work and a company. They may then decide to take the foot off the accelerator, and no longer be as fully committed as before. *Cadres* may also not wish to give such priority to their work and to the prospects of career promotion in which they previously believed on arriving at the company or at the start of a stimulating project. *Cadres* may then considerably rebalance their working and private lives, the latter having been neglected during the phases of intense engagement. They then feel themselves to be working normally, putting in the effort they believe matches their employment contract. Such readjustments take place when *cadres* are disappointed by insufficient rewards obtained from previous efforts, for example when they fail to get a bonus. A *cadre* may then decide to do less, to leave work earlier in the evening. This attitude was clearly observed in a young *cadre*, who had virtually broken completely with the company culture and who

had just had his first child. To take better care of his child, he asked his managers for a cut in working time and more flexible hours.

7. Conclusion

French salaried employees benefiting from the occupational status of a *cadre* (or manager) have not been spared the mutations of globalised capitalism. The latter began to emerge in the late 1970s, in the wake of a series of political and financial reforms, and changed the economic environment in which companies operate. In this context, the hierarchical relationships which existed within this specific category of the French labour market began to change, becoming more sanitised and consensual. Given these hierarchical relationships, the unionisation of *cadres* led to more individualised practices emerging in resolving work-place problems. Such individualist behaviour is not incompatible with the expression of informal criticisms, particularly concerning working conditions, how companies are managed or even the contemporary evolution of the economy, such as shareholder domination. But it needs to be asked whether such criticisms, often made *sotto voce* in private during interviews for this research, can find concrete outlets, especially via traditional collective forms of organisation. Moreover, such criticisms may themselves be subject to policies seeking to disarm and neutralise them, as for example when *cadres* feel themselves to be responsible for their own problems at work, rather than assigning responsibility to the organisation of work or the strategic decisions of top management. Lastly, *cadres'* feeling of powerlessness also needs further analysis: this results from overall economic forces whose mechanisms and issues *cadres* are not always able to decipher, given the complexity and remoteness of the forces at work. These questions merit attention in pursuing the analysis of relationships at work, as they are unfolding within the context of financial globalisation.

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Chapter 6

Collective bargaining reforms in Southern Europe during the crisis: impact in the light of international standards

Miguel Á. Malo¹

1. Introduction

The objective of this chapter is to compare the reforms of collective bargaining regulations implemented in a number of Southern European countries during the Great Recession. We focus on Greece, Portugal and Spain, three countries subject to financial assistance programs, all of which have implemented regulatory changes in collective bargaining. However, while in Greece and Portugal those changes were explicitly included in their Memorandum of Understanding (MoU) with international creditors, in Spain the corresponding memorandum was limited to the financial sector. Nevertheless, the Spanish government also implemented important changes in collective bargaining. A comparison between the three countries sheds light on the similarity of the changes (promoting decentralized collective bargaining), although the specific changes affected different institutions at national level. The most expected impact would have been an increase in the use of company-level agreements and a decrease of sector and any other multi-employer collective agreement (CA). However, the available statistical information does not uphold this prediction and impacts even differ by country. In addition, we will also discuss the role of tripartite social dialogue on implementing changes in the legal regulation of collective bargaining.

The regulatory changes will also be analyzed in light of the framework set by international law, namely the ILO Conventions and Recommendations concerning freedom of association and collective bargaining. The ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the corresponding Recommendation set framework conditions on collective bargaining that emphasise its voluntary nature and the auton-

1. This research dwells on work developed jointly with Johanna Silvander. Nevertheless, she is not responsible for any analysis or opinion included in this text.

omy of the negotiating partners to freely determine the level at which bargaining takes place: national, sectoral, branch or enterprise level.

2. Legal changes to collective bargaining regulation in Greece, Portugal and Spain

2.1 Major changes

An inventory of all changes to collective bargaining legislation in Greece, Portugal and Spain is beyond the scope of this research.² Yet a general pattern emerges when considering the major changes introduced in these three countries. Table 1 summarizes the most important legal changes implemented during the last crisis. The changes were intended to promote a more decentralized organization of collective bargaining, with new rules giving precedence to company-level agreements, limiting extensions of agreements between certain employers and unions to whole sectors³, and

Table 1 Major changes in collective bargaining (CB) regulation in Greece, Portugal and Spain during the Great Recession.

Greece	Portugal	Spain
(i) Precedence given to company-level agreements.	(i) Drastic limitations to extensions of CAs.	(i) Legal precedence of company CAs.
(ii) Changes in recourse to arbitration.	(ii) More facilities to works councils to bargain CAs.	(ii) Derogation of 'ultraactividad' (permanent post-expiry effects of main clauses of non-renewed CAs). [Supreme Court sentence: 'ultraactividad' remains at individual contract level].
(iii) Right for 'associations of persons' to bargain at enterprise level.	(iii) 'Organized decentralization' of CB [Law 23/2012]: Bringing CB closer to the enterprise level.	
(iv) Temporary limitation to automatic extensions of CAs.		
(v) Limits to the duration and post-expiry effects of CAs.		(iii) More room for unilateral decisions of employers on working conditions.
(vi) New minimum wage setting mechanism.		

Note: CA corresponds to 'collective agreements', CB to 'collective bargaining'.

Source: ILO (2014a, 2014b, 2014c).

2. For specific details of regulatory changes to collective bargaining and other aspects of labour law in the three countries, see, for example, ILO (2014a, 2014b, 2014c).
3. There are only six EU Member States with no legal procedure in place for extending agreements, notably Cyprus, Denmark, Italy, Malta, Sweden and the UK (Eurofound 2011). The objective of the different national types of extensions is the same, avoiding gaps in collective bargaining coverage and fragmentation.

restricting the effects of agreements after expiry. In general, this is in line with an international wave of recommendations from international organizations such as the OECD or the IMF (Cazes *et al.* 2012). Nevertheless, there were also important country-specific differences, as the rest of the section will show.

2.2 Greece⁴

The Greek collective bargaining system was highly centralized until the changes adopted during the crisis. Minimum wages and working conditions at the basic level were set by the National General Collective Agreement (NGCA), a central element of the collective bargaining system in the post-war period. Under this system, national-level bargaining on sectoral or occupational working conditions was the second most important level for bilateral dialogue (Patra 2012), while enterprise-level bargaining was introduced after 1974, allowing for company-level improvements to minimum conditions set at the sectoral or occupational level. It wasn't until 1990 that enterprise agreements gained a legal basis through Law 1876/1990 on free collective bargaining (Ioannou 1999). This Law introduced the 'favourability principle', meaning that the provisions most favourable for workers would be applied in the case of any conflict between different applicable collective agreements (ILO 2014a). However, sectoral agreements remained dominant.

With a view to responding to the strings attached to the financial assistance programme, the collective bargaining system was reformed during the crisis to give precedence to enterprise-level negotiations. This decentralization of collective bargaining, although partially introduced on a temporary basis, was expected to bring increased flexibility to wages and working hours.

Decentralization took place in stages, with Law 3845/10 introducing the possibility for lower-level agreements to derogate from certain provisions in higher-level agreements. This abolished the favourability principle previously central to the system. Further, it allowed legislation (emergency measures) to supersede CAs and arbitration decisions applying to wages and working conditions for employees in the public sector and public enterprises.

4. Here, we mainly follow ILO (2014a).

In the next stage, Law 4024/11 introduced further changes, applicable during the financial assistance programme period (2012-2015). Importantly, it changed the hierarchy of CAs by giving priority to enterprise-level agreements in the case of any conflict with an occupational or sectoral collective agreement. However, this priority was not extended to the level of the NGCA.

Law 3986/2011 on 'Urgent measures for the implementation of the midterm fiscal strategy framework' allowed 'associations of persons' to negotiate working-time arrangements at enterprise level in the absence of a trade union (building on Law No. 3846). Associations of persons is a distinctive feature of Greek collective bargaining, introduced in 1982. They can be created for a limited duration (six months) in small firms for the purpose of ensuring worker representation for a specific time-bound purpose, e.g. prior to the closure of an enterprise, when no union exists. Associations of persons gained further ground through Law 4024/2011 which allowed them to conclude enterprise CAs as long as they covered three-fifths of workers in an enterprise of any size, taking precedence over sectoral unions at enterprise level. Further, the duration of these associations was no longer limited to six months. However, associations of persons do not have the same recognition accorded to trade unions as workers' representatives and they do not benefit from the protection available to trade union members.

Law 4024/2011 also gave the Minister of Labour the right to suspend the extension of sectoral and occupational CAs to non-members of the signatory organizations while the financial assistance programme period was in force (2012-2015). This meant a moratorium on the extension principle, which in the past served to establish equal working conditions for unionized and non-unionized workers in companies irrespective of whether they were members of an employer organization.

Subsequently, in February 2012, Law 4046/2012 introduced limitations to the validity of CAs beyond an agreement's expiry date. However, in the case of negotiations being unsuccessful, the expired CA's basic terms (for instance, base salaries) would remain in force for existing workers. For new employees, the absence of a CA means that each will be subject to individual contractual arrangements with the employer, with the only limit being the NGCA minimum base and the minimum legal wage.

Looking at the impact of these measures, available information shows a decrease in the importance of sectoral and multi-employer CAs (see Table 2). From 2011 to 2012 there was a rapid increase in the number of company-level agreements and a parallel decline in sectoral and occupational CAs. Table 2 also shows a descending trend of company-level agreements after 2012, tied to the fact that several sectoral and occupational CAs were still valid in 2012, requiring enterprises to negotiate a plant-level agreement if they wished to employ different conditions. With far fewer higher-level agreements in place as of 2013, enterprises could directly apply minimum wages as set by law and conditions established through the NGCA or labour law (ILO 2014a).

Table 2 Collective agreements by type

Year	National sectoral and occupational agreements	Local occupational agreements	Company-level agreements
2010	65	14	227
2011	38	7	170
2012	23	6	975
2013	14	10	409
2014	14	5	286
2015	3	3	154

Note: The figures represent the number of registered agreements each year. The figures on company-level agreements include agreements concluded by associations of persons. For 2015, figures show the situation up to 1 July 2015.

Source: Ministry of Labour, Social Security and Welfare, Greece, www.ypakp.gr.

Another factor partially explaining the decline in sectoral and occupational agreements is the abolishment of unilateral access to arbitration. In the 1990-2012 period, up to 50 per cent of disputes over sectoral and occupational collective agreements were settled through arbitration (ILO 2014a: box 5.3).

The decline in the number of sectoral and occupational CAs may imply a decrease in the number of workers covered by collective bargaining, as the increase in company-level agreements is relatively small in comparison to the overall number of enterprises in Greece (ILO 2014a). In addition, the temporary limitation of the Minister of Labour's prerogative to extend sectoral and occupational CAs to non-members of the signatory organizations in the period 2012–2015 has had an important effect, as no extensions have been accorded since 2012. This means that CAs are only binding for enterprises belonging to the negotiating association and cover

only workers affiliated to signatory unions. According to ILO survey data, the proportion of unionized workers to all wage and salary earners was 30.6 per cent in 2007, while the proportion relative to total employment had dropped to 19.6 per cent in 2010 (ILO 2014a), implying a coverage loss through the lack of extensions.

2.3 Portugal⁵

In Portugal, collective bargaining has traditionally taken place at sectoral or multi-employer levels, with collective agreements extended to non-parties to the agreement (Palma Ramalho 2013). As in the case of Greece (and Spain), the Portuguese economy is dominated by small firms with limited capacity to engage in collective bargaining, so sectoral collective bargaining, with legal extension mechanisms, was a way to increase collective agreement coverage.

In the past, a key characteristic of newly signed collective agreements was to improve conditions set by law and previous collective agreements. As a result, agreements often stayed in force for a long time when more favourable conditions could not be negotiated – apart from updates to wages (Palma Ramalho 2013). Portuguese industrial and labour relations were further characterized by the frequent use of administrative extensions (*portaria de extensão*) to cover non-affiliated workers due to low trade union membership in Portugal.

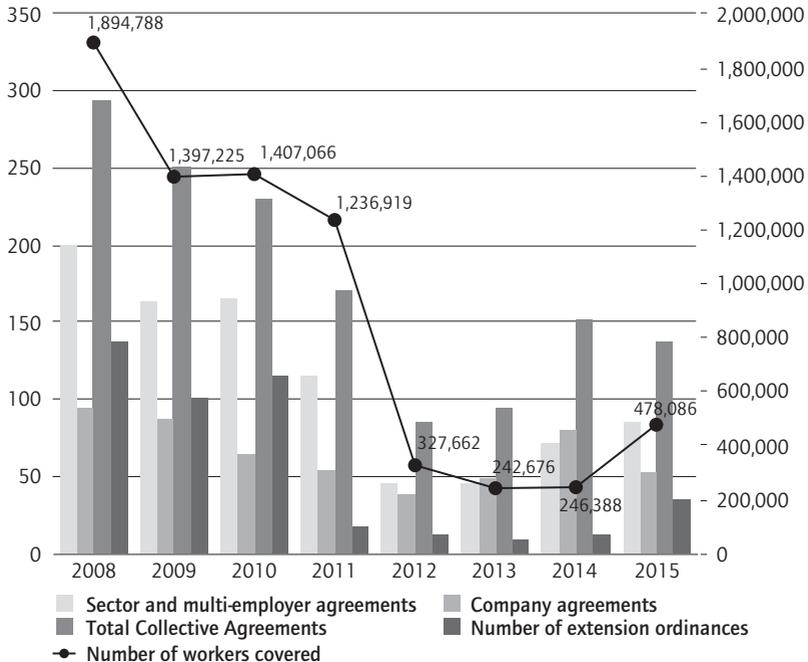
The administrative extensions were the subject of key legal changes. Much in line with the changes adopted in Greece, the mechanism for extending collective agreements to non-parties was practically suspended in Portugal in 2011. This suspension continued into 2012 and, at the end of that year, a new regulation was adopted, providing precise and tight criteria for the extension of collective agreements (Resolution 90/2012). According to the new criteria, the firms for which extension is sought should represent at least half the workers in the branch, geographical area, professional category or type of company for the extension to be granted. The Resolution further states that the requirements are not applicable when the extension request excludes small and medium-sized enterprises. As we will see later, the number of approved extensions increased after the end of the financial assistance programme and the conditionality.

5. Here, we mainly follow ILO (2014b) and Palma Ramalho (2013).

The degree of centralization was the other focus of legal changes affecting collective bargaining. Following the MoU, in 2012 a legal modification was introduced promoting the so-called ‘organized decentralization’ of collective bargaining (Law 23/2012). Under the new legislation, workers’ councils can negotiate at plant level in firms with at least 150 employees (compared with 250 before the reform), subject to delegation by trade unions. The need to promote collective bargaining was acknowledged through the establishment of a Labour Relations Centre (Decree-Law No. 189/2012). These changes were agreed by employers and certain unions in a tripartite commission (the so-called Comissão Permanente da Concertação Social).

The impact of the above legal changes has resulted in a clear decline in the number and coverage of collective agreements (Figure 1). While nearly 300 collective agreements were registered in 2008 and around 230 in

Figure 1 Number of collective agreements in Portugal and covered workers in the private sector.



Source: UGT, Relatório Anual da Negociação Colectiva, various issues.

2010, the number of agreements fell to 170 in 2011 and a mere 85 in 2012. A similar trend was recorded concerning the number of workers covered by collective agreements, although it is important to note that, at the same time, there was an unprecedented increase in unemployment and a significant decrease in private-sector employment. In this vein, the number of agreements increased when the Portuguese economy relatively improved in 2014, although the number of covered workers did not increase until one year later, in 2015. Nevertheless, Figure 1 also shows that while the number of sectoral or multi-employer agreements has declined, the number of company-level agreements has not increased accordingly. While there was a surge in company-level agreements in 2014, this died down in 2015.

2.4 Spain⁶

Traditionally, Spain has been considered as a country with high levels of bargaining centralization and coordination, with provincial sectoral agreements covering the majority of workers (Malo 2015a).

Two major labour market reforms in 2010 and 2012 affected collective bargaining regulation in Spain. The reform of 2010 introduced, among others, the possibility to derogate from multi-employer agreements through enterprise agreements on salary levels, working hours and schedules. The 2012 Labour Market Reform introduced new measures in an effort to place greater emphasis on decentralized bargaining levels. The major changes included: (i) priority of enterprise-level agreements on a wide range of issues; (ii) limitation of the post-expiry effects of CAs, i.e. automatic extension of working conditions (in Spanish, *ultra-actividad*) in the case of a failure to conclude a new agreement; and (iii) broadening the possibilities for employers not to apply clauses in collective agreements (CAs) and to change working conditions.

The aim of the changes to collective bargaining in both reforms was to enable companies to adjust to rapidly changing demand by adapting working conditions rather than resorting to dismissals. A further objective was to increase the dynamism in negotiations: since the automatic extension of working conditions (including wage increases) would no longer apply, parties would be forced to negotiate a new agreement within

6. Here, I mainly follow ILO (2014b) and Malo (2015a, 2015b).

one year of the expiry of the current one. Further, an enterprise-level collective agreement can be negotiated at any time during the validity of higher-level agreements.

The 2012 Labour Market Reform also introduced more opportunities for enterprises to opt out of specific CA clauses under certain circumstances. Non-application in this respect covers a broad list of issues, such as wage increases, remuneration systems, work schedules, shift work, the organization of work and work functions, and voluntary social security enhancements.

Where a justifiable cause emerges, an agreement on non-application should be concluded between the enterprise and the workers' representatives through a legislated period of consultation. In cases of disagreement, either party can first turn to the dispute resolution mechanism established by the agreement. If this does not result in agreement, the issues should be subjected to designated mediation and arbitration procedures, as foreseen in the CA in question, or in the final instance to the National Consultative Commission on Collective Agreements (Comisión Consultiva Nacional de Convenios Colectivos).

Table 3 shows the impact of the above changes on the relative importance of company-level agreements in Spain. At the onset of the crisis, there was a slight drop of 2 percentage points from approximately 76% at the start of the crisis, rising again in 2014 and reaching 81% in 2015, although information for 2015 is provisional. This increase is small and hard to link to the 2012 reform, as the number of workers covered by company agreements dropped from almost 11% in 2006 to just around 9% from 2009 onwards. Therefore, the change is small, and the trends in the numbers of agreements and workers covered go in opposite directions.

Table 4 shows the evolution of agreements by level, disaggregating the supra-company level to show the development of provincial sectoral agreements. The most important finding is the drop in the relative weight of provincial agreements following the 2012 labour market reform. From more than 50% of all covered workers, these agreements dropped to around 35-37% following the 2012 reform. Even considering that information for 2015 is provisional⁷, this negotiating level is losing its

7. The percentage of workers covered by company agreements in 2015 is not exactly the same in Tables 3 and 4. In fact, the total number of agreements considered in Table 4 is smaller in

Table 3 Agreements and workers covered by scope of negotiation.

Year	Total		Company agreements		Company / total, %		Agreements at levels higher than company-level	
	Agreements	Workers (thousands)	Agreements	Workers (thousands)	Agreements	Workers	Agreements	Workers (thousands)
2005	5776	10755.7	4353	1159.7	75.4	10.8	1423	9596.0
2006	5887	11119.3	4459	1224.4	75.7	11.0	1428	9894.9
2007	6016	11606.5	4598	1261.1	76.4	10.9	1418	10345.4
2008	5987	11968.1	4539	1215.3	75.8	10.2	1448	10752.9
2009	5689	11557.8	4323	1114.6	76.0	9.6	1366	10443.2
2010	5067	10794.3	3802	923.2	75.0	8.6	1265	9871.1
2011	4585	10662.8	3422	929.0	74.6	8.7	1163	9733.8
2012	4376	10099.0	3234	925.7	73.9	9.2	1142	9173.3
2013	4589	10265.4	3395	932.7	74.0	9.1	1194	9332.7
2014	5185	10304.7	4004	867.2	77.2	8.4	1181	9437.5
2015	4913	8614.1	4012	763.9	81.7	8.9	901	7850.2

Source: Register of Collective Agreements; Spanish Ministry of Employment and Social Security. Information for 2015 is provisional.

Table 4 Percentage of workers covered, by negotiating level

	2010	2011	2012	2013	2014	2015
Company level	8.6	8.7	9.2	9.1	8.4	9.2
Higher level	91.4	91.3	90.8	90.9	91.6	90.8
Group of firms	1.5	1.7	1.9	1.6	2.7	3.4
Sector:	89.9	89.6	89.0	89.3	88.9	87.4
Province	53.8	51.2	37.4	35.3	36.5	36.8
Regional	7.8	7.7	20.5	20.2	19.4	21.9
Inter-regional	0.2	0.1	0.1	0.0	0.0	0.2
National	28.2	30.7	30.9	33.7	33.0	28.5

Data source: Romanian Ministry of Labour, Family, and Social Protection.

Table 3 for 2015, because the data is provisional and the number of categories included in Table 4 has not yet been recorded for all agreements. In addition, agreements with effects in 2015 are not recorded at all in the Register of Collective Agreements. This is the main reason for considering information for 2015 as provisional.

formerly central position. However, company-level agreements are not increasing accordingly, but rather sectoral agreements at regional and national level. In fact, as sectoral provincial and regional agreements continually account for 58% of all agreements on average, there seems to be a shift from the provincial to the regional level.

Why has there not been a shift towards company-level agreements? For small businesses (predominant in Spain, as in Greece and Portugal) finding that the sectoral agreement imposes unacceptable conditions, negotiating a company-level agreement, which would take priority over the sectoral one, may not be an attractive option even when considering the mechanisms introduced by the 2012 labour market reform. Employers probably find it simpler to opt out of an agreement. According to Malo (2015b), there was a significant use of opt-outs from 2013 to 2015. Indeed, workers affected by opt-outs represented the additional 18% of workers covered by a company-level agreement in 2013 and 12% in 2014. These figures highlight the importance of this exit route from sectoral agreements in enabling companies to adjust to specific needs without going through the process of negotiating a company level-agreement (and without putting an end to sectoral negotiation).

Following the end of the so-called *ultraactividad* (automatic and permanent continuation of an agreement's provisions after its expiry), the anticipated conflicts did not generally materialise (ILO 2014c). Disputes were concentrated in firms and sectors where there was no higher-level agreement that could be applied when the relevant collective agreement expired. Recently, the Supreme Court covered this legal grey area, ruling that in these cases the provisions continued to apply to existing workers but not to newly hired ones. In addition, empirical evidence shows that the end of *ultraactividad*, instead of stimulating negotiating activity, only triggered a one-off increase, probably corresponding to agreements affected by its end (Malo 2015b).

3. Tripartite social dialogue and legal changes to collective bargaining

The previous section has shown that reforms deeply affect key issues in the organization of collective bargaining. But what was the role of social dialogue in implementing these changes? In Greece, as in Portugal, all changes were implemented as part of the MoUs of the successive financial

assistance programmes, while in Spain the legal changes were implemented via unilateral legal reforms adopted by successive governments following unsuccessful negotiations with the main trade unions and employer organizations.

There are differences in the degree of social dialogue applied in the national contexts, whereby Portugal is an outstanding example of a country in serious economic difficulties where social dialogue was kept alive during the crisis.

Even so, social dialogue did not continue unharmed during the crisis in Portugal. One of the social partners – Confederação Geral dos Trabalhadores Portugueses (CGTP) – opted out of the 2012 tripartite agreement. Furthermore, social partners expressed the view that they had not been consulted on various other reforms. Nevertheless, social dialogue on minimum wages was reinstated later when a tripartite agreement on a new minimum wage (*Retribuição Mínima Mensal Garantida*) was concluded in September 2014. However, CGTP was not party to the agreement, arguing that the increase in minimum wages should have been higher.

In Spain (ILO 2014c) and particularly in Greece (ILO 2014a), social dialogue lost ground as a mechanism for joint decision-making in the same period. Two successive unilateral reforms by different governments in Spain (in 2010 and 2012), together with an increasing weakness of the main trade unions during the recession, harmed tripartite social dialogue. In addition, Spanish governments used direct dialogue with large companies, weakening the CEOE (Confederación Española de Organizaciones Empresariales) as the main employers' negotiating institution (Malo 2015a). The early years of the crisis followed the tradition of a relatively strong tripartite social dialogue, though with few actual results. This period included the introduction of stimulus packages in 2008 and 2009. The situation changed considerably when the economic situation worsened with the onset of the sovereign debt crisis in 2010. During this second part of the Great Recession the importance of the main trade unions and employers' association weakened, leaving room for unilateral government decisions on labour market regulation⁸.

8. In fact, Spanish unions complained to the ILO about Spain's non-observance of the conventions related to the termination of employment contracts (ILO 2014e) and restrictive legislation on collective bargaining and trade union leave (ILO 2014d).

In Greece, despite its legal recognition since 1975, social dialogue has in practice been rather weak, allowing the government to make unilateral changes in the 1990s and 2000s. At the same time, social dialogue has sometimes been successful, as with the National Reform Programme in the early 2000s (ILO 2014a). However, in the face of the economic difficulties experienced from 2008 onwards, social dialogue was practically suspended in Greece, and almost all attempts (such as setting a new minimum wage, for instance) were unsuccessful. In May 2015, social dialogue was reinitiated in Greece, with discussions focusing on collective bargaining and minimum wages. However, it is subject to major limitations due to international dependencies related to the need for continued financial assistance and the requirements of the international financial assistance programme.

4. Collective bargaining changes and international labour standards

A set of ILO conventions and recommendations governs collective bargaining at international level. Conventions are binding for Member States once they have ratified them, thereby integrating their provisions into national legislation. The latter can happen either directly when entering into the agreement (in states with a monist system with regard to international law) or by adopting national laws to apply the provisions (in states with a dualist system with regard to international law). Recommendations are *soft law* documents that act as guidelines for states and can voluntarily be included in national legislation and lower-level regulations through state action. At the core of international collective bargaining norms are the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), two of the ILO's fundamental conventions. In addition, the Collective Bargaining Convention, 1981 (No. 154) sets down guidelines for the promotion of collective bargaining and extension of its scope; while the accompanying Collective Bargaining Recommendation, 1981 (No. 163) discusses the levels and coordination of collective bargaining, as well as the training of negotiators, among others.

Recent changes to collective bargaining regulation in Southern European countries raise some questions vis-à-vis the international legal framework on collective bargaining. Changes promote decentralized collective bar-

gaining systems, and in some cases legal priority has been given to enterprise-level agreements in the case of conflict. Particularly in Greece and Spain, various changes were effected with little or no negotiations with social partners. Extensions of collective agreements were restricted in Portugal and Greece, in the latter case on a temporary basis. In Greece, associations of persons were given the legal right to negotiate enterprise-agreements instead of trade unions. In Portugal, a similar right can be delegated by higher-level trade unions to associations of workers. All of these countries have an enterprise structure where micro, small and medium enterprises clearly dominate the economy, and this has relevance when assessing the appropriateness of changes in collective bargaining systems.

In the case of Greece, the ILO Committee of Experts has repeatedly questioned the far-reaching modifications to collective bargaining regulations carried out without full consultations with the social partners, and has requested that the latter be effectively involved in the process, including in negotiations with international creditors (CEACR 2012, 2013a, 2014b). Similarly, in the case of Spain, the Committee of Experts has stressed the need for social dialogue when introducing employment policy measures, measures affecting freedom of association and collective bargaining, as well as economic crisis policies in general (CEACR 2013b). Portugal, in turn, received a direct request from the Committee in 2013, asking the government to ensure that decisions on minimum wages were taken after full consultation with the social partners (CEACR 2014a).

ILO conventions and recommendations give protection to *free and voluntary bargaining*. For instance, government action annulling or modifying the content of freely concluded collective agreements is in breach of the principle of voluntary collective bargaining. However, exceptions to this general rule have been increasingly introduced in the three countries considered, as we have seen in previous sections. The vast majority of these exceptions respond to specific economic circumstances at company level.

Free and voluntary bargaining also means that the bargaining parties play an important role in determining how and at what level they negotiate. This also forms part of the *autonomy of the bargaining partners*. In line with the Collective Bargaining Recommendation (No 163), collective bargaining can take place at any level whatsoever, including establishment, undertaking, branch of activity, industry, regional and national

levels. Indeed, decentralization *per se* is not problematic from the perspective of international labour standards.

Concerning the collective bargaining *process*, the ILO Committee of Experts holds the view that employer and worker organizations should be able to choose the level(s) of bargaining themselves through mutual agreement, as they are the experts of their own situation. This has been seen as the best way to ensure independence of the parties. There are neither any criteria nor preferences on the hierarchy of agreements at different levels. As such, determining the level of priority among agreements can happen through collective bargaining – with the social partners at the forefront – or through legislation. Legislating that enterprise-level agreements should have priority thus does not breach the process-related requirements of collective bargaining norms at international level, though such legislative action requires effective consultations with the social partners. In a system where bargaining takes place at several levels, the parties should aim at ensuring coordination between the different levels in line with the Collective Bargaining Recommendation.

When analysing the *content-side* of collective bargaining decentralization, it is important to see whether the changes promote collective bargaining in line with international labour standards. In the Southern European context, it is therefore necessary to assess whether enterprise-level bargaining promotes collective bargaining and, at a minimum, appears feasible on a large scale in an environment where most enterprises are small or very small, and where almost no bargaining traditions exist at that level. Indeed, this latter aspect has been a source of concern, and in view of the preliminary effects of the reforms, those concerns have largely materialised. For instance, the ILO Committee of Experts alerted the Greek social partners to the questionable future of collective bargaining in a context where 90 per cent of the workforce works in small enterprises where traditions or the perceived need for collective bargaining are not present (CEACR 2013a).

On top of this, concerns have been raised about *effective worker representation* at enterprise level. Naturally, effective collective bargaining representation of both employers and workers is necessary for meaningful outcomes. As employers are considered institutions in themselves, employer parties to collective bargaining can be employers or their organizations. However, only workers' organizations with legislated

protection of their representatives are seen as being able to effectively represent workers under international labour standards. Thus workers themselves or their non-union representatives can only participate in collective bargaining in the absence of workers' organizations. The new regulation in Greece on 'associations of persons' is problematic in this regard. These associations were given priority as bargaining partners in enterprises with less than 20 employees, removing this majority of enterprises from the sphere of sectoral negotiations. These associations operate on vulnerable ground: they do not enjoy trade union protection and are dissolved if their membership falls below the required representation threshold (3/5 of workers in the enterprise). As a result, the Committee of Experts has repeatedly requested the Greek government to ensure that trade union sections can be established in small enterprises to ascertain the possibility of collective bargaining through trade unions (CEACR 2013a and CEACR 2014b).

Finally, extensions of collective agreements are discussed in the Collective Agreements Recommendation, 1951 (No. 91). The extension of collective agreements to cover all employers and workers within the industrial and/or territorial scope of a CA is promoted in line with national laws, regulations and collective bargaining practices. The recommendation also discusses certain conditions that can be introduced for extending agreements, such as a representative number of employers and workers already covered, a request for extension made by worker or employer organizations, and the possibility for the workers and employers concerned to submit their observations prior to the extension. As such, the key issue in the case of extensions as well is the consultation of the social partners on any modifications to be made to an existing regulation on CA extension.

To sum up, the international law framework sets certain conditions to guarantee free and voluntary collective bargaining while maintaining a broad sphere for the partners themselves to decide on the details. Decentralizing collective bargaining is not *per se* against international labour standards, but a role needs to be given to social dialogue in determining what kind of a collective bargaining system to establish in a country or how to modify an existing system. Finally, international labour standards protect the status of worker representation through trade unions, which is not the case in Greece for associations of persons.

5. Final comments

The intention of all regulatory changes in Greece, Portugal and Spain was to promote the decentralization of collective bargaining, limiting or expanding different institutions. From the perspective of international standards, decentralization is not problematic *per se*. However, as small and medium enterprises dominate the company landscape in the three countries, company-level agreements are not easy to implement, and some measures promoting decentralization in this context may harm sectoral and multi-employer agreements without providing coverage by company-level agreements. The limitation of extensions illustrates this problem in Portugal, as company-level agreements have not replaced the coverage of old extensions. At the same time, legitimating non-union workers' representatives – 'associations of persons' in Greece – to bargain at company level is not in line with international standards, because they do not have the recognition and legal protection of trade union members as workers' representatives, clearly re-balancing bargaining power to the detriment of trade unions. The result comes close to individual bargaining between workers and employers, moving the labour market towards a monopsonistic performance totally unrelated to an increase in economic efficiency or better employment outcomes (Manning 2004).

Indeed, a more feasible option for small firms is to delegate negotiations to their corresponding employer organisation (with all the legal guarantees a collective agreement requires) and thus free up their time and effort for the more pressing day-to-day tasks involved in running a small business. The Spanish case presents an interesting result: in fact, the relative importance of sectoral collective bargaining has increased at the same time as opting out of CA clauses has become more significant. The interaction between supra-company agreements and the use of agreed opt-out mechanisms could provide the necessary coordination in wage-setting without harming companies temporarily unable to pay the wages set in a sectoral collective agreement.

Finally, the role of tripartite social dialogue in the major changes implemented was rather small. Even considering that in Portugal social dialogue remained important throughout the crisis, legal changes to collective bargaining were introduced because of the MoUs of the financial assistance programmes. Therefore, social partners' leeway was very restricted, as seen in Greece. The case of Spain shows increasingly weak social dialogue during the crisis, with the two labour market reforms

introduced unilaterally by successive governments after unsuccessful negotiations with the social partners. Therefore, all changes promoting decentralization did not follow an important aspect of international standards, as the changes in the organization of collective bargaining were not decided by the social partners, but unilaterally imposed by governments. Nevertheless, as we have shown, the actual impact of the use of the different types of collective agreements is not necessarily that expected by the reformers.

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Part 2

European multi-level governance

Chapter 7

Multi-level employment relations in the multinational company: evidence from Allianz SE

Mona Aranea¹

1. Introduction

In the age of corporate globalisation, building up a labour voice in multinational companies is a major challenge for trade unions (Gil Pinero *et al.* 2012; Almond and González Menéndez 2013). For decades, trade unions and academics alike have been concerned about the impact multinational companies (MNCs) have on employment and industrial democracy (Marginson 2000; Hyman 1975). Employment relations scholars soon became aware of the need to understand ‘the internal organization and dynamics’ of these ‘enormously powerful’ enterprises in order to identify potential sources of power and resistance for employees (Edwards *et al.* 1996: 40; 43). Today there ‘remain few parts of the globe where MNCs are not significant employers’ (Almond and González Menéndez 2013: 37). The company level is currently gaining importance in employment relations as sector and national systems come under increasing pressure in a ‘common process of fragmentation’ throughout Europe (Arrowsmith and Pulignano 2013: 207). In this context, European social dialogue arenas are gaining importance as possible instruments for promoting employee voice at transnational level (Hauptmeier and Morgan 2014).

The aim of this chapter is to provide empirical insights into multi-level European employment relations through a single in-depth case study. The main argument is that we need to look at European arenas of employment relations as a transnational ‘social space’ (González Begega and Köhler 2012) that can only be understood through a comprehensive analysis of actors’ identities, interests and strategies. The case study presented here is that of Allianz SE, a leading multinational in the insurance sector with

1. This research has been financially supported by the European Union Marie Curie FP7-PEOPLE-2012-ITN ‘Changing Employment’ (‘The changing nature of employment in Europe in the context of challenges, threats and opportunities for employees and employers’).

the legal status of a European company (*Societas Europaea*, SE). The empirical findings are based on sixteen semi-structured in-depth interviews with Allianz management and employees in Spain, Germany and Belgium, carried out in 2015 as part of a PhD project on European employment relations.

Employee representatives at Allianz successfully use a multi-level social dialogue strategy covering various arenas of European employment relations in order to conclude agreements on key issues involving decent work and employability. The research question is how success has come about in a context of mostly voluntary social dialogue mechanisms and a European workforce divided by language, company structure and distinct national cultures of industrial democracy. The study analyses processes of transnational social dialogue at Allianz SE that have led to two European framework agreements (on work-related stress and training) and triggered negotiations on a third company agreement on teleworking which has still to be completed.

In the following section, the analytical and theoretical foundations of this chapter are laid out, addressing two contemporary gaps in the literature on European employment relations. First, many studies focus on specific arenas of European social dialogue, neglecting their interrelatedness. Second, the dominant stream of literature on European employment relations lacks micro-theoretical concepts allowing an analytical comparison of the interests, identities and strategies of management and labour. In line with the theories underlying the research, the case study of Allianz SE is presented as an example of multi-level social dialogue in a multinational company. Theories of social action serve to understand how management and employee attitudes shape the transnational arenas in Allianz SE. After a brief discussion of the empirical findings in relation to the theoretical underpinnings, tentative conclusions are drawn concerning the future of the research agenda in global labour studies.

2. The transnational social space of European employment relations

European employment relations have long been labelled a system of 'multi-level governance' (Marginson and Sisson 2004), i.e. a complex relationship of local, national and transnational levels, with various players involved. As Marginson and Sisson (2004: 25) have pointed out,

‘just as a ‘multi-level system of governance’ is the most appropriate metaphor for the emerging EU polity, so too is it for European industrial relations.’ Most authors follow Marginson and Sisson (2004) in using the term ‘multi-level system’ to illustrate this complexity of relations from the local to the European level. The distance to local workplaces and differences between them arguably make European-level social partner representation – whether trade unions or employer associations – particularly difficult (Keune and Marginson 2013). This chapter takes a slightly different angle in identifying multiple interlocking levels of social dialogue in the transnational sphere of European employment relations. Transnational arenas exist at company level (with a further distinction between voice at board level and at works council level) and at the European sector level. The empirical evidence suggests the emergence of a multi-level system *within the transnational sphere* of the European company, adding to the complexity of the transnational-local divide.

Research on transnational employment relations often focuses on specific arenas of social dialogue, for example European works councils (Waddington 2010), European sectoral social dialogue committees (Dufresne *et al.* 2006) or board-level representation (Waddington and Conchon 2016). This chapter argues that these European arenas, while differing in shape and outcomes, are interrelated in terms of membership and issues. The evidence presented in the empirical section below illustrates the spill-over of issues such as anti-stress policy or teleworking guidelines from one arena to another. It also shows how employee representatives can make use of the various social dialogue arenas available at European level (informal trade union networks, board-level representation, informal dialogue groups with management and formal sectoral committees) to establish a flexible ‘multi-level participation structure’ (Gold 2003).

Some studies take into account the interrelatedness between European Works Councils and other arenas but tend to emphasize relations with national arenas rather than transnational connections (Gonzalez Begéga 2011; Müller *et al.* 2004). In her work on European sectoral social dialogue committees, Weber (2013) discusses the challenges of implementing European social partner agreements at national level. Cremers *et al.* (2013) present combined research on European Works Councils and board-level representation in European companies but neglect social dialogue arenas situated outside the company sphere, such as trade union networks and European sectoral committees. There exists a growing

literature on the role of European Works Councils in signing company agreements (da Costa *et al.* 2012) and on the potential of such agreements to enhance transnational trade union networks (Helfen and Fichter 2013, Leonardi 2013) or to create or transform worker participation institutions (Helfen and Sydow 2013). Müller *et al.* (2013) discuss evidence from the metalworking sector on the extent to which negotiations over transnational company agreements are led by either European Works Councils or European trade union federations. Their findings indicate that the nature of the dialogue depends very much on national industrial democracy cultures (particularly German or French models) but also on management's strategy towards social dialogue (Müller *et al.* 2013: 18; see also Almond and González Menéndez 2013). In the study presented here, European employment relations are understood as a complex transnational structure of social dialogue arenas shaped by players' collective identity and their common strategies.

The theoretical focus of employment relations studies tends to stick to the macro level, with little attention paid to the underlying motivations and strategic approaches of the actors involved (González Begega and Köhler 2012; Seeliger 2016). Recently, a few studies have analysed the role of 'identity work' for the employee side and the role of management culture and attitudes. Greer and Hauptmeier (2012) and Dehnen and Rampeltshammer (2011) have pointed out the unifying importance of common threats and grievances for the functioning of the General Motors Europe EWC. Drawing on social movement theory, Greer and Hauptmeier (2012) analysed the General Motors EWC, concluding that it was a robust instrument of labour transnationalism. They argue that sustained collective action at General Motors depends not only on common issues but most heavily on 'identity work' (Snow and Anderson 1987) performed by trade union leaders. Seeliger (2016) discusses the role of social memory in cross-border coordination between employees of an MNC. His empirical findings from interviews with South African and German workers at Volkswagen emphasize the importance of collective trade union memory for the development of a transnational labour identity.

Williams (2011) looks at micro-political 'games' between managers in a multinational corporation and how those affect subsidiary-headquarters relations. He identifies the development of common corporate values, termed 'normative integration' as one way in which headquarters attempt to control subsidiaries. According to Williams (2011: 284), managers in

host countries may resist normative integration for fear of losing power. Management attitudes towards employee voice greatly affect the implementation of participation. While various studies show the positive effects of employee involvement on company performance (Peccei *et al.* 2010; Vitols 2005; Gospel 2011), little has been written on managers' perception of participation and how these affect its quality (Helfen and Schüssler 2009). As Franca and Pahor (2014: 132) have shown in a cross-sectional survey among managers in Slovenia, 'management's positive attitudes towards trade unions and agreement that informing and consulting with employees helps the company's performance are linked to stronger implementation of employee participation'.

There is a need to combine these hitherto unconnected approaches in order to develop a coherent set of micro-theoretical tools enabling us to understand players' identities, interests and strategies in a multinational company. In the case study at hand, the identity building of both sides (management and labour) is analysed in interaction, while also taking account of the role of labour's distinct multi-level strategies at Allianz SE. The analysis below aims to illustrate the empirical reality of transnational employment relations in interconnected arenas, emphasizing the value of such a multi-level structure for the advancement of employee voice in multinational corporations.

3. European framework agreements at Allianz SE

The European company statute of 2001 allows corporations to leave their national base and become European legal entities, *Societas Europaea* (SE). Large companies tend to use the legal form of an SE to create 'empty', 'shelf', or 'UFO' subsidiaries with very few employees and hardly any real operations (González Begéga and Köhler 2015: 80). Allianz was the first company to become an SE and is one of the comparatively few 'real' (i.e. operational) SEs. The motivation to do so in 2006 was to create a European corporate identity and to improve the company's competitiveness through streamlining the then highly fractured company structure with its many national holdings (Gold, Nikolopoulos and Kluge 2009; Biehler 2009).

Allianz is a European company with German roots and global outreach. On the Forbes (2016) list of the world's 2000 leading companies, the company is ranked twenty-first. With close to 150,000 employees

worldwide, Allianz SE is a major employer in the insurance sector, though its power goes beyond its impact on workers. In 2015, the company netted an operating income of over ten billion Euros from corporate and private customers in seventy countries across the world (Allianz 2016). The multinational is deeply intertwined with other large MNCs through its corporate ownership structure as well as through its shareholding strategy. The shareholder structure is highly dispersed and more than two-thirds of its shares are in the hands of institutional investors such as hedge funds (Allianz 2016). Moreover, management exerts differing degrees of influence over other large MNCs as a corporate shareholder. Vitali *et al.* (2011) classify Allianz as belonging to the 'core' of 'the network of global corporate control' which consists of companies that 'are tied together' through their mutual investment strategies 'in an extremely entangled web of control'.

In recent years, two transnational company agreements have been signed between the Allianz European Works Council and management, one on work-related stress (2011) and the other on lifelong learning (2012). Transnational agreements are formally proposed by the company's European Works Council, discussed between managers and employee representatives in the informal Social Dialogue Group and finally signed by the works council's Select Committee and HR management. The implementation of the European agreement on lifelong learning met with certain resistance from French employee representatives who considered training to be an independent trade union issue and not within the competence of the company or the works council (Rüb and Platzer 2015: 93). In the case of work-related stress, many national HR managers feel that existing measures already ensure compliance (INT UNI1 and INT Allianz2, 2015) but central management supports further progress and insists on regular reports on the issue from national undertakings (INT Be1, 2015, see also Rüb and Platzer 2015: 92). Employees claim that more could be done at local level to implement both agreements (INT De4, INT Es1 and INT Uni1, 2015). Despite those implementation problems, both employee representatives and management agree that these European agreements have triggered useful debates at local level (INT Allianz2, INT De1, INT Es1, 2015).

'I am very glad to have it (the European agreement on work-related stress). Naturally, an SEWC agreement is not legally binding, but it carries the signature of management. That means it is of much help for national entities who want to further work on this topic as laid

down in the stress policy. That is a great opportunity.’ (German supervisory board member)

4. Multi-level arenas in and around Allianz SE

Employees participate in the company’s decision-making in three transnational employment relations arenas: the European Works Council, board-level representation and the so-called Social Dialogue Group linking the supervisory board and the works council. An additional forum at European trade union level is the Allianz Trade Union Network (ATUN). Representatives from management and employees have also contributed to the European Insurance Sectoral Social Dialogue Committee (SSDC). Moreover, negotiations within the SSDC have inspired discussions in the company works council. A close look at the practice of transnational employment relations reveals noteworthy links between the Allianz SE company level and the sectoral level, mainly established through the Allianz Trade Union Network.

The two-tier board structure of Allianz SE provides for a board of management and a supervisory board. The latter consists of twelve members, half of them employee representatives. Board-level employee voice at Allianz is a German legacy that has survived the conversion into an SE and still largely follows German co-determination standards. This path dependency is a general feature of German-based SEs. Recent research by Waddington and Conchon (2016: 201) on board-level representation in Europe has shown that over eighty percent of all SEs with board-level employee representation are headquartered in Germany. This is not surprising as German-based companies constitute the biggest group of SEs. German-based SEs are characterized by a relatively high level of participation in comparison to companies based in other European countries (Waddington and Conchon 2016: 03).

When the German MNC Allianz became a European company (SE) in 2006, the then existing European Works Council (EWC) was transformed into an SE works council (SEWC). The creation of an SEWC is mandatory under European company law. The respective agreement on employee involvement was re-negotiated with management in 2014 to take account of changes in the corporate structure, i.e. the introduction of large subsidiaries, so-called operational entities (OEs) (INT Verdi, 2015). As a result, the SEWC grew slightly from 31 to 36 members and now includes

not only country representatives but also delegates from the four largest operational entities. Two of them (AMOS and AGCS) are SEs in their own right and thus have their own SEWCs. These two operational entities are thus able to each prepare their own position for discussion in the Allianz SEWC and to approach management with own initiatives. An attempt in 2014 to gain a similar level of European representation failed in the Euler Hermes operational entity. It now has the informal Euler Hermes Europe Forum which sends one delegate to the Allianz SEWC. Euler Hermes employee representatives state that a European Works Council would have given them ‘more power’ (INT Be2, 2015) and that the Europe Forum is only ‘the second-best solution’ (INT De2, 2015).

Among the existing transnational arenas available to employees for the exercise of voice, European Works Councils are arguably the most developed, with substantial information and consultation rights for employees of transnational companies in Europe (González Begega *et al.* 2016). For many years, the Allianz SEWC has been characterized by a cooperative atmosphere between management and employees and can be labelled as a ‘project-oriented’ European Works Council (Müller *et al.* 2004: 93). This means that the works council independently develops its own initiatives and ensures substantial representation of employee interests. The main stumbling blocks for the proper functioning of the SEWC are delegates’ lack of language skills, the difficulty of finding consensus among all members, and the dominance of management which sets the agenda and chairs meetings (INT Be1; INT Be2 and INT Es2, 2015). To deal with those problems, other arenas have emerged for initiating and/or negotiating new agreements.

Initial ideas for agreements are often developed in an arena outside direct company influence, the Allianz Trade Union Network (ATUN). This informal think-tank was set up in 2010 to bring together trade unionists working in Allianz subsidiaries throughout the European Union. Currently, trade union representatives from eleven countries participate in the network, preparing employee initiatives to be brought up in the SEWC and discussing draft agreements. The ATUN serves as a counterweight to the SEWC where trade union influence is weak and finding a consensus is very difficult (INT Be1 and Es2, 2015).

‘It is through the ATUN that we get our topics discussed with management’ (ATUN member)

‘Employers think globally. I believe we should also do that as a trade union, but we are way behind. While we have made certain progress, we still have a long way to go.’ (ATUN member)

Company-based transnational trade union networks often suffer from a lack of funding and from low intrinsic motivation among delegates (Müller *et al.* 2004). ATUN’s dynamism is remarkable in view of its meagre financial and personal resources and, above all, its very informal and voluntary nature. To lower travel expenses for national unions, since 2016 meetings are held the day before and in the same place as SEWC meetings. While German, British and Belgian trade unions clearly keep the forum running, participation from other countries used to be low (INT Be1, 2015) though has recently increased (INT Uni1; Es1 and Es2 2015). Trade union networks often aspire to become negotiating partners in their own right, either in addition to or because of the absence of European Works Councils (Gil Pinero *et al.* 2012: 105). In the case of Allianz, the ATUN works highly efficiently in the background of transnational employment relations, in close connection with other arenas but completely outside management influence.

Direct negotiations between management and employee representatives take place in an informal body called the Social Dialogue Group. This is the main arena of direct negotiations between employees and management (Rüb and Platzer 2015). Certain members of the Social Dialogue Group are also active in the ATUN. In the past, these employee representatives have successfully put issues developed in the trade union network on the table for discussion with management (INT Be2 and ATUN, 2015). According to employee representatives and management involved in the Social Dialogue Group, the informal nature of the forum is not a problem and there is no need for a written agreement to ensure its long-term existence. For them, what gives stability to the arenas are the personal relations and the engagement of well-connected individuals. (INT De1 and Allianz1, 2015).

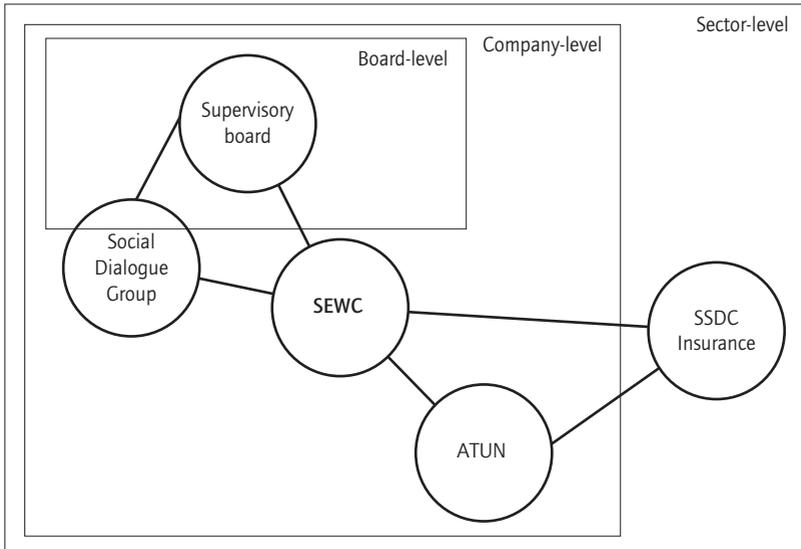
Communication between company employees and trade unions is in the hands of the Allianz trade union coordinator from the European trade union UNI Finance. Currently this position is held by a Belgian trade unionist who is not an Allianz employee. The UNI Finance coordinator is also co-chairperson of the European sectoral social dialogue committee for the insurance sector (SSDC Insurance). She constantly attempts to transfer SSDC agreements to the companies she works with as UNI

Finance delegate. For her the reason is that ‘you can be more concrete when you talk about the company than in general at EU level’ (INT UNI1, 2015). This strategy and her personal networking capacities receive a lot of praise from employees (INT De1, ATUN, Be2 and Es1, 2015).

The SSDC Insurance body brings together the major employer associations in the insurance sector – InsuranceEurope, Amice and Bipar – and the European services trade union UNI Europa under the leadership of the European Commission. Most SSDCs are characterized by ‘partner lobbying’ (Dufresne *et al.* 2006), as many social partner agreements deal with business interests and are directed towards the European Commission rather than being implementation-oriented. This is clearly different in the SSDC Insurance where several agreements have been reached between the InsuranceEurope and UNI Finance in recent years, all of them on issues dealing with employment and working conditions in the sector. Trade unionists belonging to both SSDC Insurance and ATUN relay important issues from one level to the other. The Allianz framework agreement on work-related stress was inspired by an SSDC Insurance agreement concluded in 2004 on the same topic. The recently signed SSDC teleworking agreement (February 2015) was introduced into the SSDC by the Allianz trade union coordinator, inspired by discussions in the ATUN (INT UNI1, 2015). After the signing of the agreement between social partners in the SSDC in February 2015, the text became a blueprint for a similar agreement currently under discussion in the Allianz SEWC. Since then, management and employee representatives have been negotiating basic guidelines for teleworking in a special SEWC working group (INT ATUN, 2015).

Figure 1 visualizes the connections between transnational arenas. The European Works Council (SEWC) constitutes the most institutionalized transnational arena and serves as the core of multi-level employment relations in the company. The SEWC is closely connected to the company supervisory board through both direct board-level employee representation and the Social Dialogue Group, an informal but stable body of exchange between employee representatives and managers that deals with issues arising in the SEWC. The SEWC also maintains close ties with the European Sectoral Social Dialogue Committee (SSDC) for the insurance sector. Trade unions successfully transfer issues from the SSDC Insurance to the company level. The Allianz Trade Union Network (ATUN) provides for a timely connection between the SEWC and the SSDC.

Figure 1 Transnational employee participation at Allianz SE: the European Works Council as the core arena of a multi-level network.



Source: own elaboration.²

5. Common interests, collective identity and corporate integration

European employment relations at Allianz SE are highly stable and produce valuable outcomes for employees. The dynamics of transnational social dialogue are directly related to the players' common interests, collective identity and to normative corporate integration. European Allianz employees share common concerns about job quality, with work-related stress most prominent among them. Related issues include the challenge of lifelong learning and the pressure deriving from constant availability through telecommunications. The European workforce can be seen a 'community of risk' (Greer and Hauptmeier 2012: 278; Dehnen and Rampeltshammer 2011: 124), a term which implies certain unifying functions facilitating transnational coordination. The interviews with

2. This figure is based on a presentation given at a UNI Finance meeting in Brussels in 2014. The author would like to thank respondents from LBC-NVK for the provision of material and access.

trade unionists and SEWC members revealed that respondents consciously look for common issues and ways to bring those issues to the table in various arenas (INT ATUN, Uni1, Be1, 2015). Highly committed individuals work as human links between, for example, the SSDC Insurance and the Allianz Trade Union Network. They share clear interests and have elaborated a joint strategy of multi-level negotiations with management.

‘We really try to link different levels.’ (Allianz SE trade union coordinator)

These findings are in line with the argument already established in the literature that effective employee participation needs strong trade union networks (Pulignano 2014; Weber 2013; Helfen and Fichter 2013; Leonard 2013; Gold 2003). In a departure from existing studies, the analysis reveals that these networks can spread over various arenas inside and outside company boundaries, forming a transnational social space: a relatively stable – though never uncontested – structure of social dialogue at European level. The unsuccessful attempt to install a European Works Council at Euler Hermes shows that these European arenas remain a transnational social terrain under constant contestation by both management and employees. Windows of opportunity (mainly in moments of restructuring or downsizing) are regularly seized by employees or management to either pressure for or block change, depending on their respective interests.

Many respondents emphasized the importance of individual skills and commitment and their feeling of collective purpose (INT Allianz1; INT De3; Be2, 2015). One Euler Hermes employee voiced his trust and gratitude to the (German) SEWC chairman, saying ‘he helped us a lot’ (INT Be3, 2015). The chairman’s support and advice were important in the Europeanization of the entity’s employment relations. Though this process has not led to the desired outcome (a European Works Council) but to the much weaker Euler Hermes Europe Forum, the building up of trust and a common identity among employees cannot be underestimated. The collective transnational identity of employee representatives is a strong foundation for otherwise fragile – as largely informal – structures.

‘Many things work at an interpersonal level.’ (German SEWC member)

As Rüb and Platzer (2015: 96) have pointed out, the building up of both professional and personal relations over many years provided a fertile ground for employee involvement at Allianz SE. Similarly, Da Costa *et al.* (2012: 11) emphasize the importance of trust relations among members of a European Works Council in 'the elaboration and defence of common goals'. In the past, a small group of European employee representatives from Belgium, Germany and the UK have successfully disseminated their common narratives on work-related stress, training and teleworking throughout the company's arenas of employment relations.

'Yes, I am absolutely sure that part of the positive outcome derives from the fact that we (...) are a stable team and that everyone knows that we are a team (...). If we are successful, all of us are successful and if we fail, then we have to reflect together over what went wrong.' (German SEWC member)

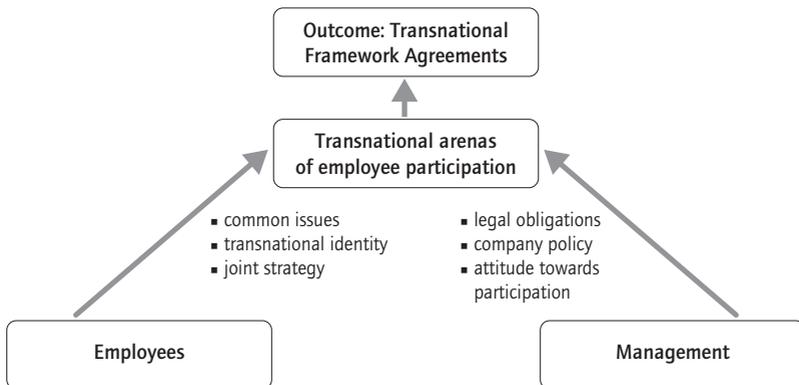
The development, maintenance and adaptation of collective identity by key group members is often referred to as 'identity work' in the literature (Greer and Hauptmeier 2012; Snow and Anderson 1987). At Allianz SE, the core group of employee representatives develops what Greer and Hauptmeier (2012: 293) call 'significant commonalities' in their interpretation of employment relations issues. Frequent encounters between individual employee representatives – in the ATUN, the SEWC, the SSDC and at board level – contribute to the creation of 'social memory' (Seeliger 2016) and a common history that unites employees at transnational level.

Since the company's conversion to an SE in 2006, management has been keen to integrate employees in the restructuring process in order to ensure their cooperation. The SEWC is well-equipped with resources and rights, not least as a result of management's desire to reconcile the workforce with the establishment of an SE (Rüb and Platzer 2015: 51; 53). This management strategy of giving precedence to cooperation over conflict still prevails and has since developed into an established culture. Interviews reveal continuing corporate HR pressure to implement the two European framework agreements where national undertakings show reluctance or a lack of ownership (INT Allianz1 and INT Be2, 2015). The company policy is to ensure a friendly dialogue for the sake of the corporate public image (INT Allianz1 and INT Be1, 2015). Consequently, the change in the CEO in 2015 after many years of continuity did not raise many worries among employee representatives as they felt the company culture went beyond personal convictions (INT De2 and INT ATUN, 2015).

‘Social dialogue should not be merely about topics of the employer’s concern.’ (Allianz manager)

The dominant attitude among HR managers is that the well-being of employees influences performance, directly through the quality of their work and indirectly through the company’s public image (INT Allianz2, 2015). This also reflects a specific sectoral logic, as insurance companies rely on a positive public image and on employees’ professionalism and motivation when engaging with clients (INT De1 and INT Allianz2, 2015; Rüb and Platzer 2015: 62). Franca’s and Pahor’s (2014) study has already pointed to the importance of management attitudes for the quality of social dialogue. At Allianz, central management is driving a process of ‘normative integration’ towards ‘a common set of values with respect to corporate goals’ among subsidiaries (Williams 2011: 292). In line with the findings of Helfen and Schüssler (2009), the perception of employees as a key resource for the company increases their power vis-à-vis management. Figure 2 visualizes the factors influencing the quality of transnational employee voice at Allianz SE.

Figure 2 How players shape transnational arenas at Allianz SE



Source: own elaboration.

6. Conclusions

One important conclusion of the research presented here concerns the research agenda in employment relations studies. In the multi-faceted social world of the modern MNC, there is no single variable explaining the quality of employee participation at European level. To analyse the complexity of this transnational social world, micro-theoretical tools are needed. This chapter has attempted to trace the ensemble of factors influencing social dialogue and to treat them as an overall set of variables rather than singling out any particular one. The result is a comprehensive analytical framework combining an analysis of intertwined European social dialogue structures with in-depth accounts of actors' common issues, collective identity and joint strategies. The analytical framework proposed here will benefit from further refinement through future research.

At Allianz, employee representatives are aware that the SEWC alone remains a toothless tiger if not backed by close ties to other employment relations arenas that provide input and take company initiatives further. The strategic cooperation of trade unionists is further strengthened by the company's good performance and sectoral characteristics which include direct client-employee relations. A multi-level strategy within the transnational social space of European employment relations has provided fertile ground for social dialogue in the fields of work-related stress, training and teleworking. One policy implication deriving from the analysis above is that European employment relations need a certain amount of trade union support to ensure transnational coordination. The transfer of issues between arenas relies heavily – though not exclusively – on the trade union coordinator and his or her links to all relevant arenas. The respective European trade union UNI Finance in turn relies on national unions' willingness to dedicate personal resources to European social dialogue.

Interviews

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INT Allianz2: HR Management Allianz Spain, 2015.
INT ATUN: British delegate to Allianz Trade Union Network, Belgium 2015.
INT Be1: Belgian delegate to Allianz SEWC, Belgium 2015.
INT Be2: Belgian delegate to Allianz SEWC, Belgium 2015.
INT Be3: Belgian Euler Hermes employee representative, Belgium 2015.
INT De1: German member of SEWC Select Committee, Germany 2015.
INT De2: German Euler Hermes employee representative, Germany 2015.
INT De3: German delegate to SEWC, Germany 2015.
INT De4: German delegate to SEWC, Germany 2015.
INT Es1: Spanish delegate to SEWC, Spain 2015.
INT Es2: Spanish delegate to SEWC, Spain 2015.
INT UNI1: UNI Finance trade union coordinator for Allianz SE, Belgium 2015.
INT UNI2: UNI Finance EWC coordinator, Belgium 2015.
INT verdi: former UNI Finance Alliance SEWC coordinator, Germany, 2015.

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Chapter 8

Uncovering the pitfalls of EU social dialogue from a multi-level perspective. The example of the electricity sector.

Sara Lafuente Hernández¹

1. Introduction

The European Commission (EC) established institutionalized Sectoral Social Dialogue Committees (SSDCs) to replace and unify formerly existing joint committees and informal structures (EC 1998). SSDCs bring together sectoral labour and management for the purpose of consultation on social affairs in the EU legislative process and bilateral sectoral negotiations at EU level. Since their creation, the activity of SSDCs has grown continuously (Léonard *et al.* 2011: 256; Degryse and Pochet 2011). Pressure from sector-specific EU legislation and from EU integration, international competition and liberalization encouraged social partners to organize sectoral interests at EU level on the one hand, and trade unions to transnationally coordinate sectoral collective bargaining strategies on the other (Arrowsmith and Pulignano 2013; Dufresne 2001; Even 2008: 249).

However, according to empirical evidence, EU sectoral industrial relations remain considerably underdeveloped compared to other dimensions of EU industrial relations or to the (declining) sectoral level in national contexts. SSDC outcomes are usually 'soft' in nature, topics are excluded (e.g. pay or working time) and enforceability and effective implementation are not secured (Weber 2010), all limiting SSDCs regulatory potential.

Firstly, social partners lack incentives to bargain in a binding manner on 'hard' topics at EU sectoral level. According to Ales *et al.* (2006) this is due to the lack of a strong legal framework or state protagonist at EU level, especially since the EC has abandoned the 'shadow of the law' strategy for the sake of social partners' autonomy. As European trade union federa-

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tions (ETUFs) are not backed by effective transnational labour protest (Turner 1996), European employers have no incentive to grant mandates for binding negotiations (Dufresne 2012: 108; Marginson 2005: 519). As a result, SSDC activities are mostly reduced to consultation and partner-lobbying through *joint opinions* addressed to public institutions (Dufresne *et al.* 2006; Degryse and Pochet 2011: 149-152; Degryse 2015: 39-46). Secondly, the social partners only devote meagre resources to the EU level, revealing their lack of political will to promote effective negotiations and the struggle of weaker national organizations to maintain very costly multi-level structures (Léonard *et al.* 2011: 265). Thirdly, EU enlargement has hindered the development of EU sectoral industrial relations, as Central and Eastern European systems rely on company-level structures (Marginson 2005).

Ultimately, SSDCs deliver in quantitative terms but the qualitative significance of their work is minor. How can we reconcile these two observations? The arguments stated above explain some SSDC shortcomings but do not dwell on underlying institutional and power relation considerations. Keune and Marginson (2013) accurately stress the prevalence of power relations in the European multi-level framework of industrial relations, but they do not evaluate how social partners are differently affected.

A political-science perspective may bring new insight to the debate on SSDCs, uncovering certain structural factors influencing the articulation of social dialogue across levels, and the asymmetric implications for social partners' room for manoeuvre and strategic capacities. Drawing on class and collective action theory (Offe and Wiesenthal 1980; Offe 1988: 111-131; Traxler 1993) and the institutional theory of EU asymmetric integration (Scharpf 2000a and 2000b), I conduct a multi-level analysis of the institutional design of SSDCs, focusing on the vertical articulation between SSDCs and national sectoral industrial relations institutions. I argue that major structural constraints shape the scenario in which EU sectoral social partners can act, and that these explain the weak functioning and outcomes of SSDCs, providing labour and management with unequal opportunities to organize and achieve their supranational collective interests. This chapter attempts to overcome a recurring limitation in EU industrial relations literature, which views EU social partners as actors with balanced positions in industrial relations institutions (Bechter *et al.* 2012; Léonard and Perin 2011).

I base my argument on an empirical analysis of the SSDC Electricity as a case study, paradigmatic of the contradiction revealed in the literature between increasingly active SSDCs and their drift towards softer joint texts. I used secondary data analysis on sectoral domains, social partner representativeness and membership, drawing on the Eurofound representativeness report (Eurofound 2014). SSDC joint texts between 1996 and 2015 were also analyzed (EC 2015), and rounded off with a text analysis of EU sectoral organizations' statutes to identify mandating rules. Finally, I conducted a thematic analysis based on three in-depth interviews with representatives involved in the SSDC Electricity, where they were asked about organizational structures, strategies, mandates, follow-up procedures, articulation between levels, the functioning of the SSDC and their expectations.

The chapter is structured as follows: first, I present the theoretical underpinnings framing the context for labour's and management's collective action at EU level, revisiting the structuring concepts of SSDC architecture from a multi-level perspective (*sector, representativeness and capacity to negotiate*); secondly, I present the empirical analysis of the SSDC Electricity and discuss the findings. I go on to address some policy challenges for researchers and stakeholders, and conclude with final reflections on future perspectives for multi-level collective bargaining in Europe.

2. The structural conditions underlying EU sectoral social dialogue: the theoretical background

2.1 Asymmetrical class relations and European integration

Class and collective action theories argue that a pre-associational structural power asymmetry underlies labour and management relations in capitalist societies, with business having more political and organizing options than labour (Offe and Wiesenthal 1980; Offe 1988: 111-131; Traxler 1993, 2006). The quantifiable nature of capital gives business a strategic advantage: it can easily define and adapt collective interests in line with efficiency, costs and returns and policy agendas. Conversely, labour is incommensurable by nature, and workers need to organize and define collective interests through explicit political processes and resources (i.e. ideology, collective identity) to compensate for their more limited power resources (Offe 1988: 116-117; Traxler 1993: 675). They are

confronted with democratic and legitimacy dilemmas and driven to aggregate interests in a more general way, without this necessarily improving their strategic capacity (Traxler 1993).

Additionally, the EU political system further disadvantages labour. Contradicting neo-functional convergence theory², critical scholars have assessed the structural asymmetries embedded in EU political integration and its modes of governance, especially since the global move towards neoliberalism in the 1980s. Following Scharpf's institutional theory (2000a, 2000b, 2006), the market-integration process was efficiently accomplished through 'negative integration' and top-down hierarchical governance of supranational institutions (i.e. the European Commission, Central Bank and Court of Justice). National protective regulatory capacities were by this means gradually hollowed out, being considered obstacles to free competition and the liberalization of the unified market. They were, however, not replaced at EU level by market-correcting 'positive integration', as the policy areas concerned (labour market institutions, collective bargaining over wages) were either excluded from supranational competences (Crouch 2014: 14; Streeck 2014: 102-110; Marginson 2015: 108) or made dependent on intergovernmental or joint-decision modes of governance, requiring high consensus between Member States or legislative EU institutions (Scharpf 2006).

Liberalization tackled specific market sectors through specialized EU-level sectoral policy-making (Crespy 2012). Such public policy 'sectorization' fragmented European governance to the disadvantage of actors representing more general interests on market regulation, such as trade unions (Crespy 2012: 158-176). Conversely, a sectorized and non-politicized EU institutional set-up strengthened the position of business in terms of resources, channels of influence and collective organization, while putting trade unions at risk of being 'co-opted by the European Commission's agenda in a symbolic 'euro-corporatism' that legitimizes rather than influences EU policies and legislation' through sectoral partner-lobbying (Larsson 2015: 103).

The crisis amplified this imbalance: in the name of recovery and flexibility, EU economic governance regulations and EC country recommendations directly targeted national labour market coordination

2. See Haas, E.B. (1958) *The Uniting of Europe: Political, Social and Economic Forces 1950-57*, Stanford University Press, Stanford.

arrangements in many countries despite the Treaties' impediment (Marginson 2015; Erne 2015). EU industrial relations are thus embedded in a structurally imbalanced EU multi-level institutional context, where labour's capacities to organize and promote interests are increasingly challenged from different angles.

2.2 A critical examination of the founding concepts of EU sectoral social dialogue

In line with national-level industrial relations' bodies, SSDCs are structured by concepts of *sector*, *representativeness* and *capacity to negotiate* (mandate), which define the scope and legitimate social partners involved in SSDCs (EC 1998). However, these notions are ambiguous: at national level, they refer to social and political constructs, whereas in the design of EU social dialogue they are adopted as 'frozen' categories. Due to EU top-down definitions, their meanings differ across levels, engendering articulation problems and a more convenient institutional setting for business than for unions, as the findings suggest.

2.2.1 'Sectoral' boundaries: ambiguity across levels

From a national perspective, sectors have always been difficult to define (Rodríguez Fernández 2000: 266). They have been historically, socially and politically constructed along with social conflict, resulting in 'strategic imbroglions' (Saglio 1991: 31). A particular domain obtains the legal position of 'sector' in collective bargaining structures after negotiations and agreement between social partners (Jobert 2005: 81), who pursue definitions that better suit their own organizational structures and aggregation of professional interests (Saglio 1991: 31). The employer's business activity might not be the most adequate criterion for labour to demarcate sectoral boundaries, as other kind of relations between workers or employers may prevail, such as job profiles (Jobert 2005: 80), especially in a context of company fragmentation, global value chains and new 'horizontal' sectors (IT, agency work).

Conversely, at EU level, the process starts with a top-down definition of sectors (García-Muñoz Alhambra 2014: 210). The EC has not formally indicated sectoral demarcation criteria (Keller and Weber 2011: 229). In practice, SSDCs are established according to the Statistical Classification of Economic Activities in the European Community (NACE, from its French title). This classification supposedly reflects economic reality and

produces cross-nationally comparable data on market activities in Europe³. When NACE codes are transferred to the EU industrial relations' domain, they imply technical, functional and undisputed top-down 'sectoral' definitions, shaping SSDCs in accordance with companies' unilaterally declared activities and the EU's sectorized policy-making agenda. This drags trade unions into frameworks not necessarily corresponding to national organizations and traditions, making it difficult for them to build and defend strong positions at EU sectoral level. NACE demarcations better accommodate the way business organizes collectively. Thus, the SSDC institutional environment discourages the regulatory function through bilateral negotiations requiring stronger and unified union positions. Conversely, it propitiates the consultation function vis-à-vis public authorities (Dufresne *et al.* 2006), in which employers can further influence the political agenda thanks to their veto power, their 'natural' leading role and their expertise in sector business.

Leónard and Perin (2011) emphasise that differences in sectoral demarcations across levels hinder the congruent articulation of multi-level sectoral social dialogue. The progressive decline of national multi-employer sectoral collective bargaining (Marginson 2015) predicts further disconnection between EU sectoral social dialogue structures and societal realities – an unpromising future for labour's voice within SSDCs.

2.2.2 'Representativeness': a problematic multi-level articulation

Representativeness has an ambiguous definition, commonly referring to how accurately a sample shares the characteristics of a broader population. However, in the context of collective interest representation, this meaning is mediated by a political process to construct a coherent and unified voice effectively serving the function of collective interest representation. Thus, *representativeness* refers in this sense to a quality of political legitimation to represent a group's collective interests in a given domain (Hyman 1997: 310). As a legal category, *representativeness* acknowledges specific rights (i.e. consultation, extended normative power and resources accorded to an organization that fulfils certain criteria previously set by national labour law (Bérourd *et al.* 2012: 6).

3. The NACE, introduced by Council Regulation (EEC) No. 3037/90 amended by Regulation (EC) No. 1893/2006, aims to create common statistical standards and produce harmonized data useful in statistics on economic and market activities.

At EU level, the EC defines certain representativeness criteria for European sectoral social partners to participate in SSDCs (i.e. 'relate to specific sectors or categories and be organized at the European level', 'consist in organizations which are themselves an integral and recognized part of national social partner structures', and 'have capacity to negotiate agreements') (EC 1998, Article 1). The criteria do not refer to affiliate members, whose representativeness depends solely on national legislation, in accordance with subsidiarity, national practices and social partners' autonomy. The EC's criteria remain too vague for any institutional control of EU social partners' bottom-up legitimacy and have thus been subject to much criticism (Even 2008: 201-202; Reale 2003: 12-13; Bercusson 1999).

First, the 'sufficient' representativeness of EU sectoral social partners relies on (i) formal criteria or (ii) the claim of organizations to represent interests in a given scope. There is no harmonized quantifiable criterion based on social circumstances (workplace elections or affiliation) to check 'true' representativeness (Welz 2008: 181; Bercusson 2009, 1999: 158; Reale 2003: 13). Secondly, despite the second criterion, the EC does not in practice compel EU sectoral organizations to consist of members involved in national collective bargaining structures (Eurofound 2014: 41), although this directly affects their goals, mandates and approach to social dialogue, and ultimately SSDC outcomes. Thirdly, the criterion of 'sector-relatedness' implies that sectors are 'specific', without clarifying how to measure 'specificity'.

Eurofound pragmatically defines 'sector-relatedness' as an objectively verifiable category: (national) trade unions and business associations are considered 'sector-related'⁴ whenever their domain of interest and/or scope of collective bargaining (in functional, personal and/or geographical terms) is linked to the scope of a given NACE code in the EU, either by: (i) 'congruence' (the organization and NACE code's domains are a perfect match); (ii) 'sectionalism' (the organization's domain is smaller than the NACE code's scope); (iii) 'overlap' (the organization's domain covers and exceeds the sector's demarcations); or (iv) 'sectional overlap' (the organization's domain exceeds the sector's, without covering it completely). If

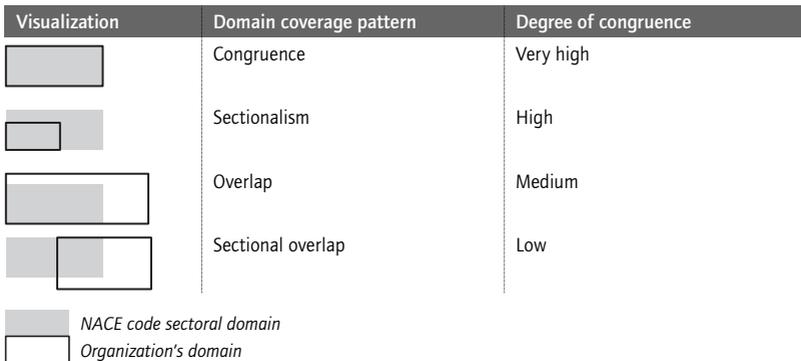
4. Although EC representativeness criteria refer to EU social partners, Eurofound examines the 'sector-relatedness' of national associations affiliated to EU social partners or participating in 'sector-related' national collective bargaining structures – i.e. both single- and multi-employer bargaining structures, as used by Eurofound representativeness studies (Eurofound 2014).

the organization’s domain does not match the NACE code at all, it is not considered ‘sector-related’. The criterion can thus be fulfilled in any of four ways, each one meaning a different pattern of adaptation of the organization to the SSDC institutional scope. But these differentiated ‘paths towards sector-relatedness’ have implications, which are in many cases overlooked.

As shown in Figure 1, ‘sector-related’ organizations can be classified as having ‘low’, ‘medium’, ‘high’ and ‘very high’ degrees of congruence between their domain of representation and the NACE code’s domain. ‘Very high’ or ‘high’ degrees of congruence mean a tight correspondence between organization and sector domains (‘congruence’ and ‘sectionalism’); ‘medium’ or ‘low’ degrees mean the two scopes are less matching (‘overlap’ or ‘sectional overlap’).

Under the first two patterns, an organization is structurally more suited to represent collective interests in the SSDC, and will find it easier to intervene in that arena and coordinate action across levels of representation. Previous studies on SSDC dynamics reveal that ‘congruence’ is seldom found (Léonard *et al.* 2011), resulting in implementation problems (Keller and Weber 2011). To my knowledge, the specific degree of congruence between labour and employer organizations has not been compared or evaluated from a class-theory perspective. It is precisely this aspect which I examine in my case study.

Figure 1 Different forms of ‘sector-relatedness’: domain patterns and the degree of congruence between organizations and NACE codes



Source: Own adaptation from Eurofound (2014).

2.2.3 Mandates: different power implications

At national level, public law usually validates social partners' mandates, acknowledging their legal legitimacy according to social criteria, mutual recognition or other historical, social or political grounds.

At EU level, given the lack of EU legitimacy criteria, Eurofound defines EU sectoral social partners' *capacity to negotiate* as a legal capacity to commit themselves and their national affiliates when negotiating binding EU-level agreements. EU sectoral social partners are required to prove they have a sufficient legal mandate from their national members to negotiate EU agreements. Eurofound usually turns a blind eye since controlling a social partner's legal legitimisation is highly sensitive politically. Nevertheless, empirical evidence suggests that EU sectoral business associations lack clear and sufficient mandates more often than do trade unions (Dufresne *et al.* 2006). According to class and collective action theory, this apparent weakness is strategically advantageous for employers since 'the bargaining party less interested in an agreement and less capable of binding its members obtains the stronger bargaining position' (Traxler 2006: 114).

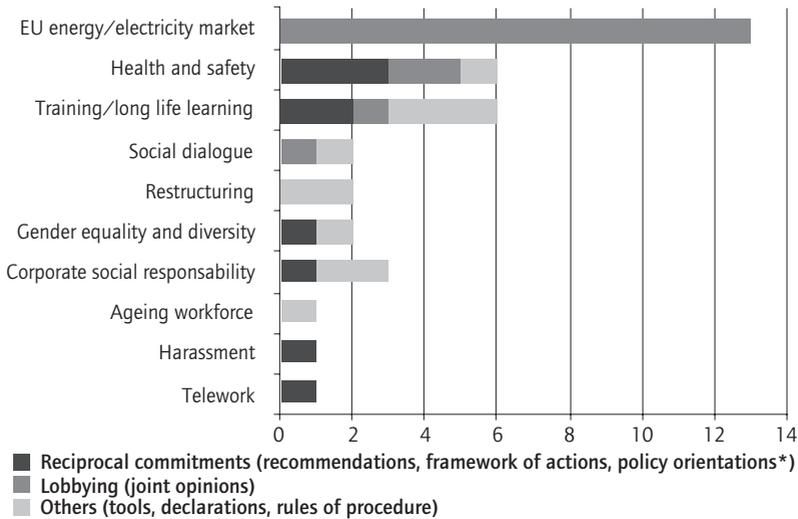
My review of the fundamental concepts of an SSDC's architecture confirms certain theories on SSDC dynamics (Léonard *et al.* 2011; Keller and Weber 2011): different meanings across levels hinder consistent vertical articulation and implementation in multi-level sectoral social dialogue structures. If we crosscheck these findings with a class-theory perspective (Offe 1988; Traxler 1993) taking into account the social partners' asymmetrical positions in EU integration and policy-making processes (Crespy 2012; Crouch 2014), we can conclude that such multi-level incongruences can amplify structural imbalances between employers and unions. In the following section, I examine how these imbalances are reflected in the SSDC Electricity, affecting its function and outcomes.

3. The SSDC Electricity: multi-level incongruences with unequal implications for the actors involved

In this section, I present the findings of my analysis of the SSDC Electricity, evaluating the appearance and impact of the above-mentioned structural imbalances. I refer to the introduction for an overview of the sources, data collection and methods of analysis used. The sources for Figures 3-6 are own adaptations of data from the Eurofound representativeness study (Eurofound 2014).

The SSDC Electricity was established in 2000 (informal social dialogue existed since 1996) bringing together three organizations: Eurelectric for the employers and IndustriAll and EPSU⁵ for the trade unions. The SSDC Electricity is one of the most active second-generation committees: by 2015 it had delivered 37 joint texts since its creation. However, an analysis of the evolution of the joint texts by topic and type confirms a consolidated trend towards joint lobbying texts⁶.

Figure 2 SSDC Electricity's joint texts for the period 1996-2015, by type and topic



**Frameworks of action* and *policy orientations* are included under the reciprocal commitments category as they address social partners.

Source: The EC's SSDC joint-texts database (EC 2015). Accessed: 23/2/2016.

5. IndustriAll refers to the ETUF created in 2012 through the merger of the European Metalworkers' Federation (EMF), the European Mine, Chemical and Energy Workers' Federation (EMCEF) and the European Trade Union Federation for Textiles, Clothing, Leather and Footwear (ETUF-TCL). EPSU refers to the European Public Services trade union federation.
6. I follow the typology proposed by Degryse and Pochet (2011), who sorted joint texts into three categories, by purpose and addressees: *Agreements* (binding) or *recommendations* (less binding) represent reciprocal commitments by the social partners, joint opinions aim at lobbying public institutions, while a residual category consists of other types of process-oriented or declarative texts (i.e. declarations, tools or rules of procedure). According to their analysis of SSDCs' evolution between 1990 and 2009, more than half of the texts issued were joint opinions, a trend that has since increased (Degryse 2015)

Despite SSDC Electricity's great activity, it has neither signed any binding 'agreements' nor negotiated any 'hard' topics such as pay or working time (Degryse 2015).

To explain this contradiction between the SSDC's high level of activity and its weak regulatory results, I analyze its design through its main structuring concepts *sector*, *representativeness* and *capacity to negotiate*. I explore the extent to which articulation between levels is incongruent, affecting unions and employers differently in terms of organization and strategical capacities, and how the findings may explain the SSDC's dynamics and its weak outcomes.

3.1 The sectoral boundary mismatch

The SSDC Electricity's scope is defined by NACE code 35.1 (Rev.2), a code covering electric power generation, transmission, distribution and retail activities, i.e. a 'mixed bag' of market segments, technologies, production systems, job profiles, company weight and size depending on the country. Due to the industry's restructuring since the 1990s, most electricity-related activities and employment correspond to the scope of other national sectoral collective bargaining arenas (e.g. steel, construction). Moreover, genuine electricity sector-specific social dialogue does not exist in all countries. As a result, national sectoral social dialogue is often not structured according to NACE electricity business demarcations (Eurofound 2014), constituting a weakness for multi-level articulation.

3.2 Incongruent sectoral social partners' representativeness

IndustriAll and EPSU have 77 affiliates, while Eurelectric has 33 (Eurofound 2014). As a result of mergers, IndustriAll and EPSU also organize workers from sectors other than electricity (i.e. manufacturing, steel, mining, energy, other public sector industries), fitting into the 'sectional overlap' pattern in relation to the electricity NACE code. Conversely, Eurelectric's domain of representation better matches NACE sectoral outlines, fitting into the 'overlap' pattern due to a geographical mismatch, as some members belong to non-EU countries.

To check EU sectoral social partners' *representativeness* according to the EC's representativeness criteria, I first examined from a bottom-up

perspective how many national organizations⁷ are affiliated to the EU sectoral social partners; then, using a top-down perspective, I looked at these affiliates, checking their degree of involvement in national collective bargaining structures, their domain patterns in relation to the NACE code demarcating the SSDC’s domain, and finally their degree of involvement in national collective bargaining by domain pattern. I drew on secondary data gathered by Eurofound’s representativeness study on Electricity (2014).

The first finding shows that the majority of national ‘sector-related’ organizations involved in national collective bargaining structures are affiliated to the SSDC’s EU social partners, meaning that the SSDC can be seen as ‘sufficiently’ representative according to the second EC criterion. However, the affiliation rate is higher for trade unions (69.16%) than for employers (50%).

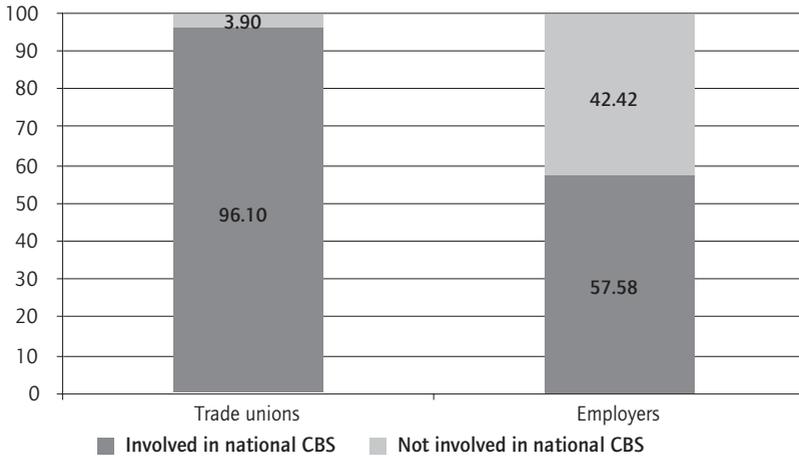
Figure 3 Affiliation rate of ‘sector-related’ organizations (involved in national collective bargaining structures) to EU sectoral social partners in Electricity



7. I considered here national organizations identified by Eurofound as ‘sector-related’ and involved in national collective bargaining. Eurofound detected 107 trade unions and 28 employer associations fulfilling both conditions. I then checked whether they were affiliated or not to the EU sectoral social partners and calculated affiliation rates. Qualitative aspects of national-level representation were thus not taken into account.

The second finding reveals that affiliates are unequally involved in national collective bargaining structures. The rate is 96.10% for unions against 57.58% for Eurelectric members⁸, confirming that a significant proportion of the latter represent ‘industrial lobbies’ or ‘trade associations’ rather than employer interests (Dufresne *et al.* 2006: 259). Such a composition favours the expression of lobbying strategies and weakens any negotiation mandate on the part of Eurelectric.

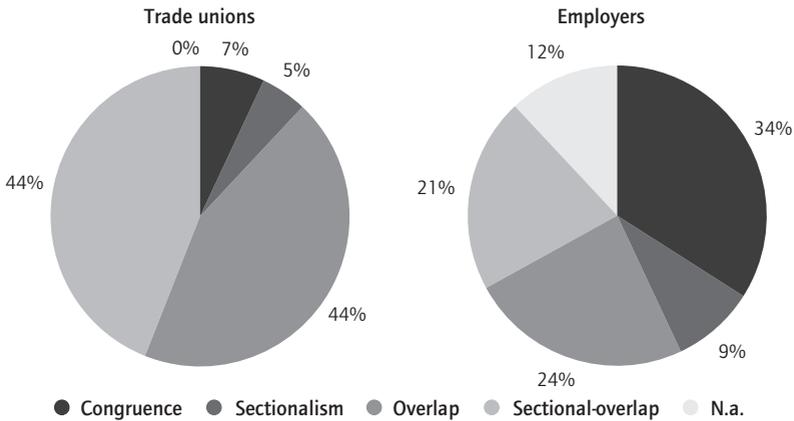
Figure 4 Percentage of EU sectoral social partners’ affiliates involved in national collective bargaining structures



The third finding refers to the degree of domain congruence between member organizations and SSDC scope. Not only are domain patterns rarely congruent between unions and employers, but in many cases they differ greatly. ETUFs seem to cluster interests in an artificial way, distant from their national structures (only 12% correspond to ‘congruence’ or ‘sectionalism’ patterns), while Eurelectric members benefit from a more congruent articulation across levels of representation (43% match the ‘congruence’ or ‘sectionalism’ patterns).

8. The ‘top-down’ findings (i.e. national involvement rates, distribution in domain coverage patterns, degree of involvement in national collective bargaining by domain pattern) were calculated on the basis of total member organizations affiliated to EU sectoral social partners (77 for trade unions and 33 for Eurelectric, according to Eurofound 2014 data).

Figure 5 Distribution of organizations in domain coverage patterns in relation to NACE code for electricity

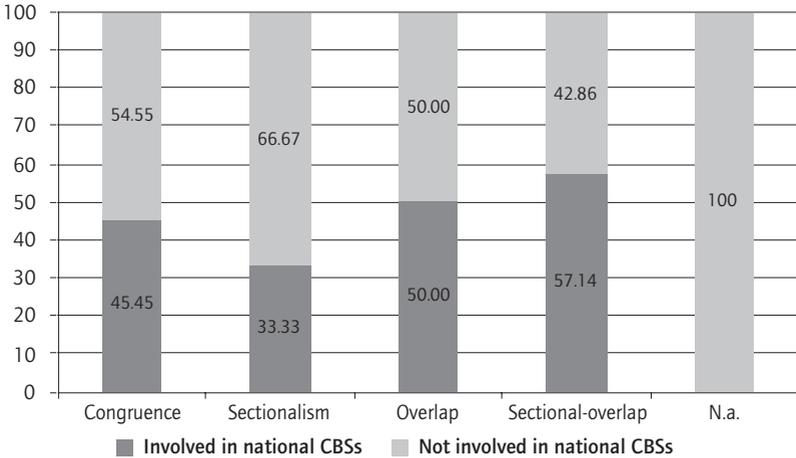


Finally, I verified whether non-involvement in national collective bargaining related to the domain congruence pattern for Eurelectric members⁹. The result was positive: organizations not involved in national structures (‘trade associations’) have a dominant presence in ‘most-congruent’ domain patterns categories, in contrast to organizations involved in national collective bargaining (‘employer associations’), which are overrepresented in lower congruence categories. This suggests that SSDC demarcation favours the representation of business interests in ‘trade associations’.

In conclusion, the findings show that the demarcation of SSDCs by NACE codes structurally benefits the representation of business in the EU sectoral arena: it favours the lobbying strategy of trade associations, while unions have greater difficulty organizing and representing collective interests in an effective and coordinated way.

9. I classified Eurelectric members by coverage patterns, and calculated within each pattern the percentage of members involved in national collective bargaining structures, according to Eurofound data.

Figure 6 Degree of involvement in national collective bargaining structures of Eurelectric members, by domain coverage pattern



3.3 Different capacities to negotiate

A look at the different *capacities to negotiate* of social partners at the SSDC level confirms the previous conclusion. Created in 1989 as a lobby association, Eurelectric’s goals as set forth in its statutes do not mention EU social dialogue. It thus has no general mandate to negotiate with unions at EU level. This handicap determines discussions in SSDC meetings: certain issues have to be excluded from the agenda or can only be addressed via non-binding texts (guidelines or frameworks of action). Conversely, sectoral negotiations on working conditions are among IndustriAll and EPSU’s constitutive goals. While their statutes include specific mandating procedures for that purpose, these cannot be used to their full potential in the SSDC Electricity due to Eurelectric’s blockade.

3.4 SSDC Electricity’s ‘surrogate’ outcomes: evidence of asymmetric strategic capacities?

In this section I link the profuse joint activity, albeit weak in terms of nature and topics, with the above-mentioned structural imbalances. These reflect in the SSDC’s ‘soft’ outcomes and explain the different capacities of labour and management to develop strategies at EU level.

Eurelectric's lack of a mandate to negotiate agreements, coupled with the influence of 'trade associations', is reflected in the SSDC's work (see Figure 2). Autonomous social dialogue is focused on joint opinions or frameworks of action with limited regulatory and follow-up possibilities, accommodating the business lobbying agenda and confirming theories that see SSDCs as 'common lobbying platform oriented towards European policies' (Dufresne *et al.* 2006) where employers' and trade unions' positions seem aligned (Weber 2010: 500).

As a matter of fact, the EC has promoted the consultation function of this particular SSDC since the 1990s to legitimize its energy policy. This was initially seen by both social partners as an opportunity to influence the EC, jointly opposing liberalization and defending a shared idea of public service. As the industry shifted to competition, understandings started to diverge, but remained focused on stressing a policy's 'social' dimension while still closely following the EC's sectoral policy agenda in their lobbying agenda. ETUFs show an ambivalent position here, more inclined to adaptation than to offensive action. For them, the function of the SSDC is to protect minimum social standards and promote the industry's good behaviour, and employers are to blame for not sufficiently mandating Eurelectric; paradoxically, ETUFs have decided not to put pressure on their counterpart ('The employers don't want it, and we have never taken the decision to force the employers to agree to something', EPSU General Secretary, interview, 29/1/2015), preferring instead to continue engaging in partner-lobbying activities or 'soft' framework of actions:

'It became of more use for us, but also for the employers, to stress the social dimension of energy policy (...) trying to see if we could have an influence on how the EC is thinking about policies. With some success' (...) 'we've tried to start to work in a new way, through (...) frameworks of action, in which you actually commit to do a number of things (...) if you don't do that, then the implementation is even worse. (...) There has been an improvement, but it doesn't happen a lot.' (Ibidem)

At first sight, the lobbying activities and frameworks of action seem sufficiently rewarding. However, the ETUFs acknowledge that liberalization has radically changed the situation that justified a strategy of aligned positions in the 1990s:

‘In the past, we had some shared interest. We were both very critical of the internal market, Eurelectric as well. So that is a shared interest towards the EC. (...) then some of these companies became MNCs, around 2000, so being in a European space must have felt also relatively natural to them.’ (Ibidem)

This paradox uncovers a rather unfruitful strategy and makes a number of national unions sceptical about the usefulness of SSDC activities, which national trade union representatives describe as ‘meagre’, ‘technocratic’ and ‘opaque’ (Interviews, 21/9/2015¹⁰). In an emerging EU arena, ETUFs are in search of self-legitimation as social partners vis-à-vis EU employers, the EC and national unions. This could explain their preference for signing joint texts (however reduced their political influence or regulatory potential might be) to an uncertain ‘exit’ strategy.

Contradictions within ETUFs also affect their strategic capacity. Their decision-making procedures prioritize consensus to show a united face vis-à-vis Eurelectric (interview with EPSU representative, op. cit.). Thus, positions most inclined to exert pressure on Eurelectric to negotiate are eventually neutralized. One explanation may be that the national unions dominating the ETUFs’ organization and policy are the most powerful national ones (i.e. German and Nordic) and are thus reluctant to accord the EU sectoral level greater collective bargaining powers (Jagodzinski 2012: 37). The ETUFs’ strategy in the SSDC may suffer from this ambivalent position, reflecting a co-determination logic inherited from the German and Nordic models and a public-sector partnership tradition. Inertia, contradicting interests and internal power relations could thus explain the drift towards a strategy of (rather ineffective) influence, instead of a strategy prioritizing mobilization and bottom-up revitalization.

Here again, the structural asymmetries of class, collective organization and EU integration theories seem a powerful obstacle to ETUFs’ capacity to build a strong unified position at SSDC level. Though surmountable, it would require a major and timeconsuming effort to reconcile differing national, ideological and strategic traditions through coordination, negotiation and *politization* (Erne 2015).

10. Excerpts from informal discussions with representatives from the French trade union CFR-CGC des Industries Électriques et Gazières, and Spanish trade unions Comisiones Obreras (CCOO) and Unión General de Trabajadores (UGT) on the occasion of an SSDC Electricity plenary meeting.

4. Challenges and policy implications

The findings highlight how structural reasons stemming from class position, EU integration and sectorized policy-making, together with the top-down architecture of SSDCs, shape power relations and affect social partners' capacities to act and gain added value from EU multi-level sectoral social dialogue in different ways. These findings indicate three main challenges.

First, they stress the distinction between sectoral 'collective bargaining' and EU 'social dialogue'. In a national context, 'collective bargaining' refers to a political process where social partners are granted normative power to negotiate on conflicting issues and reach substantive agreements at any given level (Rodríguez Fernández 2000: 50-53), while EU 'social dialogue' refers to an exchange of information without a coordination function (Léonard and Perin 2011: 163). This hinders a coherent analysis of EU sectoral multi-level industrial relations based on comparable patterns or key dimensions (e.g. organizational density, collective bargaining coverage), challenging quantitative research and the methodology of Eurofound representativeness studies. Some key qualitative dimensions are simply not present at the SSDC level (i.e. strikes, the role of the State, the legal framework, workplace representativeness or dominant collective bargaining structures) (Visser 2009). EIRO studies often face the problem of missing data. When collected, their validity is questionable on account of great divergences in sectoral scopes of representation not usually made explicit by the researchers and policymakers involved (Keller and Weber 2011: 237). The methodological deadlocks of Eurofound representativeness studies reveal the latter's political role of legitimizing an existing *status quo* rather than openly assessing the representativeness mismatches and asymmetries between social partners.

Second, from a theoretical perspective, the findings question the regulative potential of EU multi-level sectoral social dialogue. Given the structural incongruences highlighted, local commitment to joint texts is unlikely, and EU social partners and institutions find it difficult to assess their implementation (Weber 2010: 497). In the SSDC Electricity, bilateral autonomous dialogue consists of 'soft' texts with limited regulative effects and partner-lobbying, thus confirming previous studies on SSDC functions (Dufresne *et al.* 2006).

Thirdly, from an EU policy perspective, a more detailed and strict legal framework, providing social partners with EU representativeness criteria and normative power, could encourage substantial negotiations and a greater politization of this EU arena. Its content would surely be controversial and subject to political negotiation, but a coordinated multi-level system of industrial relations seems more likely to develop under such conditions.

Finally, the findings suggest that current SSDCs may reinforce labour's structural disadvantages, raising strategic implications for national unions and ETUFs. National unions may find reasons not to commit to SSDC outcomes, especially while maintaining power in their national systems and agendas (Léonard and Perin 2011: 164). However, this is gradually changing: the crisis has consolidated both the EU economic governance and liberalized market, while at the same time driving labour market deregulation and the decentralization of collective bargaining at national level, thereby accelerating the decline of national multi-employer collective bargaining (Marginson 2015). While unions are losing their capacities and power resources at national level, this is even more the case at EU sectoral level where their resources are distant and limited. The current context suggests that arenas other than the sector may gain further importance, for example at transnational company level, where new opportunities to organize and develop substantial multi-level collective bargaining could emerge (Dufresne 2012: 118).

ETUFs face major strategic challenges. Hyman provokingly implies that they limit themselves to 'collective begging' instead of offensively mobilizing 'around an alternative vision of social Europe' (Hyman 2010: 21). According to my findings, the dynamics observed in the Electricity SSDC do not seem advantageous for European labour in terms of political influence or concrete improvement of working conditions, but could lead ETUFs to lose rank-and-file support and legitimacy. The results of the study suggest that labour needs to rethink its strategy and engage in greater *politization* (Erne 2015).

5. Conclusions

This chapter identifies the relevant structural context explaining how SSDCs influence power relations, dynamics and outcomes, ultimately hindering their development as social dialogue forums also encompassing

collective bargaining. These reasons are inherent to the way SSDCs are structured, including their relationships with different levels of industrial relations (sectoral and national [local] levels) in the EU architecture, as well as the institutional context in which they are embedded.

The SSDC Electricity case study specifically shows that its weak development as a collective bargaining institution is due to a) the lack of a strong negotiating position and strategy on the part of the two ETUFs and b) the employer organization's control over the scope of negotiations (due to its lacking mandate). It has been shown how these asymmetric capacities result from the absence of clear and direct representativeness criteria, the non-application of certain existing representativeness criteria on the employers' side (i.e. involvement in national collective bargaining structures) and established top-down sectoral definitions. After analysing the level of incongruence across representation levels (i.e. mainly affecting trade union organization and employers' capacity to negotiate) and linking this to the nature of SSDC outcomes (i.e. joint opinions for consultation purposes), the SSDC's architecture and functioning seem to better accommodate business interests than labour ones at EU level.

Although these conclusions are limited to the case study of the SSDC Electricity¹¹, and certain sector-specific factors may have steered the social partners towards partner-lobbying in this case (e.g. the priority given to the EC's energy policy agenda, the public sector partnership tradition), the findings suggest major challenges for research, policymakers and trade unions (national and European). The incongruences across levels make it difficult to collect and produce reliable data for studying EU sectoral industrial relations. The study presented here generates doubts about SSDCs' regulatory potential, calling on policymakers to define a clearer and binding legal framework for collective bargaining institutions at EU level. National unions may be tempted to redirect their efforts towards more promising arenas for negotiating with employers. Nevertheless, the need for a genuine and coordinated European system of industrial relations remains, though the pre-conditions for such a European system are unlikely to be met without addressing the structural obstacles set forth in this chapter.

11. See, in this same volume, the chapter by Mona Aranea ('Multi-level employment relations in the transnational corporation: evidence from Allianz SE'), whose findings suggest a more successful experience in the SSDC of the insurance sector.

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Chapter 9

Still struggling to connect the dots: the cumbersome emergence of multi-level workers' participation

Aline Hoffmann

1. Introduction

Remember the old childhood game of ‘connect the dots’? It is not until one draws a line between numbered dots arranged in a seemingly random swarm that a recognisable picture emerges. The solution to the puzzle lies in systematically and patiently finding the links between seemingly disparate points.

The challenge facing European industrial relations is much the same. For decades, we have been struggling to work out how to solve this puzzle of Europeanisation. Since the adoption of the Recast European Works Council (EWC) Directive in 2009, a new word has entered the discourse in European industrial relations in both policy-making and practice: ‘articulation’. It refers to what is arguably the most significant innovation in the recast EWC Directive, namely a remarkably consistent recognition throughout the revised text that transnational information and consultation needs to be systematically linked to information and consultation at local and national levels. While the word ‘articulation’ is not actually used in the Recast EWC Directive, it has come to refer to the action or manner of joining or interrelating these complex processes and actors. The underlying metaphor is that of a hinge or a joint, a construction enabling two things to be joined in such a way as to permit movement of each which is nevertheless not entirely independent of the other.

This chapter will argue that we need not remain overwhelmed by the swarm of dots which is all too often all we can see when approaching industrial relations within multi-national organisations. On the contrary, understanding the fundamental logic of multilevel industrial relations enables us to connect the dots of policy and strategy; sure enough, if we follow the logic and are not deterred by seemingly backtracking or crossing lines as we draw them, we will see a coherent picture emerge.

2. What's wrong with this picture?

The policy discourse and practical experience with European Works Councils has for decades been fraught with disappointment. EWC members and trade unions complain that the system doesn't work, that employers don't comply. Employers complain that EWC legislation is impracticable and burdensome. Case study after case study fleshes out larger-scale empirical surveys; the picture that emerges is one of relatively few success stories amidst a mass of disappointing or at best neutral conclusions. Such cases of extremely active EWCs include the much-studied General Motors, whose restructuring over the past decades has been accompanied by the EWC acting in close concertation with national-level trade union and workplace representation. At Bosch, up to ten extraordinary meetings of the EWC's Select Committee per year have quietly become the norm to deal with ongoing transnational issues. Participants at a recent conference in Leuven were surprised to hear that addressing the multi-level aspects of the Alstom GE Merger involved a total of 94 meetings bringing together different constellations of players from all the different levels. As clear as the justifications for these cases seem, they are nonetheless exceptions that prove the rule that effective multi-level articulation of information and consultation is not taking place on a wider scale.

This chapter will argue that while there may be some significant policy shortcomings, the main reason for this patchy record lies in the lack of a robust and above all shared understanding of what multi-level industrial relations around MNCs could be, and how it could function.

Looking at what we know about reality in practice, the vast majority of EWCs do not seem to be engaging in genuinely transnational information and consultation. A recent survey of EWC coordinators (Voss 2016) found that while there have been some positive developments, the overall experience with EWCs remains one in which EWCs are involved too late if at all, are not given adequate information or resources, and generally expend a great deal of energy to be noticed at all. Alarming, the report finds that most EWCs are unable to fulfil their role in restructuring situations; if they are not able to rise to the occasion on an issue for which they are indisputably competent, then the prospect of EWCs serving as a linchpin in a multi-level transnational model of workers' participation is bleak indeed. It is not necessarily for lack of contact between the levels, however: a recent analysis of agreements (De Spiegelaere and Jagodzinski

2015) found that nearly three-quarters of all EWC agreements in force had specific arrangements whereby the EWC was to communicate the results of information and consultation procedures to the national or local level. Arguably, reporting outcomes back to domestic workforces is only a part of the process, as will be seen below.

A recent analysis of the perspectives of management on the development of EWCs (Waddington *et al.* 2016) also finds significant compliance gaps: despite provisions to the contrary, information and consultation as a rule only takes place in the implementation phase, and not in the strategic phase. More pertinently to the subject at hand, the report concludes that the 'generation of means to articulate between institutions of workers' participation and social dialogue' remains a policy challenge: 'If multi-level governance in industrial relations is the policy objective, then the means to articulate between existing institutions is the prerequisite.' (Waddington *et al.* 2016: 78)

This chapter argues that the means *are* provided to a greater extent than is generally acknowledged, but that it is the will and perhaps the understanding of the parties that are lacking.

Certainly, there are compliance and enforcement problems. It can be particularly difficult in times of organisational restructuring, for example, to find the political and legal resources to engage the employer and the courts in a battle of enforcing procedures.

However, part of the reason for the inadequacy of most EWCs to live up to expectations seems to lie in a fundamental misunderstanding of the intentions of the Directive. In many countries' industrial relations systems, and for many players, the exercise of information and consultation rights may be well-established at the local workplace level, especially as it almost immediately demonstrates its usefulness by informing local negotiations, but the EWC as a necessarily multi-level application of this process remains an unfamiliar and cumbersome instrument.

Before exploring whether the essential tools are present in the EWC Directive in order to come to terms with the realities of transnational decision-making in European multinational companies, let us take a look at the nature and logic of information and consultation in the cumulative body of EU legislation and its transposition, the so-called 'EU *acquis*' or '*acquis communautaire*'.

3. Industrial democracy in EU legislation

Firstly, it should be borne in mind that workers' involvement can draw on a long and varied history across the EU. The fundamental principle that democracy does not end at the factory gates or the office door has found expression in a myriad of different approaches and instruments across the EU Member States; while each country has infused workers' participation with its own particular cultural and political flavour, the overall principle remains the same: workers have a say in a wide range of issues that affect their work, their working conditions, and their employing companies as a whole.

Nor is this idea new at the European level: for over a quarter of a century, EU legislators have taken up this consensus and sought to piece together a pan-European system of comparable rights. The EWC Directive was the first piece of EU legislation that attempted to frame it as a transnational process.

In 1989, building upon a few early legislative innovations going back as far as the 1970s, Article 27 of the Community Charter of the Fundamental Social Rights of Workers first defined the essential rights 'to be informed and to be consulted within the undertaking' and 'to take part in the determination and improvement of the working conditions and working environment in the undertaking'. These principles were subsequently made legally binding as the Social Protocol to the 1992 Maastricht Treaty and relevant legislation accordingly references them.

The operationalisation of these principles is indeed work in progress, but it is still worth stopping to consider the current state of play with particular attention paid to the potential of combining – articulating – these principles across levels and national borders.

Company-level information and consultation processes are foreseen for the general development of the company and workforce; particularly in cases of restructuring and change, employees are to be consulted on ways to mitigate the impact, including training, job definitions, contractual relations, etc.

The precise rules vary somewhat across Member States' transposition, but as a general rule, the company must give the relevant information early enough and in a way that enables employees' representatives to

study the data and recognise its possible implications for employment and working conditions in the company. Crucially, consultation is to take place with the appropriate level of management. Workers' representatives must be able to meet with decision-makers, get responses to their questions and opinions, and receive an explanation of company thinking, with the aim of reaching agreement on decisions.

The importance which the EU *acquis* attaches to workers' involvement can be seen in the fact that where a company's decision is related to employment and employment conditions, there is a specific role foreseen for workers' representatives: next to the cross-cutting general information and consultation rights described above, employee representatives have the specific right to be informed about the introduction and use of temporary and agency work, as well as about the use of fixed-term labour in the company as far as possible. Employers are to keep workers' representatives informed about part-time work in the company, and provide up-to-date information about the availability of part-time and full-time positions.

Health and safety policy has direct implications for working conditions and workers' well-being. Since 1989, a series of EU laws has fleshed out the principles of workers' rights to information and consultation on workplace health and safety, thus ensuring that workers' representatives are fully informed about safety and health risks, including work-related stress or harassment and violence at work, and about preventive measures in each workstation and job. To this end, workers' health and safety representatives have the right to access all the information they need to fulfil their role, including risk assessments, information about preventive measures and reports from inspection and health and safety agencies. This involvement is not merely reactive: next to the right to present opinions in consultative processes, health and safety representatives also have the right to put forward proposals.

Next to these overall rights to information and consultation, EU law requires additional information, consultation and participation for vulnerable workers, such as pregnant women or breast-feeding mothers, or those in jobs with extra risks such as carrying heavy loads, working in front of computer screens, or exposure to carcinogens, chemicals, mechanical vibration, excessive noise, electromagnetic fields and artificial optical radiation, such as ultraviolet, infrared and laser beams. EU law also provides specific information and consultation rights for workers in

surface and underground mining and drilling industries, and for seafaring workers.

4. Workers' rights when companies restructure

One of the most far-reaching and immediate consequences of many company restructuring measures within multinationals is the threat of collective redundancies. In light of the consequences for entire communities and the fact that multinational companies often have a choice of where to lay off workers, EU law has responded by attempting to create a more level playing field across the EU by harmonising to a certain extent the rights conferred on employee representatives and the obligations imposed upon employers.

In effect, EU law on collective redundancies opens up many major opportunities for employee representatives to get their foot in the door early, rather than being condemned to wait and face the consequences of restructuring decisions. And thanks to EU law, these rights are more or less the same across the EU, meaning that no country is significantly less regulated, and that the rights can be more easily compared and combined strategically. In effect, the nucleus of a single European system of individual and collective employment rights exists.

First, there are important obligations on the part of the company to fully inform the workforce in order to enable workers' representatives to respond; this should include, in writing, the reasons, the number of workers normally employed and to be made redundant, and the period over which the redundancies will take place. Furthermore, employers must also forward these details in writing to the competent public authority, including the details of consultations with workers. To ensure transparency, workers' representatives are to receive a copy of this notification and are entitled to submit comments to the authority.

The importance of these sources of information should not be underestimated. First, the fact that the relevant information is provided transparently to the competent public authority represents an important test of the veracity of the information. Secondly, in the case of transnational restructuring, where employee representatives make the effort to check and cross-check this information across borders, various inconsistencies in the ways the matters are dealt with may be revealed.

Taken together, the information gleaned from this information phase is invaluable when preparing for local negotiations. The information asymmetries that plague much collective bargaining can thus be significantly reduced.

Moreover, EU law lays down that when considering collective redundancies, employers must immediately launch consultations with workers' representatives about ways of avoiding redundancies, reducing the number of workers affected, and mitigating the consequences through social measures, such as support for the deployment or retraining of redundant workers. Furthermore, these consultations are to be conducted with the aim of reaching an agreement, which effectively opens up an option to negotiate collectively on the subject. In many Member States, workers are explicitly entitled to call on the support of experts where the consultations are technically complex, which can go some way towards reducing the information asymmetries between the social partners.

Thanks to EU legislation, whenever businesses or parts of businesses are being transferred to a new owner, then potentially affected workers across the EU have comparable rights to information and consultation, well before any changes are enacted and in any event before employment or conditions of work are directly affected. Above all, these rights are combinable: exercised at both the local and the transnational level, they can be combined to yield a more comprehensive understanding of the matter at hand and the employees' interests which may be at stake.

All companies involved in the transfer of ownership must inform all respective workforce representatives about the date or proposed date of the transfer, the reasons or motivation for it, and must present the legal, economic and social implications for employees. The companies must also consult workers' representatives in good time about any plans they have for the future of the workforce, with the aim of getting their agreement. If the transfer of ownership is actually taking place for an entire multinational company, and all the local employee representatives are thus engaged in parallel in local-level information and consultation processes, should they not be pursuing transparency and comprehensiveness by enacting these processes at the transnational level at the same time?

What's more, EU law also ensures that employees' rights and the terms and conditions of their employment as laid down in employment

contracts and collective agreements do not automatically expire with the change of ownership. Instead, a minimum period of transition is foreseen. The transposition of these provisional arrangements may vary from member state to member state, but the rules serve to maintain the status quo for a provisional period in order to give the social partners the chance to adjust to the new situation. Employee representatives throughout the multinational can take advantage of this status freeze to coordinate with one another the information and consultation arrangements under the new owner.

5. Workers' rights in EU company law

Workers' rights are also laid down in EU company law, not just in employment law. For example, the Takeover Bids Directive regulates a company's obligations to disclose information about plans to take over another company. This legislation is designed to help protect the interests of stakeholders – of which the workforce is clearly one. The bidding company must publish an offer document which also lays out the prospective impact of the takeover on jobs, conditions of employment, and on the companies' locations. All documents must be promptly made available to workers and workers' representatives from all companies involved in the potential takeover. In addition, as stakeholders, the latter must be given an opportunity to express their views on the foreseeable impact of the takeover on employment. In effect, the workers' representatives enter into a sort of consultation with shareholders of the target company through a right to append opinion to the board's opinion. The company subject to the takeover must also publish its opinion of the bid and its prospective effect on employment and the future of the company, and must give this to the workers' representatives. If workers' representatives of the target company draw up their own opinion, this must then be appended to the official documents. Companies are also obliged to publish information on certain existing agreements regarding dismissals. What is striking about these rights, compared to many of the more internal and procedural information rights laid down in employment law, is that in many Member States the workers' representatives have the right of access to the full and official documentation required by the regulators. This dramatically increases the transparency and robustness of the information provided to the workers' representatives.

Taken together, these workers' rights and company obligations yield an impressive source of information – and indeed, potential influence. And yet, as found by a recent ETUI study of the application of the Takeover Bids Directive (Cremers and Vitols 2016), employee representatives seldom make full or even partial use of these rights. The research found, however, that the workforce is often informed too late for any action to have much effect, so there is clearly also a problem of compliance.

EU company law providing an optional framework under which companies can merge across national borders also lays down important information and consultation rights. As outlined above, employee representatives have the general right to be informed and consulted about a potential cross-border company merger. This is laid down in national law as a right for local employee representation, and as a rule, most EWC and *Societas europaea* Works Councils (SE-WC) agreements include mergers and acquisitions in the catalogue of topics on which transnational information and consultation is to take place (De Spiegelaere and Jagodzinski 2016).

The EU's Cross-Border Merger Directive contains involvement rights which are broadly similar to those laid down in the Takeover Bids Directive, and which thus also recognizes that the workforce is an important stakeholder in a company's future. Hence, the Cross-Border Merger Directive requires the managements of the merging companies to jointly draw up a merger plan laying down the complete terms of the proposed cross-border merger, including, where appropriate, arrangements for involving workers in the board-level governance of the merged company. The merging companies' managements must also compile a report explaining the legal and economic aspects of the merger and its implications for employees; this report is to be made available to the workforce or their representatives at least one month before each company holds its general meeting to approve the merger. The workers' representatives may also append their own opinion to the management report, to be distributed to the shareholders.

In light of the immense potential to link information and consultation at different levels of a multinational company about a measure as far-reaching as a merger or takeover, one might have expected many more EWCs and SE-WCs to have been active in this area. However, preliminary findings of a forthcoming ETUI study (Cremers and Vitols forthcoming) on the impact of workers' participation on the procedural aspects of cross-

border mergers suggest that these rights have not been extensively used so far either at local or transnational levels. While the potential sources of employee-side influence are slightly stronger in the Cross-Border Mergers Directive than in the Takeover Bids Directive, their usefulness is somewhat compromised by the fact that there are no penalties for false prognoses; for example, the merger plans almost invariably announce that there will be no effects on employment, yet experience repeatedly teaches us otherwise.

Nonetheless, in light of the potential strategic usefulness of these rights to early and comprehensive information and consultation of the workforce, and the potential influence gained by appending the employee side's assessment of the merger or takeover to the official documentation, this seems to be a field that would benefit from more attention by trade unions, EWCs and other employee representatives at both the national or the transnational levels of their activity.

6. How to connect the dots

EU legislation on European Works Councils (EWC) and the Representative Body foreseen in the *Societas Europaea* (SE-WC) provide for transnational information and consultation in multinational companies and represent one missing link in the construction of a genuinely cross-border system of worker participation geared towards the decision-making realities of multinational corporations. While the modalities of their operation may vary by company, EWCs and SE-WCs have the right to be informed and consulted about the possible implications of transnational measures planned by the company (De Spiegelaere and Jagodzinski 2015).

The original EWC Directive passed in 1994 was the culmination of nearly a quarter of a century of fruitless debate. Unable to overcome the impossibility of defining a one-size-fits-all model of European workers' rights to information, consultation and board-level employee representation, the 1994 Directive privileged negotiations conducted against the backdrop of a basic model of transnational information and consultation. The original 1994 Directive was thus much more about how the negotiations themselves were to be conducted than about the substance of information and consultation. Passed in 2001, the SE Directive also included provisions for transnational information and consultation which slightly improved the vaguer provisions in the 1994

EWC Directive. But it was not until the Recast EWC Directive was passed in 2009 that some of the more glaring omissions of the original EWC Directive were rectified. Major improvements included basic definitions about what transnational information and consultation was meant to be about, which the original EWC Directive had effectively ended up leaving subject to negotiations.

As laid out in Article 2 and elaborated upon in Recitals 21, 22, and 23, information provided to the employees' representatives must be sufficiently extensive and received in time in order to enable the latter to carry out an in-depth examination of possible consequences and prepare for consultations where appropriate. Furthermore, these consultations must take place at the appropriate managerial level, in the appropriate form, with the appropriate content and at the appropriate time so that the opinion of the EWC can be taken into account in company decision-making regarding the proposed measures. Finally, the transnational competence is also laid out quite clearly in Article 1, sentences 3 and 4, and contextualised in Recitals 12, 15 and 16 as going beyond a simple geographic explanation of 'at least two countries' affected; on the contrary, whether the EWC is to be informed and consulted depends on the nature and scope of the potential impact of a proposed measure as well as on the managerial level involved.

7. The EWC is a bridge, not a detour

The EWC is intended to pick up where national levels of information and consultation reach their limits. These limits are firstly reached in terms of the content of the matter under consideration: within multinational companies, many policies do not originate at local or even national level; they are thus likely to have a greater scope of possible implications that cannot be grasped at the local level alone. Secondly, limits are also reached in terms of competence: where decisions are taken beyond the sphere of local information and consultation, neither local nor the national management is in a position to deliver relevant and complete information and engage in meaningful consultation.

These facts were indeed not lost on the original architects of EWC legislation. Why do we have transnational information and consultation in the first place? The original 1994 EWC Directive, particularly its recitals which serve to justify the motivation and rationale for the EWC

legislation, already provided some of the answers; some of these were elaborated upon and specified in the later Recast EWC Directive of 2009.

Picking up a text already present in the 1994 EWC Directive, Recital 10 of the Recast EWC Directive identifies the key task at hand: the Europeanisation of companies must be matched by the Europeanisation of workers' participation:

'The functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, take-overs, joint ventures and, consequently, a transnationalisation of undertakings and groups of undertakings. If economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees who are affected by their decisions.' (EWC Recast Directive, Recital 10 and preamble to 1994 EWC Directive)

Both the original 1994 EWC Directive and the Recast EWC Directive clearly recognize the shortcomings of the existing information and consultation regimes when it comes to their effective application in a multinational setting, in which the locus of decision making may well be located beyond the reach of established national- or local-level information and consultation mechanisms and procedures. The risk is identified that different workforces will be treated differently depending on the country in which they work unless a coherent and unifying transnational approach is found:

'Procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions affecting those employees. This may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings.' (EWC Recast Directive, Recital 11 and preamble to 1994 EWC Directive)

While the original 1994 EWC Directive somewhat lamely sought to 'ensure that the employees of Community-scale undertakings are **properly** informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed', Recital 12 of the Recast EWC Directive directly confronts this mismatch

between existing information and consultation rights at local or national level and workers' representatives access to the actual decision-making locus:

'Workers and their representatives must be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence and scope of action of a European Works Council must be distinct from that of national representative bodies and must be limited to transnational matters.'

Recital 16 develops the idea of a hierarchical rather than a geographic understanding of competence, while still allowing for a geographical understanding of the spillover, intended or otherwise, of the consequences of a decision or measure: 'The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves.'

This hierarchical definition of the term '*transnational*' represents one of the single most important clarifications of the Recast Directive. After years of often fruitless debates in EWCs as to whether a measure affects more than one country and is thus a matter to be considered by the EWC, the Recast EWC directly confronts the realities of transnational company management: in a process of simultaneous centralization and decentralization of policy-making, key strategic decisions are taken by transnational management levels. It does not matter in which country this management is physically located, it matters only that they are hierarchically above those whose role is to implement, perhaps with some scope for local adaptation, those transnationally or centrally defined policies.

In essence then, the Directive is founded upon a highly functional understanding of multi-level information and consultation: one in which the rights to information and consultation are exercised at the precise and relevant locus of decision-making. This locus depends on the decision at hand and is distinct from other levels of information and consultation. Yet it is not only the hierarchical level of decision-making which matters, it is also the geographical scope of its potential impacts that define an issue as transnational or not. In this understanding of multi-level division of competence, each level of information and consultation operates in its own discrete sphere.

In this conception then, the EWC acts as a bridge between information and consultation at the local and national levels. It serves to collectively represent the European workforce in information and consultation processes, and, crucially, to enhance and strengthen the role of local employee representatives by giving them the resources to address the big picture.

8. Follow the decisions to make the connections

Operationalising its insight that transnational decision-making within transnational companies is a complex and multi-level process, the Recast EWC Directive goes to some length to describe the need to build links between information and consultation processes.

The insight into the hierarchical rather than geographical understanding of competence, as encapsulated in Recitals 15 and 16 of the Recast EWC Directive, is laid out clearly in Article 1(3) of the Recast EWC Directive. The information and consultation processes must be separate and distinct – yet they must be (better) linked. This is established in Recital 7, while Recital 21 sets out the task to not only bring the definitions of the concepts of information and consultation into line with more recent EU legislation, but also to permit ‘suitable linkage between the national and transnational levels of dialogue’.

Recital 37 describes the essential framework for this interlinkage that the legislator had in mind, and Article 12 spells out the relationship between transnational information and consultation and other European and national-level legislation very clearly: information and consultation at the different levels are to be linked with due regard for the competences and spheres of action of each.

Interestingly, the original internal documents developed at the very beginning of the recasting process contained a more sophisticated prescription for this linkage: transnational information and consultation processes were clearly prioritised as a precondition for adequate information and consultation at national/local level. The latter were not to be considered complete until the transnational process had run its course.

By the time the documents were released into the social partner consultation process, however, this more ambitious approach, which

would have harnessed the obvious interdependence of multi-level information and consultation processes, had been replaced by a concept which only sought to privilege the launch of transnational information and consultation processes, but not their completion, as a prerequisite for the completion of local information and consultation.

Recognising the complexity and above all the company- and case-specificity of such linkage, the Directive does not seek to prescribe the process in any detail; rather, the parties negotiating the EWC agreement are charged with defining their own tailor-made arrangements. Recital 29 provides some context for the requirement in Article 6 (c) to define 'the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies in accordance with the principles [of subsidiarity] set out in Article 1(3).'

9. Cut the drama: transnationality is becoming the rule, not the exception

As explained above, the EWC Directive had to provide a solution to the old dilemma of defining structures for an infinite number of company structures and transnational scenarios. The solution found was to establish a coherent but strictly minimalistic fall-back model.

Here, at least one meeting of the EWC is foreseen as a matter of course; other meetings are to be held as needed – i.e. the advent of issues with possible transnational implications. It is here that the definitions play the critical role: by defining the transnational competence of the EWC, they provide the legitimisation for any further meetings.

The language used in Article 1 e (3) of the Directive's Subsidiary Requirements unfortunately overdramatises what the Directive's conception of multi-level information and consultation, as laid out so clearly in its definitions of information, consultation and transnational competence, would lead us to expect normal practice to be.

'Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings

or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed.’

The term ‘exceptional circumstances’ refers to nothing more than that the minimalist ‘rule’ foreseen in the subsidiary requirements that the EWC shall meet at least once per year may be broken where transnational matters arise at a point in time outside that scheduled annual meeting. In fact, the equally dramatic-sounding ‘extraordinary meeting’ that has become a commonplace term in EWC and SE-WC agreements and hence in practice, never actually occurs in the text of the Directive.

Another result of this overdramatisation is that it seems to have been forgotten that EWCs and transnational information and consultation are about more than restructuring. To be sure, restructuring processes serve to focus attention most acutely on the possibly far-reaching impact of restructuring, not least of which is the loss or deterioration of employment. However, as argued above, the intentions of the Directive were clearly to recalibrate the machinery of information and consultation in a uniting Europe so that it is geared toward transnationality. Next to the wide-ranging definitions of information, consultation and the transnational competence of European Works Councils, the subsidiary requirements are also instructive about the intentions of the legislator. According to these, transnational information goes much further than restructuring and the cataclysmic consequences of transfers of production to include ‘in particular [...] the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures [...] and collective redundancies.’

Of course, restructuring, transfers of production, cutbacks and closures, and collective redundancies receive special attention because of their potentially damaging and lasting impact on employment, but it is short-sighted to allow the impact of the Directive to be reduced to this. On the contrary, the very justification for the original EWC Directive, and the 2009 definitions of the transnational competence of the EWC and local- and national-level players to engage in information and consultation all point to a wider, more realistic interpretation of the role of transnational information and consultation.

10. The complex realities of multi-level company strategies

Let us now have another look at what is actually happening in multinational companies. Beginning with the obvious example of company restructuring where transnational management decides to transfer production or even just change the way it produces goods or delivers services across countries, the impact is rendered all the more complex where the production of goods or the delivery of services take place within an internal supply chain, in which different sites or parts of the company are suppliers or recipients of parts or services. In all events, such restructuring is likely to have direct consequences on the volume of incoming and outgoing products or services. There may also be different technical specifications. There may be parallel production or service providers within the company which will be impacted. Thus, next to its impact on the retention, creation or destruction of jobs in absolute terms, such restructuring can also be expected to hold implications for local job content and job classification. It may affect local working conditions and personnel relationships, particularly as they are operationalised in lines of reporting, supervision, evaluation and performance measurement. Clearly all of these changes lie directly within the mandates and rights of local employee representatives, in terms of both information and consultation procedures, as well as bargaining and negotiation.

Obviously, restructuring measures clearly create knock-on effects immediately felt by the workforce. However, transnational management also continually seeks to optimise procedures and policies in order to improve overall corporate performance. One strategic response of multinational companies is to standardise certain policies at the transnational level for implementation at national and local levels. Ongoing ETUI research (Dörrenbächer *et al.* 2016) has identified a range of cross-border standardisation strategies and trends in European MNCs. These include process standardisation in the areas of compliance, human resource management and IT strategies, particularly with respect to 'big data' and the increasing digitalisation of production and services. A renewed focus on lean production strategies is similarly leading to cross-border standardisation approaches, while the impact of outsourcing is also found to play an important role.

What are the likely cross-border implications of such standardisation processes that concern EWCs and local employee representatives and

trade unions? If for example a company decides, for reasons of efficiency and control, to centralise certain so-called 'back office' functions such as IT and the IT helpdesk, payroll, or finance and controlling, then this will have an impact on the work of employee representatives at the local level. Or perhaps the company intends to introduce a new management software directly linking Human Resources Management data, such as working time and performance indicators, with financial indicators in an attempt to better quantify the use of human resources as part of overall resource and cost structures. Next to their potential impact on jobs in absolute terms, both of these examples have obvious implications for the protection of personnel data and privacy. With the advent of 'big data', the prevailing principle that data may only be used for the purpose for which it is collected no longer holds: through the digitalisation of virtually all internal company processes, data is being collected all along the way more or less automatically. It should be recalled that across the EU, employee representatives play an essential role in monitoring the collection and use of personnel data, particularly when that data can be used to monitor employees' performance and behaviour. Where companies have implemented cross-border IT standardisation, this data is collected locally, but stored and possibly analysed elsewhere. It is thus removed from the reach of local employee representatives. Some EWCs have only just begun to try to address this issue, seeking to regain access to transnational decision-making in order to better fulfil their monitoring role at the local level.

To take another example, the creation of cross-national teams may be an excellent means of harnessing resources, competences, and creativity across borders, but it complicates workers' participation immensely. Geared towards local management and reporting structures and indeed the physical presence of colleagues and supervisors, existing workers' participation structures are unable to cope with personnel relationships which extend beyond national borders. Lines of reporting (Who's my boss? Where's my boss?) are interrupted, which becomes a problem for employee representatives at the latest when conflicts arise about performance evaluation and appraisals, or disciplinary measures.

Returning to the vast range of issues on which employee representatives are to be informed and consulted at the local level, the case for better articulation of these processes is obvious. In the case of restructuring, the case is clear: it goes some way towards ensuring the transparency of the information and consultation procedures if all site representatives are

given the same information at the same time, especially since the affected workplaces may be in competition with each other for concessions and investment.

Take the example of health and safety regulation: Clearly, within multinational companies, any hazards are not uniquely present at each local workplace; rather, they are replicated across the company wherever the same work is being carried out. Yet presumably, the legally required information and consultation procedures are all centrally coordinated, but replicated in the same way at each local site without any coordination or exchange amongst the employee representatives across sites.

EWCs are able to engage proactively with the transnational dimensions of company policy. Would it not make more sense to join up the information and consultation processes by bundling them via the transnational EWC information and consultation procedures? Would it not create opportunities to exchange and even support the extension of best practice, to pool strengths and compensate for weaknesses? Would it not increase the transparency of the information and consultation procedures of all site representatives?

11. Articulation: form and sequence follow function

Much has been made in practice and academic debates of the need to properly sequence information and consultation processes. As Dorsemont and Kerckhofs have demonstrated, there is actually no clear solution: national laws and jurisprudence contradict one another about the 'correct' way to proceed (Eurofound 2015) if either level contests the prerogative of the other. Fortunately, in practice it may prove a bit easier to cope with when applying the articulation logic presented here: The form and sequence follow the function of information and consultation procedures at national and transnational levels. In other words, each level has its own particular angle on the information and consultation procedure.

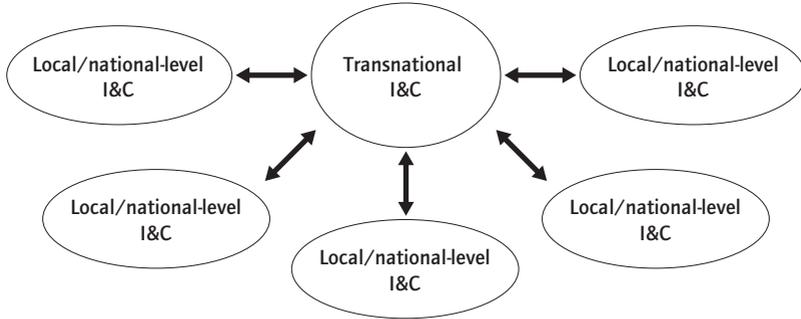
If we start with the issue or measure itself and consider its possible impacts, then it may be easier to identify which players need which information at what stage in the decision-making process in order to satisfy their information and consultation needs at transnational, national, and local levels.

Local information and consultation may be deeply rooted in its national context, for example if the matter at hand touches upon the application of national laws or collective agreements; however, the transnational context will be essential in order to better assess the motivations and consequences of the measure. Equally, the transnational information and consultation processes need to be informed by national/local specificities.

Each level has own rights, informational needs and justifications. They may overlap or coincide, they may address distinct aspects of the same issue, but they are not independent of one another: on the contrary, they are closely interdependent. It is only when information and consultation is conducted iteratively, for example first at the transnational level, then the national/local level, then back at the transnational level, that the needs of each level can be met. And, crucially, if the process is iterative, alternating between levels, then the whole question of sequence, or who is informed first, become moot.

Figure 1 **Multilevel information and consultation**

The process is iterative until the information and consultation (I&C) needs are met:



If every level plays its role, then sequence does not matter.

Source: own elaboration.

12. Conclusions: connecting the dots means combining and alternating complementary information and consultation rights

As demonstrated above, the actual rights to information and consultation at the different levels are essentially the same. The key lies in combining the exercise of these rights with the insights gained through their exercise at local, national and transnational levels.

The challenges faced by employee representatives operating within the multi-level environment of transnational organisations are not new: they have been there all along. This chapter has argued that the tools to approach these challenges are largely provided in the accumulated original EWC Directive and its Recast, as well as by drawing on the wide range of EU legislation ensuring information and consultation rights for employees and their representatives.

For decades, the debate around the EWC Directives and practice has focused on the shortcomings of the legislation, its implementation in national law, and the difficulties of breathing life into these laws in actual practice. But perhaps practice has been too much held back by a limited interpretation of what the EWC Directives have actually delivered.

By starting with an integrated approach to information and consultation at all levels, the steps to follow can be reliably guided by the dynamics of the issue at hand. The rudiments of the rights are there at local level and are roughly comparable. The key is to apply them at the different levels intelligently, solidaristically, strategically and pragmatically.

It is key to identify those parts of the 'narrative' of EWC practice and the Directive which effectively hold back progress. Chief among these misconceptions is the focus on a single annual meeting as the sole expression of an EWC's existence. On the contrary: the annual meeting is useful to establish a robust and reliable context in which employee representatives can grasp the transnational dynamics of the issue they experience and negotiate about locally. But the real work of the EWC takes place between the annual or semi-annual meetings: it is in insisting on timely, written and comprehensive information about planned transnational changes in strategy or organisation. Depending on the potential consequences of the issue at hand, it is about the EWC or its select committee and representatives of the affected sites rising to the

occasion and insisting on a meeting or a written procedure for the purposes of information and consultation which is appropriate to address *any* transnational issues as they arise.

There is one major caveat, however. In the realities of transnational organisations, there are often at least three levels; between the local sites and the transnational EWC level, there may be a regional, a divisional or a national level of company organisation, which may or may not have the respective information and consultation institutions in place. It is here, between the activities of the local employee representation and the transnational employee representation, that we often lack the structures to adequately communicate between levels.

Information and consultation across levels in a multinational company is a process, not a one-off event. EWC work takes place all year long, in between plenary meetings. It is time to defuse the drama and the exceptionality of the EWC fulfilling its role, which is to be that of a bridge, not a detour.

As the EWC Recast Directive makes abundantly clear, transnational information and consultation in the EWC – and by extension in SE works councils – does not hover above the other information and consultation institutions and processes; rather, it must be dynamically and flexibly linked to them. Only then can each player and each institution at each level play its role to the fullest, informed by the insights gained from information and consultation at the other levels. Only then can workers' participation be brought to bear on the complexities and vagaries of transnational company policy and strategy. Only then can a coherent picture emerge out of the mess of numbered dots on the page.

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Chapter 10

Unhinging social dialogue: a review of the politics of pacts and the diverse uses and transformations of the concept of social dialogue

Miguel Martínez Lucio

1. Introduction

The aim of this chapter is to consider some of the more political and ideological challenges facing social dialogue in the European Union (EU). While the concept of social dialogue is quite broad and used in a variety of ways, its importance to the practice and identity of labour and employment relations within the EU cannot be underestimated as it is seen as a differentiating characteristic when for instance comparing the EU and the US. However, the definitional basis of the concept is open and, in many respects, the way it is evolving – and perhaps fragmenting – as a concept and a series of organisational and institutional practices is a matter of concern, as it is an important part of the influence organised labour and workers may have in relation to employers. This may even be the case for the role of human resource managers and related constituencies. The problem is that we are seeing changes that suggest that we are witnessing weaker forms of worker influence (although not a definitive and terminal decline) and more importantly, within the EU, a fundamental shift in its purpose and ideological grounding.

The chapter will argue that structural social and economic factors that have weakened the role of organised and coordinated dialogue within the EU since the 1970s have been joined by political and ideological factors which have shifted the meaning and orientation of social dialogue, attaching it to a more neo-liberal and employer-driven agenda. The chapter will also avoid the episodic and heroic mythologizing of change and decline partly because workers and many worker organisations and representatives have been proactive in the way they have responded to a hostile set of economic, social and political environments. However, the subtle – and sometimes not too subtle – shifts in the way social dialogue has been linked to neo-liberal and more market-facing agendas are, in part, the outcome of a lack of political will to sustain and enhance worker engagement and participation: especially as social dialogue, and labour

and employment relations more generally, have in many cases been redefined around business agendas and a particular view of productivity and efficiency.

These latter factors have led to the development of what the chapter refers to as a relatively *vacuous social dialogue*, where the movements and articulations within the relations between management and labour – and the perceptions from policy circles about these relations – are based on a lack of political intensity, social purpose and longer-term visions of humane labour and employment relations. It is, instead, based on a vision that labour and employment relations can be enhanced by ignoring the reality of difference, dialogue and conflict, and by reducing these to the needs of the ‘economic’/‘business’ community. This shift frames and begins to limit the impact of even those more interesting developments in EU labour and employment relations that the EU has – under worker pressure – developed in terms of worker involvement at national and transnational levels in the past. This chapter will look at these curious shifts.

It will also argue that the consequences of such political and organisational shifts potentially dismantle a set of relations and interactions based on complex sets of interactions and structures between capital and labour established over time: the failure within policy circles to comprehend the nature of such exchanges within labour and employment relations illustrates the declining understanding of this area of practice and theory, as well as a failure to comprehend the importance of multi-level political *commitment* and reciprocity to economic development and change: something even employers in some cases are suggesting play a role in social and economic terms. This is a broad and multi-disciplinary subject area and the chapter presents a view informed by a series of academic interventions and personal reflections based on experience of engaging with the EU and its social organisations. The focus is on general developments with an eye to local level changes and outcomes, and their political context.

2. The context and meanings of social dialogue

One of the problems of writing about social dialogue is that the use of this term has become somewhat obscured – and the author is not exactly convinced that this chapter will extend the meaning and clarity related to it, given its slightly different purpose. On the one hand, the term is

normally conflated with questions of top-level tripartite relations and consultations between the state, capital and labour. It tends to dovetail with the question of corporatism – or neo-corporatism, especially in the form of its societal, as opposed to state/authoritarian, variants (Schmitter 1974). This is seen as being a fundamental feature of decision-making within specific systems, having a stronger emphasis on regulation, labour rights and socially oriented economic policy, although even during the post-World War II period such relations varied in scope and intensity within developed countries (Lehmbruch 1984). To this extent, social dialogue has been very much associated in some approaches with the elite framing of employment and socio-economic policy. Hyman (2010) argued that such forms of corporatism have evolved into focusing on, and being as much about, responses to economic crisis (he cites the work of Avdagic *et al.* 2005, amongst others): thus, it is a move away from a much longer term, proactive corporatism. Such approaches may vary, covering a range of issues such as wage containment or initiatives to support restructuring. So, there has always been a question mark over the imperatives driving these forms of decision-making in terms of their being more reactive in many cases, rather than proactive. Nevertheless, these elite-level relations and processes form a key part of the work of political scientists on the subject (Compston 2003).

On the other hand, social dialogue has been increasingly used to emphasise the importance of consultation and/or collective bargaining (and joint problem-solving between management and trade unions) at sector, company and workplace levels. It has evolved into a broader concept – although when this shift actually happened is a matter for discussion and sincere empirical investigation in its own right. Within the Varieties of Capitalism literature (Hall and Soskice 2003) reference to relations and dialogue at various levels between the social partners, and between them and the state, are seen to be a key feature of coordinated market economies, with their emphasis on social, regulated and more collaborative forms of economic decision-making. What is more, social dialogue has begun to represent some of the supposedly democratic values and commitments to conciliation which are seen as central to specific regions of the European Union. It has steadily taken on a mythical feature: the counterpoint to the harder and market-oriented aspects of the new global economy.

This, in turn, has led to increasing interest in the way different activities in relation to social dialogue are combined across the different levels, and

the way the stronger systems seem to be the outcome of greater coordination between these levels (Crouch 1993; Pulignano 2011). Keune and Marginson (2013) have argued that we need to widen our analysis of the conduct of labour and employment relations in terms of levels and players (including a greater sensitivity to the transnational, as well), as social dialogue is constructed in a variety of ways and means. Furthermore, many factors contribute to the effectiveness and role of social dialogue and, especially, to forms of trade union engagement and collective bargaining across countries, which suggests that we need to be careful when generalising. For example, Pulignano *et al.* (2016) have argued that various local and contextual factors continue to frame the nature of trade union activity and responses to change in multinational companies; for example, subsidiary-level contextual factors in the form of competition, technology, and product alongside inter-subsidiary dependencies or integration. Furthermore, the nature of collective bargaining arrangements influences the ability of organised labour to balance or choose between security and flexibility approaches to restructuring (*ibid.*). Hence, we cannot ignore the complex construction and context of social dialogue broadly speaking, as we will discuss in more detail later.

Nevertheless, social dialogue is not without its critics and should not be seen as some universally accepted norm or activity. Those on the political right point to the way it can limit managerial prerogative and undermine the role of the market as an allocator of resources: it is seen as providing trade unions – and, presumably, radical elements within them – with political resources and access to institutions that further their particular interests. Alternatively, critics from the left – very broadly speaking – argue that any ‘consensus’ based on some form of social dialogue is not so much a product of social dialogue *per se* but that, instead, it could be argued that social dialogue is a product or outcome of political and social worker initiatives which challenge capital (see Ramsay 1977, for a related argument on worker participation more generally and how it responds to the changing balance of power between capital and labour). Social dialogue is not something that employer classes and the political right *inherently* support. Even in the case of Sweden, the systematic approach to social dialogue was based on the fact that in the earlier periods in the 20th Century the emerging power of workers and their trade unions had contributed to employers having to accept the embryonic new social democratic order (Fulcher 1988). Engagement with ‘social dialogue’ is therefore not clearly motivated by altruistic or social agendas. Furthermore, Panitch (1981) argued that social dialogue – although that

may not be the precise term that he utilised – is sometimes used to incorporate trade union leaders within more conciliatory and less militant economic and social agendas. There is thus a set of concerns about the nature of social dialogue and its rationales from such critical perspectives. Nevertheless, the current Great Recession – together with the steady move to the neo-liberal right and new xenophobic (and anti-trade union) politics – are leading to a more compromising and positive view of the importance of social dialogue amongst the more critical traditions of the left (although one cannot conceal the fact that there remains concern about its limited roles and somewhat reactive nature within such constituencies).

Thus, any discussion of social dialogue has to be mindful of the way it has evolved and the way it varies as a real practice. It has evolved into a concept representing a multi-level set of relations which include harder forms, such as bargaining, and softer forms, such as consultation thus creating a range of tensions and political differences in relation to it.

3. Embedded pressures on social dialogue (from the 1970s to 2008)

It is ironic that, when we discuss the pressure on social dialogue, we have to compartmentalise the different phases and factors that have been undermining the nature of social dialogue since the 1970s, when the first major economic crisis challenged the social-democratic consensus of the post-World War II European context. Aware of the diversity of this period, the pressures on social dialogue are not something recent – although one could argue that their current intensity is. There are many ways of conceptualising such changes and their consequences but we can point to some that have a very specific effect on labour and employment relations in terms of the nature of its social and spatial dimensions (see Martínez Lucio 2006 and 2016).

Within the workplace and employing organisations, there is an ongoing ‘decentralisation’ of, and in, production: central to this is the issue of outsourcing and the greater use of agency-based and indirect labour (MacKenzie and Forde 2006). These can not only undermine the regulatory scope of trade unions, but also challenge the ability of management to coordinate the organization of work and employment. Second, the way management subsequently evokes the market and links

workers' interests to those of the customer, in terms of the need to placate customer demands, has become more visible. The marketised focus on the customer and greater performance management (Garrahan and Stewart 1992) is an important development which aims to swerve loyalties away from unions and the collective and which creates new interests within the workforce (although outcomes vary, to say the least). Third, many of these changes occurred alongside profound social transformations in the workforce in the form of their greater diversity and a greater degree of individualisation and change, challenging the legitimacy and effectiveness of trade unions. (One could argue that the emergence of the private service sectors and the relative decline in various national contexts of the manufacturing and public sectors has undermined a more collective and coordinated pattern of labour relations and regulation. The presence of certain North American multinationals in the range of service sectors in the European context may also weaken the role of trade unions and more coordinated forms of collective bargaining.) Fourth, at the level of the state there has been a decline in its formal role in economic and employment terms, which means that unions cannot readily rely on it. This increasingly neo-liberal turn has made it more difficult for the unions to influence employment and social policy. Fifth, employers have turned their gaze away from the national space towards a strategy of greater mobility between national spaces, thus questioning alliances made with organised labour in the past. Sixth, within the communicative sphere there are broader spaces which focus on a more individualised set of communications and media activities. That is not to say that trade unions have not responded to these different changes and explored opportunities (Martínez Lucio 2005; 2016) but, rather, that the nature of 'traditional' social dialogue may be challenged by such developments. Sarfati (2003) points to the role of changing labour market demographics and the persistence of unemployment, and new forms of social exclusion, in creating challenges for the state: such challenges may be exacerbated by the adoption of neo-liberal responses that in turn further accentuate the state's problems of capacity due to having to cope with ever wider social problems (Rubery 2011). Social and economic change can reduce – in such a neo-liberal context – the ambit of trade union influence. Even in the context of a system lauded for its approach to social dialogue such as that in Germany, with its forms of coordination in terms of labour and industrial issues, there are concerns that, while 'coordinating institutions help the German manufacturing sector to remain competitive, they do little to preserve the previously egalitarian nature of the German model' (Hassel 2007: 272). In the 1990s, a seminal reflection by Wolfgang

Streeck (1994) argued that, within the EU, business was becoming a major obstacle to the social narratives and aspirations of the state and labour in a post-Maastricht context. He posited that there was a part of the European capitalist class that was increasingly less interested in implementing social dialogue and was increasingly encouraging policies aimed at labour adaptability and effectiveness. Crouch (2013: 123-126) notes how from the mid-1990s onwards the question of labour market policy shifted from a social welfare perspective to one which emphasised greater flexibility in labour and cost-conscious approaches. This replaced the idea of avoiding the social race to the bottom with encouraging policies aimed at labour adaptability and effectiveness in market terms. Yet, it could be argued that the outline of the factors discussed plays an even more discreet – and, sometimes, not so discreet – role in undermining social dialogue per se. The consequences of this are discussed in the following section.

4. The consequence of the erosion of the structure and form of social dialogue

We can argue about the meaning of social dialogue and the nature of the crisis that has led to its weakening or transformations, but the problem is simply that employers and management have the upper hand and that the prevailing political winds seem to blow us away from social dialogue as once perceived. As we saw in the previous section, there are many factors weakening the form and content of labour and employment relations.

However, of importance in relation to social dialogue, generally speaking, and to the nature of discussion and exchanges within labour and employment relations, is that social dialogue is premised on ongoing and reciprocal exchanges. Sustainable dialogue assumes that those entering into discussion have a relatively *stable position*, that their *legitimacy is respected and systematically sustained*, and that their *resourcing is respected, and even supported*.

Second, in terms of engagements between players, these have to be clear and played out across a longer timeframe in order for questions of reciprocity and gains/sacrifices to be understood, recalled and sustained (and responded to): i.e. sequentially and as far as possible, dialogue has to have a clear timeframe allowing for the consequences and further phases of dialogue to be understood and informed.

Third, there has to be a general framework of understanding as to the role of players and the nature of the democratic underpinnings of these relations. So, if we were to use the liberal-democratic assumptions which presumably underpin the EU, then these relations and exchanges require a political framework as well as an appreciation of questions of capacity (see MacKenzie and Martínez Lucio 2005). Indeed, we require a comprehension of the spatial and temporal factors determining the way dialogue and exchanges occur. The construction of social dialogue is not always a deliberate and clear outcome of specific policies and strategies but, rather, it evolves steadily over time under the influence of a range of factors. Moreover, their embedding over time involves a range of informal and social relations (see Oxenbridge and Brown 2002; see also Stuart and Martínez Lucio 2005). What is more, there are specific economic, technological and institutional contexts and factors that need to be appreciated – social relations and institutional interactions do not emerge in some simple economic exchange but, rather, depend on many factors (see Pulignano *et al.* 2016).

If one adopts a transaction cost approach to institutional change, then systems of social pacts, for example, emerge for a broad range of reasons: for instance the fact that, over time, a social pact provides gains visible and tangible to specific players, allowing them to learn over the longer term and to derive information from their previous experiences (see the discussion of North [1990] in Avdagic 2011: 59-51). Avdagic (2011: 52-54), in turn, argues that the emergence of social pacts between the state and social partners (or between the latter), put very generally, are determined by specific decision-making processes influenced by a contextually based and bounded rationality, and by historically derived identities and goals. Furthermore, the extent of intra-group cohesion within the social partners and perceptions of shifts in power relations between players is also a factor (*ibid.*). In effect, the nature of relations and interdependence between players are therefore important factors that emerge over time and lead to specific approaches to social dialogue.

Hence, the dismantling and undermining of social dialogue has implications which cannot be easily reversed. In the first instance, the core nodal points in the exchange relation become less clear when, for example, fragmentation creates a greater number of negotiating partners at different economic and organisational levels. This creates a greater challenge in terms of establishing clear benchmarks and points of reference. Even in systems with a more de-centralised approach to

collective bargaining, the shifts towards further decentralisation and internal fragmentation – along with the emergence of more individualistic approaches to issues such as pay – can create further challenges and undermine the social coordination of dialogue. Second, further fragmentation can also undermine the capacity and resources of organisations (trade unions but, in some cases, even firms) in their ability to arrive at agreements across a range of employment issues. Third, the nature of discussion and the pre-requisite knowledge required for such discussions on a range of issues can be undermined. It could be argued that these changes can present possibilities for renewal and change – and can undermine hierarchical and closed systems of representation and negotiations.¹ However, when occurring in a context of labour market fragmentation, greater individualisation and increasing employer power (broadly speaking), then the impact on trade unionism is much more detrimental. In the case of extreme examples, such as in the USA and the UK – and more generally in liberal market economies – where these developments are at a much more advanced stage, there is evidence in terms of new forms of organisational practices, management culture and negotiating strategies that suggests major difficulty in reconstituting collective approaches. In effect, social dialogue is becoming a declining feature of labour and employment relations and, in many ways, any desire to revert to it becomes increasingly difficult, especially in its more articulated and dense forms. In turn, the decline of such structures is increasingly seen to have detrimental effects in terms of greater inequality, greater wage dispersal, and growing informality and social exclusion within the economy.

5. The reinvention of social dialogue for our troubled times: new forms of collaboration versus deliberate forms of exclusion

Partly in response to this, there is a greater interest in those new forms of decision-making and consultation within the EU which have tried to sustain an element of dialogue and social sensitivity. There is a wide ranging discussion about the way the changes in the new economic, social

1. See the work of Fairbrother (1994) on the way collective bargaining decentralisation in a highly unionised context can enable and empower trade unionists locally as they directly interact with labour and employment relations processes.

and industrial context mentioned above are viewed as leading to a need to develop a new understanding and logic of social dialogue. The debate and discussion on the need for networking, and especially new forms of relations around more flexible policy- and decision-making, has become a vital part of the parlance of the EU (see Kooiman's 2003 work on governance, for example). Falkner (2000), on the one hand, in a paper that looked at the post-Maastricht phase of social policy and collective bargaining in the EU, pointed to the steady re-engineering of social dialogue around different policy institutions within the EU and their subtle engagement with social partners. A form of complex corporatism with different tiers and arrangements emerges which includes the social partners – but at specific points and not always focused on central levels of decision-making. Though there are issues in terms of the fabric of negotiations, Falkner argued that within the EU discreet influences from social partners are evident, although it is conceded that the acceptance of complexity and a perceived need for strategic compromises are important features mediating the nature of dialogue.

Building on this general approach, Vandenberg and Hundt (2012) argue that corporatism is not something that has run its course but, rather, that it has gone through a process of reinvention in some cases. In their national case studies of South Korea and Sweden, Vandenberg and Hundt show the importance of new forms of broader alliances and points of cooperation of a more flexible and focused manner. In fact, even Sarfati's (2003) discussion of new frameworks of social dialogue, which emphasises the fundamental challenges social dialogue is facing, points to the need for patient and realistic longer-term planning and positioning as a way of maintaining collective bargaining and social cohesion. The reality is seen to be that social partners must accept the challenges of the new competitive pressures facing them and society as a whole, and manoeuvre dialogue around these challenges and their resolution. Questions of innovation and change must not just be the focus of dialogue but, rather, part of the reinvention and renewal of that dialogue itself.

There are many studies on the new terrains at both the top level of the EU and at the lower levels of dialogue and bargaining; these point to the emergence of a new, flexible form of governance which retains many of the features of more organised models but which is exercised across a wider set of decision-making levels and temporal frames (Keune and Marginson 2013). The emergence of the European Trade Union Congress as a voice for organised labour, and its perceived legitimacy and support

from the European Commission, has allowed a new set of interests to be articulated. Even so, social dialogue remains fragmented and uneven at this level. Arguably, this is due to the complexity of decision-making at such levels, the opaque balancing of specific national interests and their use to stymie or reframe the social dimension, the ambivalent position of European employer organisations as part of a complex and ever more organised lobby that questions the fundamental extension of worker voice. Finally, added to all this is the under-resourced nature of the transnational trade union movement. Moreover, there is very little supervision and monitoring of social initiatives (de la Porte and Heins 2015), mirroring debates about the extent of the social dimension and the way it has been introduced in a piecemeal manner only after extensive discussion and political positioning.

Keller and Sörries (1999) argue that social policy intervention and coordination remain limited in terms of the governance roles of the EU. In effect, it is also separated from – or, at best, indirectly linked to – the labour relations ambit of dialogue within the EU’s governance systems, creating a fractured system of decision-making, although one could argue that this is the norm in most European national states. Even in areas such as training, where the EU has dedicated funds and permitted trade union roles in terms of executing new forms of workplace and workforce learning (Stuart 2007), there are uncertainties and unevenness in terms of the development of this feature of labour and employment relations (Heyes 2007). Social dialogue is therefore a complex and uneven terrain at the top level of EU decision-making, with variable levels of commitment from the state and capital.

That is not to say that EU policy outputs from its political spheres have not been utilised by many workers and their organisations to enhance their ability to participate within their companies (the European Works Council Directive and information and consultation rights are examples). Many of the more negative and cynical arguments about developments, such as European Works Councils – and their limited scope in terms of influencing corporate decision-making – ignore the way workers throughout Europe have been inventive and imaginative in the way they use these institutional spaces (Martínez Lucio and Weston 2000; Pulignano 2009). However, these have typically been stronger where there is already an embedded trade union with strong traditions of organisation and innovative approaches to workplace change.

One could argue that there have been quite large communities of trade unionists extending their negotiations and dialogue processes within and across companies through the organisational spaces provided by the EU since the early 1990s. However, it is interesting to note the extent to which the more systematic and more effective end of these cases is normally due to the ability of worker representatives in more organised environments, in union terms, to extend the remit of EU directives and their national legal consolidation. Many initiatives have socially ‘worked’ in cases where the local partners have been more systematic and resourced – or supported – in enacting them. This is, in part, due to the way the framework of EU regulation is less focused on the question of how labour and employment relations frameworks can be generally and universally upgraded or enhanced to enact and enforce the specific rights developed. The emphasis has increasingly focused on the importance of the market and the enhancing of the competitive environment, especially since 2008.² Moreover, since the late 2000s there has been a significant shift in the character and tone of the EU’s executive and bureaucratic structures. These changes suggest the lack of a systematic and strong commitment to a proactive or deeper social dialogue. This shift is identifiable at four levels.

First, Visser (2000) argues that there has been a perceptible shift from traditional social policy, with its focus on equality or outcomes, to employment policies based on equality of opportunity. This move to a ‘third way’, where individual rights appear to predominate over collective ones, was seen clearly in the UK during the Labour governments of Tony Blair and Gordon Brown (see Howell, 2005 for a reflection). In effect, the basic architecture and focus of the social are shifting towards a more individualised approach, and Visser (2000) is clear about the challenges this would bring due to the declining capacity and roles of the traditional social state. Hence, there is a process of re-focusing at best, or fragmentation at worse, underpinning the orientation of EU social and employment policy.

2. A commentator could argue that the EU is limited and constrained by these national differences and the challenge of balancing distinct national economic and political interests in its quasi-legislative and executive structures. It also has a bureaucratic system through the Commission that assumes a peculiarly influential role in internalising and managing these types of tensions and diverse perspectives. In this respect, the position of social partners at this trans-national level within the European Union can only play a secondary and subsidiary role.

Second, there is the disconnected nature of new discourses on the social, as seen in the case of corporate social responsibility (CSR). There is no doubt that greater attention is being paid to more regulated and substantive approaches to CSR in the EU (Tschopp 2005). Compared with the USA, the EU is considered to be more committed and progressive³ in such aspects, although mandatory CSR reporting structures are unevenly developed. In many respects, CSR in the EU is seen very much to be the basis for ensuring that foreign trade is not disadvantaging the EU (Breitbarth *et al.* 2009). Yet, the linking of the EU's CSR agenda to the labour and employment relations agenda and the role of trade unions is unclear and not always systematic. Where we do see a stronger commitment to CSR and a more articulated policy approach in relation to labour and employment relations is in those contexts with a stronger corporatist tradition – especially where trade unions are strategically involved (Preuss *et al.* 2006). So, once more, there is no concerted attempt to *push up* the level of worker voice in the EU but, rather, to allow different national traditions and contexts to frame developments. Hence, a major development in business ethics and corporate behaviour is not systematically unified and underpinned in the EU.

Third, in structural terms we have seen a tendency to manoeuvre social dialogue activities into a subsidiary role. Within the current Great Recession, we are seeing the dominance of a more austere and neo-liberal approach to economic and social policy. The role of the Troika and the EU components within it has been explicit in the need to curtail or redefine social dialogue of a collective nature, as has been seen in southern Europe (see Fernández Rodríguez *et al.* 2016). Regardless of one's views of the causes within the European Commission, there has been a systematic narrative developed that sees the way out of such a context as being based on increasing the competitiveness of these economies through lowering labour costs and deregulating collective bargaining (Koukiadaki *et al.* 2016a, 2016b). More recently in 2016 this has started influencing some core European economies, with deregulation becoming part of social-democratic labour policy as in France (Lefebvre 2016) In effect, social dialogue, broadly speaking, and collective bargaining in particular, are increasingly viewed by key EU bodies as marginally related to economic development. This has led to systematic reforms being overseen in terms of lowering the costs of dismissing workers, restricting the role of collective agreements, and the development of restrictive

3. Much may depend on your definition of CSR.

approaches to labour and employment relations (*ibid.*). Whilst Broughton and Welz (2013) state that such changes have not led to an overall decline in regulation and collective negotiation, Marginson (2014) is more pessimistic and concerned with the changes in collective regulation, especially at multi-employer and sector levels. These changes are seen to further the fragmentation of social dialogue. For example, in Greece, Lavdas argued (2005) that, even before the current wave of deregulation-based policies driven by the EU, European policy was creating a disjointed approach to corporatism and its articulation around neo-liberal agendas.

Fourth, it has not gone unnoticed that a large proportion of the EU's learning and research arm has become increasingly interested in focusing on social dialogue in more individualistic ways. There is growing interest in the development of research agendas which are less academic in nature; are linked more directly to organisations, and especially the firm; and are focused on individual and informal interactions in terms of 'conflict resolution'. The narrative is based on workers and managers 'resolving' and 'overcoming' differences, and recognising the importance of responding to common threats of an economic nature and the significance of 'moderating' their expectations and behaviours.⁴ It has been noted how research on social dialogue is being pulled into the economic and finance dimensions of the European Commission, with social and political approaches being marginalised in favour of more employer-related and individualistic approaches to the subject that operate within a more neo-liberal consensual framework.

Hence, we are seeing a steady shift towards a more deliberate and explicit questioning of the role of social dialogue, redefining its form and its purpose. The shift is, in part, working 'under the cover' of the problem of sovereign debt and the economic crisis; it is also clear, however, that even prior to 2008 there was a move towards a competitive and market-based approach to collective and individual rights that facilitated neo-liberal change.

4. The author is referencing a series of terms and concepts that are emerging within many EU texts and projects that emphasise the importance of the individual and the psychological over the collective and sociological.

6. Conclusion

The orientation and meaning of social dialogue has been redefined and steadily re-crafted around the notion of the market and the individual. It has worked in a context that has been uneven and ambivalent in its commitment to workers and trade unions, and with an even greater obsession with the *managerial* and the praxis of the private corporation as a panacea for economic and social problems. To this extent, we are seeing the congruence of trends and developments into a more systematic questioning of social dialogue, and the emergence of a more submissive and less purposeful and social form of social dialogue: a relatively *vacuous social dialogue*. Or at best it is becoming unhinged and decentred. Much may be due to the way consensus is generated within the EU's formal institutional spaces and the competing political interests and ideologies balanced within them. The uneven and contradictory projects and internal differentiation within the state – and within the EU institutional apparatus, in particular – are major factors. Yet, since the onset of the economic crisis in 2008, a more concerted and more explicit unease with the democratic logic of social dialogue and its collective nature has begun to be discussed amongst EU elites. We are seeing a more explicit questioning of collective approaches to social dialogue and a steady expansion of interest in its more individualistic, obscure and less transparent forms. Much of this is legitimated by the ongoing fascination with, and fetish for, neo-liberal business models and business cultures within the political and organisational spaces of EU polity (irrespective of any signs of growing concern with neo-liberalism in some elite policy circles.)

However, social dialogue in its more meaningful forms requires not only political commitment, but also long-term engagement and investment. It calls for a complex form of accommodation and change over time, necessitating a fundamental recognition of the importance of organised labour within the economy (Martínez Lucio and Stuart 2004). The position of workers needs to be acknowledged as more than just a means of production, as does the significance of the democratic principles within the space of work and employment, as well as the broader economy. Instead, what we have seen is an attempt to ensure the collective dimension is constrained and, in some cases, even reduced within the European context. The problem is that social dialogue in its most elaborate and effective manner – in its collective and broader-reaching forms – evolves through a series of diverse historical and institutional processes: it is not a system that simply 'reboots' when you 'turn it off and on'.

In fact, the impact on employers themselves needs to be acknowledged (Koukiadaki *et al.* 2016a, 2016b). There may emerge an employer led wage cost obsession with regards to labour – as opposed to a focus on the quality of labour and its ability to add to the value of an organization or the economy – due to the increasing labour relations fragmentation and the importance attributed to short-term economic gains through wage cuts. Amongst employers a culture of engagement with social dialogue and the knowledge associated with long term social dialogue and engagement through human resource managers and trade unions may thus be undermined (Fernández Rodríguez *et al.* 2016) which, ironically, may lead to negative long term effects for all including employers – something some employer organisations have acknowledged to be worrying (*ibid.*).

If we are to reclaim ground in terms of social dialogue, then it will not just mean defending the very models of social dialogue that have been steadily opposed or eroded. A project of renewal is needed that goes beyond making the simple business case for its relevance, or beyond focusing on proving the economic and profit-oriented worth of social dialogue. Commentators also have to remove themselves from the obsession of counting down to the final days of social dialogue or fixating on the negative effects of its demise for the workforce as this, curiously, tends to reinforce the sense of (heroic) fatalism that surrounds discussions on work and employment today – where some academics even make careers discussing declining structures and not their re-imagination and evolution.

Instead, any reclaiming of social dialogue and any attempt to halt its erosion requires a more imaginative and emancipatory response. It needs to look back to the debates on worker control and genuine social dialogue between industry and society (see Martínez Lucio 2010). It must look to the importance of providing a firmer democratic underpinning of the role of organised labour and the collective dimensions of regulation, if dialogue is to work in a broader democratic and social sense (see Martínez Lucio and Stuart 2004 on debates in the UK in relation to social partnership). An imaginative and emancipatory response must focus on the multi-level nature of social dialogue and the need for its transnational, national and macro level framing, if we are to avoid fragmentation. It must also emphasise the importance of dialogue within organisations and the role of workers in relation to their leadership inside trade unions, as well, so as to ensure that agendas emerge from real concerns. Finally, the

missing link in the project of the European state has to be addressed in the form of questions of ownership and control through a return to the overarching debate on industrial democracy and common ownership, as Hyman (2016) has reminded us. Though these debates were a crucial part of deliberations of the left and the labour movement during the 1960s and 1970s, they never weaved their way into the narratives of the EU beyond tokenistic gestures around information and consultation rights. In many ways, one may see these as naïve or somewhat optimistic views: yet, it is simply that social dialogue is a political narrative which has many trajectories and traditions, rather than the current prevailing one of desiring to individualise and decentralise it around managerial concerns. We therefore need to remember what some governments and trade unions were proposing in the real time and space of the 1970s, if we are to realise that questions of, or control over, ownership were meant to be part of the future of social dialogue. In effect, social dialogue has to be located in a counter-imagination and narrative on workplace and organisational democracy along the lines suggested by Hyman (2016). Defending extant collective bargaining alone and its economic contribution may not be enough.

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Conclusions

The practitioners' perspective

Introduction

In the spirit of the various insights to be found, here, the concluding chapter seeks to reflect on these contributions from a ‘multi-levelled perspective’ – in that we are trade union officials working at both national and European levels. What we set out to do in this final chapter is to situate the findings in the context of current challenges facing organised (as well as un- or even dis-organised) labour based on our current work programmes. Central to these are the transformations of employment relations at every level whether driven by macro-economic decisions around investment and austerity or local decisions to outsource and fragment.

We have gathered our thoughts under three main headings. First Ben Egan situates the challenges of this book in an analysis of the challenges in European labour markets. David Wilson then reflects on the contributions to this volume in the context of fragmenting collective bargaining arrangements. He gives relevant and specific insight from the UK public sector where he is a senior officer in the National Union of Teachers. In the third and final section Wolfgang Kowalsky and Peter Scherrer offer a potential solution to the issue of worker marginalisation by mapping the ETUC position (and demands) on Workers’ Participation. While we have divided the analysis between these sections the point of convergence is fragmentation of order and the reduction of workers’ effective voice – in short, workers and their organisations are seeking ways to resolve the complexity in relations from the local to the European level.

Employment in Europe: mapping trade union challenges

Ben Egan

From the European perspective there are several long-standing labour market challenges that are raised in the contributions to this volume – some more directly while others implicit. Access to the labour markets in the first place remains a major issue for the more-than 20 million unemployed across EU Member States, particularly from marginalised groups, as does structural segmentation within labour markets limiting the potential of many more workers. The following is thus divided between a first section which relates to the main labour market challenges facing workers in Europe around finding adequate employment, before moving on to relate the challenges of precarious working lives to the contributions in this volume. Finally, there are sections on the importance of constructing persuasive narratives in enhancing workers' voice in and around the workplace.

1. The state of European labour market(s)

At the heart of the employment challenges across Europe are the very different regulatory environments in which labour markets function. A 'Europeanisation' of labour markets has never really happened – demonstrated starkly by the divergence in employment performance between Member States. This was highlighted by the leaders of the European Council, the European Commission, The Eurogroup and the European Central Bank in the 2012 *Four Presidents' Report*, yet was addressed so inconsequentially that it remained the focus of the *Five Presidents' Report* (2015) three years later (with the addition of the President of the European Parliament). It is fair to say that a recognition of divergence is one of the very few issues on which all European stakeholders fully agree. The failure of such high-profile interventions is itself a strong indication of the sheer complexities of multi-levelled governance that this volume speaks to.¹

1. Working on the presumption that some, if not all, political actors are genuine in seeking to address divergence.

Unemployment, for example, remains historically high despite modest improvements over recent reporting quarters. Furthermore, it is not only the headline figures, worrying enough as they are, that are the real story on unemployment. Once we break down the structure there are gravely concerning trends. Take youth unemployment which has been a problem for many years and – as with so many socio-economic problems in Europe – there is wide divergence in the situations between Member States, as well as in the policy responses to them by both the states themselves and those followed by the Commission and Council via economic governance procedures. Hence we see rates of youth unemployment in countries such as Spain and Greece that are more than seven times that in Germany². In other countries (un)employment challenges manifest very differently. Austria has one of the best rates on youth unemployment but real difficulties around the employment of older workers and notably women – with the latter being identified in a Country-Specific Recommendation in May 2016³. Other countries have major challenges relating to regional and demographic disparities.

In short, the available work is not being fairly distributed or, to put this another way, any economic recovery that is being experienced in Europe is not being enjoyed by all – in Euro-jargon it is not ‘inclusive growth’. And this is the key point because it is precisely in this context that employment policies have been conceived in recent years. The idea was that that *now* was always the time to get people into work to tackle the ballooning unemployment come-what-may. In particular, the ranks of the long-term unemployed were growing alarmingly – and when unemployment did start to fall it fell more slowly for the groups of workers that had been unemployed for more than a year. The inevitable result was that between 2007 and 2014 the number of people in the EU who had been unemployed for more than 12 months doubled from 6 to 12 million⁴.

There is now a Council Recommendation on long-term unemployment which highlights the recognition at the European level that this has to be a social priority. This is of course welcome from a trade union perspective and yet the fact remains that there is a long way to go to rectify the distorted labour markets of Europe. Some of these are undoubtedly the result of wrong-headed policy at Member State level but, more importantly

2. <http://ec.europa.eu/social/main.jsp?catId=1036>

3. http://ec.europa.eu/europe2020/pdf/csr2016/csr2016_austria_en.pdf

4. <http://ec.europa.eu/social/BlobServlet?docId=14443&langId=en>

for European economic governance, it is the EU itself which has been responsible for many of the disastrous interventions that have heaped misery on top of crisis.

There is however no sense of *mea culpa* from the European institutions. Despite the noticeably more inclusive approach of the Commission of late towards listening to ‘social partners’ (via DG Employment, Social Affairs and Inclusion) the analysis continues to treat the very serious employment challenges that we face as external or incidental, rather than created by the very policy prescriptions of deregulation that have been prescribed for the last decade and a half. For example, in its Winter 2016 Forecast⁵ the Commission claimed that employment gains have been broad-based across almost all Member States, ‘especially in those mostly affected by the recent crisis, such as Spain, Italy and Portugal.’ Yet this analysis overlooks their own role in decimating demand (and employment) earlier in the crisis, as well as their instrumental role in dismantling collective bargaining. For example, the labour market section of the 2016 Country Report for Portugal opens with the claim that ‘the overall employment rate made up about half of the ground lost since 2008’⁶. It took 8 years to achieve a limited recovery. For Spain it states that ‘after almost 6 years of predominant job destruction, employment growth turned positive at the beginning of 2014.’⁷

This very subject is addressed in this volume by Malo (chapter 6) who notes that all regulatory changes in Greece, Portugal and Spain have been designed with the very intention of promoting the decentralisation of collective bargaining as well as limiting certain institutions while expanding others with the result of greatly diminishing coverage. So labour markets in Europe are not incidental but shaped by the policies of the past. Of course we all want to see people in work, but not any work in any conditions. Employment quantity cannot be exchanged for quality. Especially when such a trade-off doesn’t even work.

5. http://ec.europa.eu/economy_finance/publications/eeip/pdf/ip020_en.pdf

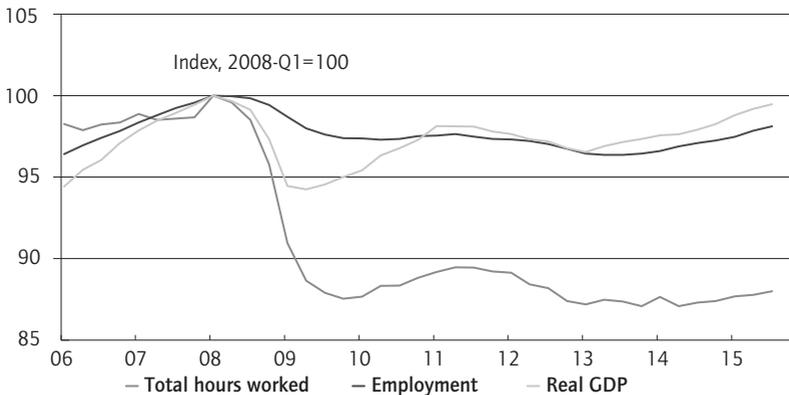
6. http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_poland_en.pdf

7. http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_spain_en.pdf

2. The growth of non-standard and precarious employment

By any measure non-standard employment has been mushrooming across Europe. In many Member States the growth of these more precarious forms of employment represent the sum total of employment growth over the course of a decade or more. This means that lower unemployment rates do not necessarily mean that there is sufficient employment shared in such a way as to provide for the ‘constant improvements in living and working conditions’ envisaged in the Treaties of the EU. It is into this environment that we must place the proliferation of precarious employment, which alone highlights the poor state of European labour markets. Poor quality, non-standard employment has been encouraged by European policy-makers in fire-fighting mode on the logic that ‘any job is better than no job’ yet at the same time unemployment levels (especially long-term) remain historically high. This is shown in Figure 1 which demonstrates that despite the economy as a whole and employment specifically recovering to some extent this is resolutely not the case for hours worked. It is worth pointing out here that were the debate about a fundamental rethink on European labour markets and varieties of capitalism to sustain living standards then less work would not necessarily be a bad thing. However, this is not the case.

Figure 1 Total available employment across the EU28



Source: European Commission, Winter 2016 Forecast.⁸

8. http://ec.europa.eu/economy_finance/publications/eqip/pdf/ip020_en.pdf

Furthermore, notions of ‘precariousness’ and the ‘standard/non-standard’ paradigm have an ambiguous relationship: employment being ‘standard’ by means of being full-time and permanent does not necessarily mean that it is not precarious. This is because the extension of non-standard employment forms has in many (but by no means all) Member States been pursued at the same time as the diminishment of protections associated with the standard full-time, open-ended contract. The result is that many Member States with the highest proportion of standard contracts counter-intuitively having the higher rates of risks of precariousness. For example, an August 2016 Briefing document of the European Parliament, *Precarious Employment in Europe: Patterns, Trends and Policy Strategies*⁹ found that of the eight Member States with more than 70% standard employment contracts, only Belgium was not a CEE country. Despite this, workers in CEE countries continue to endure some of the most precarious working lives.

At the European level there is a further challenge around definitions in pursuing a policy agenda to counter precariousness in work. Notwithstanding the innate linguistic difficulties in accurately translating ‘precarious’, ‘informal’, ‘flexibilisation’ and so on, the definitions are often linked to distinct heritages. Considerations on the desirable levels of employment protection to be provided by statutory or voluntarist methods, for example, will depend on the legacy of established industrial relations, industrial power and so on. Some trade unions see labour market flexibility as a threat, while others as an opportunity. This is shown in approaches to ‘flexicurity’ debates and so on where the experience of Nordic workers and their unions are very different to those in southern Europe. Decentralisation of bargaining has proven to be an effective way of providing flexibility for employers (as well as precariousness to workers) as Martínez Lucio reflects in Chapter 10. The use of outsourcing and the greater use of a more agency based and indirect labour force has been shown to be an effective way to ‘undermine the regulatory scope of trade unions, but also challenge the ability of management to coordinate the organization of work and employment’ (Martínez Lucio). Developing ways of confronting this at the European level remains a key challenge.

The decline of ‘standard contracts’ is an issue spoken to very clearly in the chapter by Doerflinger and Pulignano (Chapter 3) on works councils’

9. [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587303/IPOL_BRI\(2016\)587303_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587303/IPOL_BRI(2016)587303_EN.pdf)

approaches to flexibility in German workplaces. Of particular interest to a trade union labour market analysis is the observation of how inclusive labour markets are: 'the extent to which legislation and collective bargaining cover the entire or parts of the workforce. Differences between standard and non-standard workers could thus result from varying levels of "inclusiveness"' (Doerflinger and Pulignano). Though cited in the context of internal labour markets, the outcome is nevertheless true for the broader labour market. The decentralisation and casualisation of employment relations are results of the structure of labour markets. In short we need to regulate them in such a way as to facilitate a robust role for organised trade unions, whilst also ensuring that no worker is allowed to remain unprotected. Questions of what features 'standard work' should contain are therefore essential.

Our priority, therefore, at the European level is to ensure that the appropriate levels of protection are available at the lower levels – both as collective rights and individual protections. As Hoffmann notes in Chapter 9, the rudiments of the rights are 'there at local level and are roughly comparable. The key is to apply them at the different levels intelligently, solidaristically, strategically and pragmatically.'

3. Union approaches and workers' voice

As outlined above, many trade unions in Europe, as well as employers and governments, have clear historical roots which can put them at a relative advantage or disadvantage in terms of institutional power and legitimacy. Several of the chapters in this volume touch upon this. Such contributions can prove very insightful for trade unionists at the European level as they can furnish us with instructive examples – both good and bad. Clearly models and approaches can rarely be transposed wholesale into another country but lessons can be learned. This is also the case for sectoral unions in which shared notions of collective or professional identity can be powerful mobilising forces.

The Belgian model of industrial relations, for example, is raised in the chapter by Vermeerbergen, van Hootegem and Benders (Chapter 4) with the nice analogy of employers and employees either boxing or dancing in terms of the extent to which dialogue should be collaborative or confrontational. As far as trying to maintain strong institutional power for collective bargaining, while at the same time sustaining the levels of

militancy necessary to defend these in times of industrial conflict, Belgian unions and the system in which they operate is on the whole a good one from which many other Members States could learn.

The issue of union ‘strategy’ is prominent in another chapter. Adăscăliței and Guga (Chapter 2) show that of the two automotive plants in Romania that they compare it is, amongst other important factors it must be added, a lack of strategic thinking on labour markets that led to one union seeing a significant decline in prominence in relation to the other. A lack of strategic thinking is one issue that is regularly raised within the trade union movement and even more so in periods of crisis – the context in which most unions have been operating in recent years. This is not a criticism per se but an inevitable product of organisations in fire-fighting mode. Indeed, at the European level it can be ‘easier’ to be strategic when an organisation doesn’t have direct members with potential threats in terms of jobs and pay and conditions to contend with on a daily basis. Yet there often lies a fundamental question that goes without a clear and emphatic answer – what do we actually want and how much do we want it? Only from this can long-term objectives be attained.

The neoliberal turn of the last couple of decades has clearly presented major problems as power sources become more opaque and globalised. Union approaches must be adjusted to deliver an effective voice for workers in a very different market to those of the past. In the words of Martínez Lucio (Chapter 10): ‘employers have turned their gaze away from the national space towards a strategy of greater mobility between national spaces, thus questioning alliances made with organised labour in the past.’ The challenge then for unions, particularly (though not exclusively) at the European level, is to reform labour market regulation so as to preserve what remains of previous protection while reconfiguring for the challenges of the future. As Martínez Lucio goes on to highlight, trade unions have responded to these different changes and explored opportunities but the nature of ‘traditional’ social dialogue has greatly changed.

4. Importance of narratives

An important theme running throughout the chapters in this volume is the significance of narratives in promoting workers’ interests. As the following section of this concluding contribution on collective bargaining

by David Wilson argues, the political side of trade unionism has not always been sufficiently emphasised. This is for good reason in an era of widespread attacks on unions and their members but despite this it must be challenged. A trade union movement that doesn't have a broader story to tell and can't place struggles into a broader narrative is in a weaker position. At the European level, less directly linked to the specifics of workplace disputes, there is arguably an even greater duty in this regard.

In terms of developing persuasive narratives that are able to inspire the mobilisation of members and resources, unions have two key arenas in which they must be able to convince: in the workplace and in a broader political sense. In the case of the former, the chapter by Köhler and González Begega (Chapter 1) is instructive. Here we see an example of restructuring with a clear (though by no means logical) agenda: the entire process from relocation decision onwards is described, including the involvement of a consulting firm for the specific reason of developing a narrative to 'underpin the new strategy with pseudo-rational arguments.' Here the authors note the degree of involvement of regional headquarters differ and 'depends on the organization and power structures within the corporation, but there is a general trend towards concentrating power and decision-making in corporate headquarters without taking regional or local interests into account.' That the restructuring – i.e. the closure of the plant – never took place was almost certainly partially a result of the campaigning work taken up by organised workers, though there were certainly greater forces at play. The reason why narratives are important is to an extent shown by this case study and that is that when opportunities to win arise for workers under attack they are often not where they might be expected. Circumstance can throw up unlikely emblematic disputes and therefore it is crucial that trade unions are intellectually, as well as operationally, equipped. The surprising outcome of the case study was somewhat fortunate but should nonetheless be built on.

A second way in which workplace narratives are important relates to the expanding communicative spheres opened up by social media and instant information sharing. Namely, as Martínez Lucio puts it, the way management 'evokes the market and links workers' interests to those of the customer'. This is particularly problematic for workers in public services and other areas of the labour market where they have that most valuable commodity in industrial relations: leverage. This means not only being able to situate union approaches into a logical broader narrative but

being able to rebut the inevitable backlash that employers and their supporters are able to mobilise.

Perhaps the most significant aspect of narrative development that unions must be prepared to pursue is one of its own present and future rather than of a glorious past. As several chapters in this volume demonstrate, and as we see as active participants on a daily basis, there are many areas in which unions are doing innovative and effective things in the spirit of renewal. At the risk of sounding inconsistent given the challenges identified here, for many members a more uplifting tale needs to be told if gains are to be made and sustained.

5. Conclusion

The key questions then facing workers from a European perspective is what do we actually want? Clearly, multi-levelled governance is creating complex sets of relations but these are qualitatively different for diverse actors. Do we want a Nordic model with the higher living conditions that entails, or is that inappropriate to countries with very different varieties of capitalism and organisational infrastructure? One thing is certain and that is that more ambition is required to address the social crisis that has been borne of the economic crises in Europe. As Lafuente Hernández reminds us in this volume, the treaties' decrees were no impediment to EU economic governance regulations and Country Specific Recommendations which ruled against national labour market coordination arrangements in many countries. When an economic crisis was perceived policymakers did what they thought to be necessary – workers now need to see the same attitude to tackle the social crisis that threatens not only living standards but the EU itself. Within this we need a serious and honest analysis of what role there should be for unions in economic governance via the European Semester. How will the European Pillar of Social Rights which is currently being consulted on fit into this?

What is certainly required at the European level, and which the trade union movement continues to push for, is an end to what we might describe as 'all supply; no demand'. The incessant pursuit of labour market supply side reforms which presume that unemployment in Member States is a result of unemployable workers rather than a crisis of demand via disinvestment. This is not to say that such some supply-side reforms are not both necessary and welcome – particularly around skills

and education – but they are insufficient. Austerity is the cause of this malaise; investment in workers and their communities to create sustainable and high quality jobs is the cure.

A question that cannot be avoided

David Wilson

1. Introduction

The aim of this contribution is to reflect upon the research findings presented in the current volume, and to offer a perspective of the themes discussed based upon the recent experiences of a trade union operating in an area – both geographically and industrially – not covered in the book: namely the public sector in the UK; and, specifically, teachers in England and the experiences of the National Union of Teachers (NUT).

As an active trade union officer, intellectual analysis and reflection have one primary purpose: that is, to guide practice. Therefore, this contribution is, hopefully, in the words of Darlington and Dobson (2013), ‘objective but not detached’. Indeed, it is unashamedly partisan, based upon perhaps the most important issue highlighted – implicitly or explicitly – throughout this collection: namely, the continued re-balancing of power in favour of employers at the expense of workers across Europe, and how this situation is best slowed, halted, and reversed. In particular, it focuses its attention upon changing collective bargaining arrangements and, specifically, the increasing devolution of bargaining to the level of the workplace, and the possible options trade unions have in responding to this situation.

Whilst, given the limitations of space, this contribution is broad brushed, it hopefully contributes to an on-going dialogue by asking some strategic questions of the trade union movement.

2. Context and challenges

The day after the UK voted to leave the European Union, the *Financial Times* ran an article, using research by the labour market economist Professor Stephen Machin, showing that between 1997 and 2015 the

median wage in the UK rose from £269 a week to £426 a week. Prices rose 43 per cent over the same period, leaving a real median gain of just 15 per cent, or less than 1 per cent a year. The aggregate data masks a more nuanced and troubling situation in which whole areas of the country didn't even see this modest gain: 62 out of 370 local authorities actually saw median wages fall in the period measured – in some areas this decline was recorded in double digits. As the article concludes: the campaign for Britain to remain in the EU faltered in these areas.

The irony within these findings is many of the areas where wage stagnation is greatest are also the areas where EU immigration – a key factor in the referendum debate – is below the national average, and are also amongst the biggest beneficiaries in terms of EU funding. They are, however, often also the areas that have witnessed the most severe form of de-industrialisation and the starkest retreat from skilled and secure work to more precarious and unskilled jobs.

Whilst this is not the place to discuss the varied and complex reasons why a majority of UK voters chose to leave the EU, any discussion concerned with the contemporary position of labour, and their collective organisations in the UK has to view the state of affairs described above as a touchstone to encourage and re-evaluate our collective understanding of the size of the challenge confronting labour, and the possible strategic options available in addressing these challenges. Whilst the UK is at the extreme if European industrial frameworks are viewed as a spectrum, it is the case that in many ways the uneven balance of power between employers and labour is the benchmark that informs the trajectory within many countries.

In the UK, over the timeframe measured by Professor Machin above, despite the New Labour government (1997-2010) opting into the Social Chapter, introducing a statutory process by which trade unions can gain recognition, as well as a minimum wage, the fortunes of British trade unions, with the occasional exception, did not qualitatively improve during the years of New Labour government. Indeed, the strength of British trade unions measured by membership numbers, union density, days of strike action, or any other measure or proxy, shows a situation that, at best, could be described as stable decline during this period.

The election of the coalition government in 2010 and the subsequent return of a Tory majority government in 2015 poses some new – and in

some cases fundamental – challenges to the future trade unions and their functioning and potential power resources in the UK.

One key measure to current union strength is the number of workers covered by collective bargaining and collective agreements. Currently this figure stands at around 16% in the private sector and 63% in the public sector in the UK. Further, unlike some European neighbours, collective bargaining in the UK generally occurs at the level of individual employers. Even in the public sector we are seeing the devolution of decisions around pay and terms and conditions to individual workplaces. In the education sector, this means that each of the twenty-thousand or so schools in England are now, in essence, individual bargaining units. Whilst an extreme example of fragmentation, this volume demonstrates the general trend towards the breaking up, or weakening, of higher level and more coherent bargaining arrangements, even within countries where there still exist tripartite or sectorial negotiations.

The lack of trade union coverage, strength and impact in terms of collective bargaining has clearly contributed to the stagnation and decline in living standards for many workers in the UK, as well as the growing inequality within society. Recent popular studies (for example Dorling (2015); Wilkinson and Pickett (2010)) have shown why this situation is bad for not only individuals in terms of life prospects, but society as a whole. If one still accepts as valid the description that trade unions have two interrelated faces, namely, vested interest (of members) and a broader ‘sword of justice’ role within society, this situation is surely intolerable.

3. Strategic options: rapprochement, resistance, renewal

As Flocco outlines elsewhere in this volume, a fundamental starting point if this situation is to be addressed, is to have a clear understanding of political and economic context within which we find ourselves. Academics and practitioners within the labour movement have, over a number of years, successfully theorised the economic and political changes that have occurred across the globe over the past 35 years or so. Whether we describe these changes as ‘globalisation’, ‘neoliberalism’ (my preferred description) or ‘new capitalism’, what is apparent, and what is highlighted in these chapters, is the increasing convergence of key economic and

political practices across Europe (and beyond), and the common challenges these practices present to labour. What is perhaps less clear is the question of whether there is also a convergence of responses to this situation on behalf of organised labour.

The drive towards greater decentralisation and liberalisation, as a means by which to create or increase a competitive market environment, are amongst the most important points of convergence that have impacted upon established industrial relations and labour processes. This specific impact of decentralisation and liberalisation can be seen in the reformulation of collective bargaining across industries and countries, and in particular the weakening of national or sectorial collective agreements, in favour of devolution of decision making power to the level of the workplace.

This process does not happen uniformly, either in terms of breadth or depth, as shown in this volume. In some instances, the weakening of national or sectorial bargaining is sudden as in the case of Romania (Adăscăliței and Guga, Chapter 2); in other instances it is more gradual and contested, as in the case of Germany (Doerflinger and Pulignano, Chapter 3); and in other instances the change is not only sudden, but is, as seen across Southern Europe in the wake of the 2008 crisis, also brutal (Malo, Chapter 6).

Understanding how and why these changes have happened is important to understand the potentiality of halting and reversing the process. The process of change reflects the interrelated issues concerning the relative strength of labour vis-à-vis employers; the role and political direction of government and state; as well as the durability of established industrial relation frameworks.

One clear practical outcome of the devolution and liberalisation of bargaining for trade unions is the need to (re)build strength at the level of where bargaining takes place. The chapters of this book demonstrate that, where strong workplace union organisation exists, the more successful workers are in defending or advancing their interests. This is a model recognised and discussed by Fairbrother (1996) in relation to restructuring in the public sector in the UK in the 1990s. Fairbrother recognised the devolution of power to the level of workplaces as representing not necessarily a step back, but an opportunity within the new devolved collective bargaining framework for unions to rebuild

strength on a more participative basis, hopefully delivering favourable bargaining outcomes.

Theoretically coherent as this position is, questions concerning the effort and resources needed by unions to make the transition and sustain a model based upon multiple fragmented bargaining units needs to be investigated. This is the situation the NUT has been confronted with over its recent history, where practice has concluded that whilst rebuilding at workplace level to sustain collective bargaining may be possible, there is a question of whether, as Martínez Lucio comments in this volume, 'defending extant collective bargaining and its economic contribution may not be enough.' This then surely begs the question of what would be enough to redress the situation.

One way in which the NUT has attempted to address these questions is to use the framework presented by Carter *et al.* (2010), which can be seen to build upon the work of Fairbrother. Carter *et al.* offer three major strategic options for trade unions confronted with devolved and fragmented bargaining arrangements and broader threats around labour processes resulting from neoliberal reforms. These are: *rapprochement*, *resistance* and *renewal*.

Rapprochement is best described as a 'pragmatic' coming to terms with neo-liberal reforms, whilst not necessarily accepting the logic of neoliberalism. This position accepts the parameters of neoliberalism and seeks to develop the best possible outcomes for union members within these parameters. Clearly, this is perhaps the function of most trade unions most of the time. Dörflinger and Pulignano in this volume perhaps show in clearest terms how it is possible for strong workplace unions, in certain contexts, to successfully agree pragmatic settlements. Although clearly, even in situations such as those described, labour organisations will be confronted with many difficult questions such as striking the balance between protecting core workers at the expense of those in more insecure and precarious roles, and so on.

Resistance describes the situation of unions actively seeking to challenge the trajectory of neoliberal reforms, often through collective action. However, 'resistance' is often based upon a small number of activists calling action 'from above', and does not necessarily reflect the fact the 'frontier of control' increasingly exists at the level of the workplace and consequently any mobilisation needs to be rooted here.

Renewal rejects the trajectory of neoliberal reforms, but recognises the changed environment within which unions operate, and the consequential need to organisationally re-focus but, crucially, renewal also seeks to deal with the *causes* and not just the *consequences* of neoliberal reform. This accepts the need to address issues ideologically, politically, as well as economically, which consequentially means increasing political, social and industrial leverage by working with a range of allies. A clear part of this perspective - explicit or not - is the need to pose an alternative to neoliberal policies. It could be suggested that the case study presented by Kohler and Begega (Chapter 1) is illustrative of a form of this strategic orientation.

The NUT has decided - in theory if not quite uniformly in practice - upon a renewal strategy (Little 2015). The factors behind opting for this strategic orientation result from: a combination of objective conditions within the education sector; broader industrial relations in the UK generally; and the subjective political factor of the union's history, ideological belief and current elected leadership.

4. Does a convergence of threat necessitate a convergence of response?

Whilst there is undoubtedly a convergence around fragmentation and liberalisation within industrial relations across Europe, it is also true that there is continuing differentiation between some key characteristics of industrial relations frameworks. Hyman (2001) notes that trade unions operate along a class-market-society axis. Where a union positions itself on this axis is influenced and shaped by - and in turn helps reinforce - established industrial relations framework. Whilst such a situation can, in certain contexts, give the impression of stability and permanence, the chapters of this book show that this stability is not a given, but dependent upon the inter-relationship of objective political contexts and the balance of forces between employers (and the State) and labour, as well as the ideological viewpoint of individual labour organisations.

The question confronting trade unions across Europe, therefore, is if the political context within which any given industrial relations framework has developed qualitatively changes, is there then not a need for unions to reassess their position on the class-market-society axis? Further, if there is a convergence of pressures bearing down upon workers and their

collective organisations, is there a need for a convergence around a common response?

Whilst this is not a new question (Ferner and Hyman 1998; Bieler *et al.* 2008 for example), the context within which it is posed gives it a new meaning. The answer to the question does not exist at the level of academic contemplation; the issue of not only combatting neoliberal reform in individual countries, but also of developing and deepening genuine solidarity in practice across Europe, is potentially at stake.

As noted at the outset, these lines are written from a partisan position. A position that posits the need for trade unions to consciously embark upon a renewal strategy that attempts to deal with both the consequences and causes of neoliberal reform. The NUT has attempted, by adopting a 'renewal' strategy, to develop a clear understanding that, whilst dealing with the day to day consequences of neo-liberal reforms is clearly a necessity, this cannot, in itself, halt and reverse the neo-liberal framework that so detrimentally shapes policy, industrial relations, and labour processes within education. The response framework developed by Carter *et al.* (2010) that informs this approach can possibly offer a more general framework for helping decide upon the best possible strategic response to the situation the trade union movement across Europe finds itself in.

The difficulties in theorising the consequences of adapting a 'renewal' approach as described – let alone attempting to implement it – are undoubtedly very real and deep rooted. This is a reflection that such an approach represents a decisive shift in the way in which many trade unions operate most of the time (across various industrial relations frameworks). It necessitates an understanding of trade unionism that is undoubtedly highly politicised, and accepts – even where broader social dialogue continues – that there are increasing antagonisms between 'social partners'.

The re-founding of an industrial relations landscape more favourable to labour, as well as genuine social dialogue, necessitates the radical redressing of the balance of forces between employers and labour. For genuine dialogue to take place, there has to be an equivalence of power within the relationship. Anything else is not a partnership, but a lopsided relationship that, in consequence, will benefit one side at the expense of the other. Addressing this situation is becoming more acute, and addressed it must be.

This is a question that cannot be avoided.

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Democracy at the workplace in the 21st century

Wolfgang Kowalsky and Peter Scherrer

1. Introduction

The debate on industrial democracy in Europe goes up and down in waves, partly influenced by the political agenda, partly influenced by economic development. After World War II industrial democracy was regarded as a tool limiting the power of big companies in particular in the iron, steel and chemical industry, some of them being quite militaristic. The next wave towards more democracy at the workplace arrived at the end of the so called 'trente glorieuses' (from 1945 to 1975), the three decades of nearly uninterrupted growth in Western Europe. In 1969 German chancellor Willy Brandt had won the election with the slogan 'Let's dare more democracy', initially limiting democracy to the political area but incorporating a civil rights agenda. In the 70s the debate on democratisation of the economy intensified and in 1972 the 'works constitution act' granted substantial rights to German Works Councils. When the growth era turned into an era of anaemic growth, Keynesianism seemed to perish and neoliberal ideology became the mainstream. From the mid-70s through the 80s, the economic and political debate became increasingly dominated by monetarists and free marketeers. Democracy at the workplace was seen by mainstream politics as superfluous, an additional burden on free enterprise, a factor reducing a company's share price¹⁰ and contrary to the image of free and independent entrepreneurs making the economy prosperous.

It was more than a symbol that in the aftermath of the crisis of 2008/9 Thomas Piketty's *Capital in the Twenty-First Century* became a bestseller in the US. In the US, the bottom 90% has endured income stagnation for

10. A study by Schmid and Seger (1998) claimed that parity codetermination caused a 21-24 percent decrease in share price relative to companies with 'one-third' codetermination; Sigurt Vitols, Prospects for Trade Unions in the Evolving European System of Corporate Governance, 2005, p. 21. (http://www.boeckler.de/pdf_fof/S-2003-562-2-1.pdf)

a third of a century.¹¹ Between 65 and 70% of households in 25 high-income economies experienced stagnant or falling real incomes between 2005 and 2014¹². The economic profession hadn't seen the crisis coming, moreover: any reflection on the crisis' origin was short-lived. The economists were locked into monocultural mind-sets making them blind to new challenges. The western economies continue to stagnate, approaching a lost decade (2008-2018), with generally high and sometimes extremely high unemployment. The political elites were reaping the consequences of the financial crisis, a political whirlwind, turning public opinion against banks, bankers and business leaders, and undermining faith and trust in the competence of the political establishment. New social movements such as the Indignados (Movimiento 15-M), 'We are the 99%', the Occupy movement and 'Nuit debout' emerged. Opposition to TTIP and CETA flourished and withered again. This and other popular revolts are often described, in a somewhat dismissive fashion, as populism, which has become a label that political elites attach to policies supported by ordinary citizens that they don't like¹³. Prospects for Trade Unions in the Evolving European System of Corporate Governance remain ambiguous.

After decades of Anglo-Saxon addiction to the shareholder approach, neglecting stakeholders, aiming at maximising economic efficiency and competitiveness, the question of effective democracy inside corporations is back on the political agenda. The question of industrial democracy returned in France with the introduction of workers' board-level representation (WBLR) to the political stage, in Germany with the DGB celebrating 40 years of the German law on codetermination which had brought parity in the supervisory boards of big companies, and in the United Kingdom with Prime Minister May announcing to take some inspiration from the German workers' participation system. Jean-Claude Juncker and Martin Schulz, as candidates for the Commission presidency in 2014, took a stance in favour of setting a European minimum standard on workers' board-level representation¹⁴, but unfortunately they never returned to their campaign pledge.

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11. Joseph E. Stiglitz, Globalisation and its New Discontents, August 5, 2016. (www.project-syndicate.org/commentary/globalization-new-discontents-by-joseph-e--stiglitz-2016-08)
 12. Larry Elliott, The Guardian, 14 July 2016. (<https://www.theguardian.com/business/2016/jul/14/up-to-70-per-cent-people-developed-countries-seen-income-stagnate>)
 13. Martin Jacques, The death of neoliberalism, The Guardian 21 August 2016. (<https://www.theguardian.com/commentisfree/2016/aug/21/death-of-neoliberalism-crisis-in-western-politics>)
 14. Für dieses Europa streiten die Kandidaten, Mitbestimmung, 2014 (5) 16-21.

2. The European dimension of industrial democracy

This chapter deals with the need to Europeanise and modernise workers' involvement which at European level looks like a highly rugged landscape. Significant achievements at European level have been made with the 1994 Directive on European Works Councils (EWCs), the 2001 Directive and Regulation on the European Company Statute (SE), the 2002 Directive on a general framework for information and consultation. Each time, the European debate focused mainly on the question of how to find a European minimum standard, either for information, consultation at national or at European level or for workers' board-level representation in European companies. However, progress towards a joint vision of industrial democracy was never guaranteed and, once achieved, compromises on minimum standards cannot be taken for granted. In spite of the piecemeal approach, neither the European Commission nor the European Parliament ever developed a coherent proactive policy agenda on the topic including the three dimension of the triangle: information, consultation and workers' board-level representation.

So in reality, regime competition put national legislation under pressure by facilitating regime shopping from companies. At European level the opening and downsizing of once achieved and agreed compromises on minimum standards as in the SE led to several backlashes such as the rules on board-level representation in the Cross-Border Merger Directive (which does not refer to information and consultation rights and undermines the provision on board-level representation of the SE). Adding several attempts by the European Commission to curtail workers' involvement such as the proposal for a European Private Company or for the Single Member limited liability company (SUP) which generates serious concerns with regard to fiscal evasion, bogus self-employment, letter box companies, workers' rights and sustainable corporate governance in general is still on the table.

European Works Councils, information and consultation, workers' board-level representation are like pieces of a jigsaw which function well once they work as a triangle and as interconnected and do not stand-alone. In 1994, the European Works Councils Directive (94/45/EC) was adopted, inspired by the German Works Councils system. The EWC Directive is applicable to transnational undertakings and groups of undertakings employing more than 1 000 employees, and at least 150 in two Member States. The European Parliament reacted quite often and loudly to public

discussions such as the *Renault-Vilvoorde case*: In February 1997, Renault had announced the closure of its Belgian plant, but did not see the need to consult the EWC prior to the ultimate decision. In the following months Belgian and French courts clearly established that the company could not proceed in implementing its restructuring measures until it had adequately consulted the EWC. The judges made clear that Renault had not fulfilled its obligations on information and consultation under national and European law. This case represented a milestone in clarifying the meaning and scope of European information and consultation rights. A similar event occurred in Greece in 2013 when the government closed down the public television and radio broadcaster ERT, ignoring the information, consultation and participation rights of the staff, workers and journalists.

In May 2009 a recast EWC directive was adopted (2009/38/EC). In 2016 it was 20 years since the first EWC directive came into force in the EU. Right now in 2016 the European Commission is assessing the functioning of the EWC recast directive. The Commission's view as well as some other studies¹⁵ will fuel the debate on the need for further improvements to European regulation of EWCs. It has become clear that EWC in cases of restructuring have a structural difficulty: in companies without workers' board-level representation a discussion on the actual company strategy is usually lacking sufficient information. There is no possibility to directly influence a company's decision making and so the institution of information and consultation functions only *post festum*, even in cases where the information arrives on time and the consultation process is accomplished in due form. Generally, the information-consultation is 'too little, too late' – this dilemma can't be solved within the formal structure of the EWC Directive and therefore no revision and no recast will really help. EWCs can fully function only when embedded in a triangular system of workers' involvement, when workers' representatives can have a say and vote in the boardrooms and influence company decision making and anticipate change. Other promises can only deceive expectations and create frustrations as can be concluded from a recent report on restructuring¹⁶.

15. Eckhard Voss, European Works Councils Assessments and requirements. Report to the ETUC, 2016; European Works Councils on the Move: Management Perspectives on the Development of a Transnational Institution for Social Dialogue, 2016; Jeremy Waddington *et al.*, Managers, BusinessEurope and the development of European Works Councils, 2016; Stan De Spiegelaere, Too little, too late? Evaluating the European Works Councils Recast Directive, 2016.

16. Eckhard Voss, Revisiting Restructuring, Anticipation of Change and Workers Participation in a Digitalised World. Report to the ETUC, 2016.

The year 2016 marks the fifteenth anniversary of adoption of the EU directive on workers' involvement in the European Company. An agreement on the European company statute (SE) was reached after several decades of discussion in 2001, the original proposal being published in 1970 after a first informal proposal by Professor Sanders in December 1966. The challenge was to avoid the lowest common denominator and to find an ambitious European standard. Whereas in 18 out of the 28 Member States national systems of workers' representation in company boardrooms existed beforehand, up from 2004 it became possible to establish a European Company. The main purpose of the statute was to enable companies to operate cross-border businesses in Europe under one and the same roof of a European corporate regime.

From the perspective of workers' involvement, the most interesting feature of this new company form was the obligation to negotiate on worker involvement in SEs including the representation of the workforce at company board level which was welcomed by the trade union movement as a step forward. However, in hindsight it became clear that the SE did not even establish a European minimum standard as a common denominator. It is built on the 'before-after' principle which means that only in Member States where board-level representation existed beforehand, a newly established European Company can have board-level representation. In the Member States without there is nil. This situation has proved unsatisfactory. There are at least two major shortcomings. First, a company can convert to being a European company just before reaching the national thresholds and thereby avoiding stronger national forms of workers' involvement¹⁷. A dynamic adaptation clause would be needed in order to adapt the form of workers' participation to the size of the company, reflected in the number of workers. Second, the before-after principle does not set a European minimum standard as it provides different forms of workers' participation depending on to the pre-existing situation in the Member State in which the company takes its seat. The freedom of establishment makes it possible to establish a company, for instance a British Limited company in Germany, allowing it to circumvent workers' representation on the boards.

17. Sebastian Sick counted 50 companies which converted into an SE to avoid parity in the boardrooms, but only 14 SEs which have parity; Zukunft Mitbestimmung, *FAZ* 30 June 2016, p. V4.

2.1 The ETUC on the move towards industrial democracy

A key European player on workers' participation is the ETUC which, since its foundation, has promoted it¹⁸. Workers' involvement is one of the cornerstones of the Sustainable Company concept, since it enables the exercise of 'workers voice' in corporate governance and company affairs¹⁹. More democracy at the workplace is what workers and society want. Information, consultation and WBLR function as communicating triangle. When WBLR is a source of reliable and early information, it can become an additional source of influence at the heart of company decision making and a tool for better access to and anticipation of management decisions at an early stage. This means that WBLR has to become an integral component of an overall workers' involvement triangle. It is essential to ensure smooth articulation between all levels of workers' and trade union representation. A common level playing field would address the gaps and inconsistencies in the current and upcoming EU acquis, reducing incentives for abuses and circumvention of national standards. 36% of the European workforce already benefit from participation on the boards.

It is therefore important to take a closer look at the evolution of the ETUC positioning. In April-June 2016 the ETUC adopted a far reaching position²⁰ on the triangle asking for a coherent approach and a horizontal EU framework for democracy in the workplace. It is necessary to deliver some benchmarks to give the background to this step: The 2011 Athens ETUC Congress mandated the ETUC Secretariat to start some in-depth work on board-level representation. Several expert groups dealt in particular with the opportunities to draft cornerstones for the directive on European Company Statute to ensure that the directive fulfils its purpose and discussed different options to broaden the scope of board-level representation in Europe. On the basis of a new consensus in

18. Trade unions for a change of course in Europe, Edited by Wolfgang Kowalsky and Peter Scherrer; Brussels 2011.

19. Wolfgang Kowalsky and Claudia Menne, ETUC for strengthening employee involvement, in: European company law and the Sustainable Company: a stakeholder approach, Vol. II, Edited by Sigurt Vitols and Johannes Heuschmid; Brussels 2012.

20. ETUC position paper - Orientation for a new EU framework on information, consultation and board-level representation rights. Adopted at the extraordinary ETUC Executive Committee on 13 April 2016 in The Hague and the ETUC Executive Committee on 9 June 2016 in Brussels. <https://www.etuc.org/documents/etuc-position-paper-orientation-new-eu-framework-information-consultation-and-board-level#>

October 2014, the ETUC Executive Committee adopted a resolution²¹ calling for a Directive introducing a new and integrated architecture for workers' involvement in European company forms. The new Directive should set high standards on information and consultation, and introduce ambitious minimum standards on workers' board level representation.

The ETUC gives clear indications how this Directive should be designed and drafted. First of all, the ETUC made a call for a common level playing field on workers' rights to board-level representation. The idea is to propose a coherent sustainable vision for EU company law. Whenever a business wishes to use the opportunities offered by European company law, it must at the same time adhere to shared European values such as sustainability and workers' involvement. The new framework proposed by the ETUC would become the single reference on information, consultation and board-level representation for all European company forms (such as SE, SCE). It would also apply to companies wishing to rely on EU company law instruments enabling company mobility, such as cross-border mergers or cross-border transfers of registered offices.

Furthermore, a dialectic of negotiations in the shadow of the law would apply. The proposed Directive should leave as much space as possible to negotiate at transnational company level with a view to enabling the parties to design an information, consultation and WBLR procedure that best fits their needs and traditions. Key principles should thus be laid down in binding standards, and ambitious subsidiary requirements should be designed. These requirements would apply as fall-back provisions in the absence of an agreement or if the parties wish to do so.

Above all, there is the delicate question of enforcement. Information and consultation is an integral part of company decision-making at all levels: local, national and transnational. Before management takes a final decision, the transnational information and consultation process must be properly conducted and completed. At the same time, it can be anticipated that the introduction of WBLR standards will considerably help works councils to receive timely and quality information.

21. Towards a new framework for more democracy at work: ETUC resolution.
<https://www.etuc.org/documents/towards-new-framework-more-democracy-work-etuc-resolution>

The EWC would play a stronger role as the Directive should strengthen the existing minimum standards for the creation and functioning of an EWC, which will serve as the discussion partner of management for employees' involvement in the company. Building on the existing acquis (e.g.: EWC Recast Directive, SE Directive), the Directive should provide solutions for the composition of European works councils, its competence and functioning rules. The competence of EWCs can be usefully extended to include decisions on recourse to external labour (subcontracting, temporary work agencies), data protection, environmental issues and the introduction of new technologies, large loans, etc. The functioning of the works council can be improved by requiring more than one meeting a year and the creation of specialist committees with the assistance of experts (e.g. economic, social and education committees).

As the third dimension of the triangle, the Directive should introduce an obligation to put in place a system for workers' representation on the board. This can either be the board of directors (for one-tier systems) or supervisory boards (for two-tier systems). This Directive has no vocation to regulate companies' board structure. Every workers' representative on the board should be a full member with the same rights and duties as the members representing shareholders, including the right to vote. This means that workers' representatives should receive an invitation to the board meetings in time and with sufficient documents. They should have the right to discuss and ask questions individually. They should have an individual right to convene extraordinary meetings and to request that a topic is included on the agenda.

In full respect to different corporate structures, the Directive should contain a non-exhaustive list of the topics that should appear on the agenda of the board. It will be of utmost importance that in accompanying European company law instruments sufficient provisions are inserted to compel all board members to act in the long-term interests of the company. Workers' representatives, both on the board and in the works council, must enjoy protection against dismissal and discriminatory treatment. Sufficient time off and training must also be secured.

Some topics need further development such as confidentiality and election methods. It is essential that the Directive tries to define sensibly what the notion of confidentiality entails. Too many topics are often qualified as 'confidential' by management. This leads to poor or absent information to works councils. The rules on confidentiality must enable

the necessary flow of information with due respect to confidentiality obligations. The same rules on confidentiality shall apply to workers' board-level representatives and shareholders' representatives alike. There shall be no specific provisions on restricting confidentiality which apply solely to workers' representatives. Workers' board-level representatives should have the right to regularly communicate with national and European worker representation bodies.

There are different methods and traditions available to elect or appoint WBLR. Regardless of which method is applied, it must secure a genuinely European mandate by ensuring that the nomination and selection procedures cover the entire European workforce, include a prerogative for trade unions supported by the European Trade Union Federations, and precludes any management role in the selection of WBLR. The mandate of the WBLR is to defend the long-term interests of the company as a whole, in particular the interests of the workforce.

The ETUC proposes an escalator approach with a lower proportion of WBLR for small enterprises and increasing to higher proportions depending on the size of the company (in the single-tier as well as the dual system):

- small companies with 50 to 250 employees (within the company and its direct or indirect subsidiaries) should have a low proportion of WBLR (2 or 3 representatives);
- companies with 250 to 1 000 employees (within the company and its direct or indirect subsidiaries) one third participation;
- big companies with more than 1 000 employees (within the company and its direct or indirect subsidiaries) should have parity (half of the seats).

The Directive should not lead to a situation where workers' board-level representatives have no works councils to report to.

For the ETUC gender equality and diversity in the boardroom of companies are key democratic principles with positive societal and economic side-effects. The principle of gender equality should however be kept separate from that of diversity: women are neither a group nor a minority, but more than half of the world's population not to mention 45% of the European workforce. Therefore, the balanced participation of women and men in decision making bodies is not merely a question of

diversity, but an essential imperative of the fundamental principles of democracy and human rights, as enshrined in the EU Treaties and the Charter of Fundamental Rights. Each gender should be represented at a level of between 40% and 60% in decision-making structures. This principle should apply to publicly-listed and non-listed companies and to both executive and non-executive board members.

These cornerstones would lay the foundations of an ambitious integrated European architecture of industrial democracy in the medium- and long-term. In the short term, this proposal can be an inspiring source for all attempts to improve existing directives on workers' involvement.

2.2 Conclusions

At the beginning of the 21st century, European company law continues to look like an arbitrary patchwork, resembling an incomplete mosaic. The European architecture of corporate governance is fragmented and incomplete²². Information and consultation are individual fundamental rights permitting no thresholds, and at the same time there are collective rights for European works councils, works councils and workers' representation in general. A holistic approach to this triangle is still missing. Therefore, the European Commission is asked and challenged by the European Trade Union movement to make visible steps forward, away from the better regulation agenda, beyond the shareholder value approach. Neither better regulation nor shareholder value orientation have improved corporate governance - on the contrary.

The financial, economic, monetary and corporate governance crisis has not yet been adequately addressed. It is urgent to promote sustainable companies with a strong workers' involvement dimension. In a company, a balanced and fair decision-making process should reflect a plurality of interests including all major stakeholders, and amongst them, workers in particular, in a gender balanced fashion.

The ETUC is pushing hard and consistently for political and in particular for industrial democracy. In other words: for more and better democracy

22. Wolfgang Kowalsky, *The ETUC on the way towards sustainable European employee involvement*, in Vitols S. (ed.) *Long-term investment and the Sustainable Company: a stakeholder perspective*, Vol. III, Brussels, ETUI 2015.

at the workplace. The ETUC demand for a horizontal EU framework on information, consultation and board-level representation means introducing a new and integrated architecture for workers' involvement in all European company forms. Information, consultation and board-level representation are a triangle functioning together and are not stand alone features. ETUC has developed quite clear views based on normative values, institutional arrangements in particular the embedding in a triangular structure and benchmarks (% of workers covered by EWCs, by WBLR etc.). This directive would propose a new differentiated approach, an 'escalator' with a low proportion of board-level representation for small companies and increasing to higher proportions depending on the size of the company.

From an ETUC perspective, workers' board-level representation is not about extending or transposing national models to the EU; it is different as it would be genuinely European, covering European company forms in a first step and transnational companies in a second step. The logic is to strengthen and broaden the right to workers' representation in order to broaden workers' strategic influence in company decision making. It is not about introducing any form of co-management or collaboration but of strengthening workers' influence, in particular the possibilities for the control and supervision of important company decisions affecting the workforce.

Better workers' involvement is a key question of the 21st century. A rapid Europeanisation of business opportunities and a delayed Europeanisation of the right to workplace democracy do not fit together. The Europeanisation of effective workers' participation rights would accelerate the process of the Europeanisation of the Trade Union movement, too. EWCs have existed for more than 20 years. Investing in the work of the EWC is an investment in the future of the democracy at the workplace. In supporting and enabling workers' representatives - in Works Councils but also in company boardrooms - to play an active role in a participative society the European Trade Unions can sustainably contribute to the European project.

The general lack of coherence on workers' involvement in the digital era has to be addressed. It is not yet clear if the European Pillar of Social Rights is purely symbolic to show that the interests of the working class have not been sacrificed in favour of the big corporations or whether it will bring some steps forward for real and efficient workers' involvement.

The European Commission has to be challenged to show that fundamental rights are at the core of the European project and not only competitiveness and the interests of big corporations. In a time where European institutions are suffering a substantial crisis of legitimacy and credibility, a visible and tangible signal towards strengthening rights of participation for workers would certainly help to change the image of an EU which serves the business interests only. The topic of industrial democracy in the 21st century is therefore crucial²³.

23. For the first time since the first general elections to the European Parliament, a discussion on workers' board-level representation started in this institution launched by the chair of the Employment Committee. At the time of drafting this article (September 2016) the discussion was still ongoing.

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