Progress in Workers Information and Consultation
Standards brought about by European Social Dialogues

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1. Introduction

“Citizenship has meant a reciprocity of rights against, and duties towards, the community. Citizenship has entailed membership, membership of the community in which one lives one’s life. And membership has invariably involved degrees of participation in the community.” (David Held 1991: 20)

European Citizenship in specific has emerged as “market citizenship” (Everson 1995: 73), where special rights were given to workers, service providers, professionals and their capability of participating in a common market. With the Treaty of Maastricht in 1992 these have been constitutionalized and extended to the membership of a member state. Still nowadays due to the rights and duties entailed in participating within the different channels of communication of a globalizing/Europeanizing market, workers Information and Consultation rights can be seen as the core idea of (European) citizenship at work. But since its emergence these rights have made quite some progress in their meaning and extend. With the aim of an European Social Model a legal framework with minimum social standards and mechanisms of participation have been established. (Bercusson et al 1996; Schulte 2010) Especially in the field of transnational working rights four different Social Dialogues have been established: the European Works Councils (EWC), cross-sectoral Dialogues, sectoral Dialogues and Transnational Company Agreements (TCA). But how much influence generates the European legal frame on the actual Social Dialogues? How does the European Social Dialogue evolve and what are the established minimum standards for a general participation?

This paper presents current research done at the Collaborative Research Center 597 “Transformations of the State” at the University of Bremen. In a three year project we are investigating 2521 documents brought about by the European Social Dialogues in the fields of “information and consultation”, “Health and safety at work”, “anti-discrimination” and “work life balance”. The aim of this article is to highlight the theoretical and empirical research of the first field, while taking conclusion through the results of the overall research. Therefore, the first part will focus on the methods and analysis of the documents to gain insight on the current research. Following I present the changing configuration of work related participation through transnationalization. And finally a set of conclusions shall hint at some answers about the evolving progress on workers information and consultation standards in the EU.
2. The Social Dialogue in the EU: an Overview

The progress of the European Social Dialogue has mainly occurred in the 1990s and is constantly evolving. On the one hand this is caused by the changing competences and structures in this field. By now many different actors exist and create a multi-level, multi-tiered form of governance. (Marginson/Sisson 2004) Still three categories of governance are of particular importance: the employer side, the employee side and the political side. The employer side contains the management of multinational companies and their different sectoral and cross-sectoral federations. The employee side can be separated into individual employees, (European) Works Councils and Trade Unions. The political side is differentiated between the member states and the EU institutions as supranational actor. This constellation interacts on various ways and establishes new forms of autonomies and interdependencies and creates new forms of transnational norm-building networks. Through the various autonomies and interdependencies governance with and without governments is possible. (Rosenau/Czempiel 1992; Zürn 2005) Due to our research on the change of performance and effectiveness we focus on governance with governments. We investigate for a cooperation of transnational actors possibly willing to secure adequate social standards – apart from the clear boundaries of a democratic, legal and social national state. By now over 2900 documents have been established from which 2492 are available until the end of 2013 and fit in our criteria as official document. (see graph 1)

Graph. 1: Development of SD documents

Source: own composition
On a national level collective bargaining and with it to some extend the conflict between capital and labor has been long since institutionalized. (Müller-Jentsch 2008: 58) Equally the autonomies and interdependencies through a mixture of dual-channel and single channel representation are institutionalized. (Rose 2009: 41) By now four different forms of Social Dialogue exist: European Works Councils (EWC), Sectoral Dialogue, Cross-sectoral Dialogue and Transnational Company Agreements (TCA).

Especially the Directive 94/45/EC of the Council on the establishment of European works Councils (EWC) has had a big impact. Firstly, by establishing a legally enforceable dialogue between employers- and employee representatives and second, by fostering new ways of communication in all Social Dialogues. The sectoral- and the cross-sectoral Dialogue regulated in Art. 154/155 of the Treaty on the Functioning of the European Union (TFEU) are able to establish autonomous agreements, which can be implemented into the legislation. Only the TCAs are yet unregulated but can serve as additional Dialogue between employers and Trade Unions. Altogether, the amount of documents in all forms is continuously rising.

Graph 2: Development of SD Forms

Within our research project we had to divide the documents into different working fields and specify their type to effectively work with such a high number of cases. We focus on “health
and safety”, “Participation”, “anti-discrimination” and “work-life balance” as they seem to be
the most innovative areas within the Social Dialogue. We expect with our preliminary data
that the fields “health and safety” and “Anti-Discrimination” have already a high density of
political regulation while “Participation” and “work-life balance” is set in a legislative
framework which must be concretized.
Additionally, we categorize the type of each document because we rather expect a higher
efficacy of norm-building in binding agreements than in joint opinions. Thus we concentrate
on agreements and procedural text in comparison to recommendations, opinions and tools.
Altogether, we cover with our four fields 90% of all agreements and all procedural texts.

Graph 3: norm-building SD-Documents by working field

![Graph 3: norm-building SD-Documents by working field](image)

Source: Own composition

The Outcome shows that the seemingly more established fields of “health and safety”,
“Participation” and “Anti-discrimination” contain in comparison to the relatively new
emerging field of “work-life balance” many agreements and procedural texts. Nonetheless all
four fields have binding agreements and procedural texts which establish a serious Dialogue
on the matter. Moreover, the field “Participation” has a high amount of procedural texts due to
the founding documents setting the frame of ongoing communication. The data indicates that
“Participation” has some overarching function as the documents are regularly connected to
the other topics as well. For the in-depth analyzes of “Participation” these to aspects have to
be considered. In the following part I will highlight another aspect of participation, the changing configuration due to transnationalization of work. The aim is to establish on a theoretical basis a scale for the ability to participate in transnational companies and conclude a given set of norms which can be further empirically investigated.

3. Forms of transnational participation at work

The scope of work-related participation covers all possibilities and forms of creating communication between the employers’ side, the employees’ side and to some extend the political side. This communication is based on the membership or on the influence on decisions of multinational companies. Participation is therefore the participation on a decision making process within a company. As normally the management has the prerogative on the business of the company work-related participation originates as a claim by the employees (voice) and can be entitled by law or additional company regulations (entitlement). (Mückenberger 2008: 9) Within the EU and its member states participation is to a certain amount guaranteed. With unclear competences and the small influence of member states a new form of transnational participation for employees has to evolve. As the European Social Dialogue has the ability to generate its own norms the questions arise whether new aspects on participation are established. On the brink of the investigation a scale of minimum standards representing the former accountability of a social state has to be created. With the changing requirements on cooperating with people from other regions this scale must picture the new ability to participate.

Under the premises of good will can participation, and thus transnational work-related participation, be divided in input and output legitimate participation. (Scharpf 1999) Input legitimation describes here the ability of all affected to be able to take comprehensively part in a decision making process, generate an opinion and have the possibility to formulate it. Albeit not only claiming individual needs and developing individual solutions but to raise a common welfare. Output legitimation on the other side circumscribes a decision making process which in absence of affected persons, here by representatives for other employees, is envisaged and eventually a decision is made for the common welfare of others. As a result, both forms of legitimation have a common welfare in mind which distinguishes this approach from sole direct and collective participation.

For the idea of a Social Dialogue capable of creating norms adequate to former social states this differentiation is an important assumption. If only direct and collective participation are assumed two major problems arise for a possible scale on the ability of participation. Direct
participation focuses on the individual employee and his/her ability to gain influence. Consequently the responsibility is reduced to the respective individual and the collective access on making decisions is lost (Zimmermann 2012: 449) Collective participation on the contrary aims at an equal treatment of everyone. But within spheres of timely bound decision making, for example the demand for productivity in the economic sphere, not all needs of the affected can be incorporated into the process. From this background emerges one current debate about decision making under the paradigm of effectiveness which supports the fear for solidified roles of experts and its extreme of “post-democracy” (Crouch 2004).

On the opposite, in an ideal process both forms of input and output legitimacy are complementary to each other as they focus on a common welfare. Hence for the creation and examination of a scale on the ability to participate both forms must be included by a balanced set of social standards. Following shall, in short, be presented from which concepts and values this set of social standards can be extracted from.

3.1 Input Legitimate participation

Input legitimacy shall be defined as a realization-focused approach containing the requirement that every employee gains the capability to participate in a multinational company. This definition is derived from the capability approach of Armatya Sen. Sen (2002) incorporates in his approach individual capabilities and shows which means are necessary in a society to raise this capability: 1. political freedom 2. economic institutions 3. social chances 4. Guaranteeing transparency 5. social security.

In the context of transnational work-related participation specific demands arise from these categorizes. Political Freedom must ensure equal treatment regarding all employees and give them the right to vote on decisions. Economic Institutions must be implemented as a form to develop and express interests. The category of social chances implies the possibility on life long learning and education. The information about working conditions, the working place and changes in employment have to be transparent. And finally social security results from a collective demand on social minimum standards. The result of this process must be an ability of employees to take technical, political and moral influence on ones surrounding and to state what is of importance at each working place. This aim can be circumscribed as a “capability of voice” (Zimmermann 2012: 439) and calls for means, liberties and ongoing empowerment.

The mentioned categories thus represent already a scale of common needs of realization. The frame can inter alia be found in the core labor standards of the ILO. And – despite the fact that the EU and its 28 member states is by far no single Union – all categories can be found within the Community Charta of Fundamental Social Rights of Workers from 1998 and was
reaffirmed in the Art. 151 TFEU. As they are indented as a minimum provision common to all the EU member states the specific transnational configuration of participation might need additional abilities to be realized. One issue for example is the difference between member states in guaranteeing education, environmental protection, social protection, minimal wage and so forth. Another one is the defibration of the state itself changing the scope of responsibility granted. This shift increases a perceived loss of responsibility in a transnational sphere. Within this arbitrary gap private actors take on a special function. They gain the quasi-possibility to either set these standards in competition (race to the bottom) or positively harmonize them (race to the top). The first possibility is limited in so far as companies neither can topple the aquis communautaire of the member states nor the competence of the EU institutions as supranational actor. The second possibility would rather be expected for qualitative, non-antagonistic interest regulation of companies which might lead to the empowerment of employees in some areas.

This interaction of a given frame of legal initiatives and binding rules on the one side and the ability of self-regulation via Social Dialogue on the other creates a “Shadow of the Law” (Bercusson 1992: 185) which must be considered in an ongoing research.

It can be summarized that input-legitimate participation is a pre-condition for the existence of voice. But the current transnational configuration leads to an even further shift of responsibility towards private actors on guaranteeing the minimum standards necessary.

### 3.2 Output Legitimate participation

With output legitimacy a more effective and efficient procedure on raising common welfare can be seen with the constraint of not incorporating the opinions of all persons affected. Extended from the capability of voice output legitimate participation takes place within an arranged communication of representatives. It describes the interaction of taking influence (voice) and gaining the positive rights and duties towards a decision making progress (entitlement). The interaction normally based on democratic rules like voting rights, freedom of opinion and mutual recognition can be described as “voice-entitlement nexus” (Mückenberger 2008: 9). In the frame of transnational, work-related participation – with the indicated shift of responsibility – new questions occur. It has to be specified whom to address with voice, who can entitle and how effective and reliable this nexus.

In more detail has the aim of creating a scale on the ability to participate to take two problems into consideration. First, the decision making process within a transnational sphere implies a high degree of individual skills to interact on cross-border topics and issues. This individual
skill is not given by the sole membership in a company nor is the individual automatically empowered to reach this degree and perform within the decision making process. The decision making process has the chance to reduce itself on expert decisions and reproduce a hierarchy. The good will to produce common welfare on participation could become a paradox.

This relates to the second problem. The given governance between employer, employee and politics includes imbalances. It is expected that the management of transnational companies can act more confident in its interest than employees representing parts of the workforce and being dependent on given rights, institutions and facilities. Through the political side three forms of Social Dialogue are guaranteed. The European Works Councils following the Directive 2009/38/EC (ex 98/45/EC), the cross-sectoral Dialogue and the sectoral Dialogue both Article 154/155 TFEU. In comparison to the former guarantees of national states both lack the EU institutions competences to positively intervene and would not necessarily change the imbalances within this nexus. Summarized is the intention of creating comprehensive participation on this level mainly based on unequal preconditions.

Both problems apparently indicate a disability to work on a common welfare. The reversal conclusion means that an intended scale needs to comprehend aspects of collective bargaining. Especially assumption of costs (means), the regulations of membership (liberties) and social responsibility (empowerment).

4. Progress brought about by the European Social Dialogue

For a feasible analysis the theoretical assumptions on transnational work-related participation have to be reduced to various aspects of capability, voice and entitlement generating the mentioned scale on the ability to participate. Consequently these aspects must be necessarily within an agreement or procedural text to fulfill or even raise the standard.

But with our current preliminary data we can observe positive outcomes on all aspects. As shown above substantial agreements have been completed. Moreover, among the procedural texts a firm tendency is concretizing more detailed and comprehensively norms than the minimum standards would imply. This does not exclude the fact that other documents are valued below the set minimum standard.

But if a positive outcome is produced, particularly regulations on “information in good time”, “vocational training”, “language courses”, “working committees”, “special company release” and “additional access rights for workers” surmount the expected standard.

Another conclusion is that – even though positive outcomes in companies have been reached
without legal guarantees – the majority of positive outcomes were established relying on a
given legal frame of the EU. This finding highlights the importance of the shadow of law but
also on the importance of the cooperation between “state” and private actors generating
hybrid forms of labor law. These forms seem to contain performance and effectiveness based
on a reliable frame necessary on acting at transnational spheres.

In sum both, input and output legitimate participation, rely on the will of creating a common
welfare relating to democratic values and reliable frames of action. Thus societal
preconditions have to be met to realize the chance of participation. Upon these preconditions
another set of abilities is required to take influence on cross national matters within a
company. This influence is within a transnational voice-entitlement nexus channeled to a new
form of governance establishing European social standards. European minimum standards are
one the one side derived from different sources among International norms like the ILO, EU
primary law, secondary law and national regulations. On the other side builds and spreads the
European Social Dialogue autonomously and in cooperation with European institutions its one
norm. In particular the hybrid cooperation of state and private actors tends to develop norms
build by the Social Dialogue.

In the next steps of the research we further review which leads to the diffusion of new norms.
And which role private, governmental or hybrid actors adopt. In the presentation during the
conference I will be able to give further insight into the empirical data at hand.
References


