

BEYOND EWCS? – GLOBAL MECHANISMS OF INFORMATION-SHARING AND WORKERS' INVOLVEMENT WITHIN MNEs

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Introduction

GREAT EXPECTATIONS

- Historical antecedents from the 1950s (US, automotive industry etc.)
- The adoption of the EWC-Directive in 1994: an opening?
- EWCs' legal framework as an extra incentive for GWCs?

NO SNOWBALL EFFECT IN REALITY

- On a closer examination: fiction (Tudyka, 1978)
- Very few GWCs, the idea is in its infancy
- Sometimes only an initial meeting, very few met regularly
- Still mark the initial, symbolic acceptance of global employee representatives structures on the part of management...

Variety of mechanisms and structures of transnational/global employee representation at undertaking level
(in line with Rübbs, 2002)

1. **World Company or Group Councils** (or committees) or company-based trade union networks

2. **World Works Councils**

3. **Extended European Works Councils**, and with some provisos,
(on the basis of an agreement with the management / only for internal meetings)

4. **Information Committees, monitoring committees** dealing with particular issues (as part of an agreement)

- + **Other transnational mechanisms** and structures of communication and cooperation

**THE REFLECTION OF THE BROAD
IDEA OF I & C IN
TRANSNATIONAL LABOUR LAW**

Starting point: the rise of global hybrid LL & TPLR - Kolben, K.: definition of TPLR:

„TPLR refers to the private regulation of labor standards in global supply chains, and it is a subset of the broader scholarly field of transnational regulation. TPLR has emerged as a response to pressure by transnational activists, consumers, and other stakeholders that corporations enforce domestic and international labor governance through various forms of non-state means.”

TRENDS: Paradigm-shifts or semantic tricks?

EU-law (EWCs)

- „shadow of law”
- participation - rights
- „I & C”
(Note: most EWCs remain institutions of „I” rather than consultation)
- employees
(EWCs are located within the company)
- „council”

Transnational Labour Law

- Governance gap – initiatives „out of blue” – soft governance....
- Management trends – multi-stakeholder-ism
- „I” only (at best) – under the banners of transparency, disclosure etc.
- all stakeholders (less targeted)
- less-institutionalization (more process-oriented ,ad hoc mechanisms, or multi-level governance)

NEW MECHANISMS, REGULATORY TRENDS IN POSSIBLE SUPPORT OF THE I & C IDEA

Some examples

EXAMPLE 1: the concept of risk-based human rights 'due diligence' from transnational soft law

(UNGPs, OECD Guidelines, ILO MNE Declaration)

- from investment protection to human rights protection
- protection of human rights in the sphere of influence, as it might reasonably and normally be expected in the given circumstances
- „to identify, prevent, mitigate and account for how they address their impacts on human rights”
- risk-based due diligence – can be incorporated it into their enterprise risk management systems
- the nature and extent depend on the circumstances of a particular situation

Labour law perspective: the UNGPs explicitly refer to the ILO's Declaration on Fundamental Principles and Rights at Work

- new horizon and method of enforcing employee's rights in the supply chain? a modern 'super principle'?
- central concept of global hybrid labour law (or TPLR)

UNGP

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out **human rights due diligence**. **The process should include** assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and **communicating** how impacts are addressed. (UNGP 17.)

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to **communicate** this externally, particularly when concerns are raised by or on behalf of affected **stakeholders**. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should **report formally** on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality

3 core steps of the Corporate Responsibility to Respect (II. Pillar)



EXAMPLE 2: REPORTING, a measure of transparency and accountability

- Communication by business enterprises on how they address CSR, their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting
- Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications.
- Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports.
- Requirements on “parent” companies to report on the global operations of the entire enterprise
- Generally, there is a *trend* towards more government-driven, regulatory initiatives related to reporting!

DIRECTIVE 2014/95/EU - disclosure of non-financial and diversity information by certain large undertakings and groups

- EU law requires large companies to disclose certain information on the way they operate and manage social and environmental challenges.
- This helps investors, consumers, policy makers, employees, social partners and other stakeholders to evaluate the non-financial performance of large companies and encourages these companies to develop a responsible approach to business.
- [Directive 2014/95/EU](#) lays down the rules on disclosure of non-financial and diversity information by large companies.

Natural links between the EWC directive and the reporting directive? 1. Big business

- **REPORTING:** „*Large undertakings*“: public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees...
- **EWC:** ‘*Community-scale undertaking*’ means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States...

Natural links between the EWC directive and the reporting directive? 2. The information

REPORTING: information to the extent necessary for an understanding of the undertaking's *development, performance, position and impact of its activity*, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

- (a) a brief description of the undertaking's business model;
- (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;
- (c) the outcome of those policies;
- (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;
- (e) *non-financial key performance indicators* relevant to the particular business.

EWC: The information of the European Works Council shall relate in particular to the structure, economic and financial *situation, probable development and production and sales* of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to 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 of undertakings, establishments or important parts thereof, and collective redundancies. (subsidiary requirements)

Natural links between the EWC directive and the reporting directive? 1. Regulatory philosophy

- Regulated-self-regulation?
- **REPORTING:** Directive 2014/95/EU gives companies significant flexibility to disclose relevant information in the way they consider most useful. Companies may use international, European or national guidelines to produce their statements
- **EWC:** SNB's role

EXAMPLE 3: TCAs

TCAs provide for procedures for monitoring and follow-up which all-in-all are similar: annual review or meeting on the implementation of the text and/or setting-up of a **monitoring, steering committees**

Revival of GWCs?

With an increasingly sophisticated structure?

ENEL: Global Framework Agreement (2013) (excerpts)

- The European Works Council offers a useful way to gradually extend and strengthen "high quality" social dialogue within the business....
- The participatory approach adopted by the Parties translates, in reality, into a system of information, consultation...
-it will include establishing a **Global Works Council** which may set up a number of **Multilateral Committees** *focusing on the most significant international issues*
- The purpose of the Global Works Council *is among others to supervise with the Company the implementation of this agreement and to take initiatives to secure and **extend social dialogue** in the company and to analyse the main aspects of the Group's functioning and propose initiatives for improvement. The Global Works Council does not replace employees' information and consultation rights in force in the various countries and does not interfere with the bargaining rights granted by law or by agreements with the relevant trade unions.*
- The Global Works Council does not have any bargaining role, nor is it a second forum for matters dealt with on a national level!. The Global Works Council is an **information body** at Group level and does not deal with employee information and consultation rights in force in the various countries. Likewise, the Global Works Council does not interfere with bargaining rights granted by law or by agreements to the relevant trade unions.
- The Global Works Council is supported by the Coordinating Unions Committee (CUC),

ENGIE:

European Labour Relations Agreement (2016)

The European social agreement focuses on four pillars and provides all ENGIE employees with new rights and (at the very least) the retention of those rights in the event of a change of situation. The agreement focuses on:

- # 1. Social guarantees
- # 2. Training and personal development
- # 3. Support measures for voluntary mobility
- # 4. Cases of restructuring

Article 11. Monitoring of the agreement (excerpt)

The monitoring of this agreement is carried out by a **monitoring committee** made up of 17 members (excluding management representatives), including the European trade union federations that have signed the agreement, and the Secretary of the EWC.

The monitoring committee will meet once a year. (work-plan included)

The European Works Council, through the Secretariat, will be kept regularly informed of the monitoring of this agreement

CONCLUSION

- „....given the logic of corporate internationalisation, **EWCs can only represent an intermediate step**. What is needed is the construction of transnational structures of industrial relations embracing all the operations of an undertaking – transnational industrial relations on a global scale.” (Rübb, 2002)
- ‘Only by establishing World Works Councils will the organisational structure for the employee side achieve congruence with the decision-making structure of the employer’ (Schmierl, 1999, p. 577).
- What the body is called or how it is formally set up is a secondary issue – what is important is the substance

THANK YOU VERY MUCH!

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