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Paul Marginson, Keith Sisson*

European Works Councils - Opening the Door to European Bargaining? **

Are European works councils the first step on the road to European level collective bargaining? Factors against this view include the Directive's limitation to information rights, the existence of a clear demarcation between information and bargaining in many EU countries, the national focus of most European unions, and the increasingly divisionalised structure of companies. Nevertheless, as product markets become more internationalised, multinationals develop more international employee management systems, and unions seek cross-border comparisons of employee rights and benefits, there are real pressures towards a form of 'arms-length' bargaining at European level. In this the parties do not formally negotiate at the European level, but they do influence and anticipate each other's at national level.

Sind europäische Betriebsräte ein erster Schritt auf dem Weg zu Kollektivverhandlungen auf europäischer Ebene? Gegen diese Sichtweise sprechen folgende Faktoren: die in der EU-Richtlinie vorgenommene Begrenzung auf Informationsrechte; die klare Abgrenzung zwischen Information und Kollektivverhandlungen in vielen europäischen Ländern; das nationale Interesse der meisten europäischen Gewerkschaften; sowie die häufig nach Sparten gegliederten Unternehmensstrukturen. Gleichwohl werden mit der weiteren Internationalisierung der Produktmärkte in vielen multinationalen Unternehmen transnationale Systeme der Arbeitsbeziehungen entstehen und die Gewerkschaften zunehmend grenzüberschreitende Vergleiche von Arbeitsnormen und Arbeitnehmerrechten vornehmen. Es gibt folglich einen realen Druck in Richtung „indirekter Kollektivverhandlungen“ auf europäischer Ebene. Nach diesem Verständnis verhandeln die Parteien zwar nicht formal auf europäischer Ebene, sondern beeinflussen sich gegenseitig und antizipieren ihre jeweiligen Reaktionen auf nationaler Ebene.

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English Abstract: DM, deutsches Abstract: WMJ

Are European Works Councils the first step on the road to European-level collective bargaining? Examining the forces for and against such a development, Paul Marginson and Keith Sisson argue that, although management fears and union aspirations in this area are unlikely to be realised in the foreseeable future, they do contain an important grain of truth.

In the debate surrounding the implementation of the European Works Council Directive, one of the key concerns articulated by management has been that EWCs could represent a significant step along the road towards European collective bargaining. Such concern reflects aspirations on the trade union side that, in conjunction with growing international integration of production within companies themselves and the prospect of Economic and Monetary Union, European Works Councils will provide a platform eventually leading to European company-level bargaining. This is because they provide a structure within which trade union representatives from different European countries can meet, exchange information and potentially forge common negotiating positions. We argue that whilst, for the foreseeable future, such fears and aspirations are unlikely to be realised, they do contain an important grain of truth. We begin with an examination of the forces which stand in the way of any development of collective bargaining at the European level, before considering the factors which are likely to promote activity at this level. In conclusion, we suggest that the most likely outcome is the development of „arms-length“ bargaining, in which negotiations continue to be conducted through existing industry and enterprise structures at national and sub-national level, but where the positions of the parties are increasingly coordinated across European borders and outcomes are increasingly similar.

Impediments to European collective bargaining

There are a range of institutional factors and social and economic forces which stand in the way of European-level collective bargaining.

The first factor is the Directive itself, which expressly limits the scope of EWC's to the purposes of provision of information to, and rights to consultation for, employee representatives at European level. Reflecting the Directive's intentions, none of the 80 or so agreements concluded to date under Article 13 of the Directive provide employees or their representatives with any rights to negotiation over matters within the ambit of the EWC. The managements concerned have successfully demarcated information and consultation from collective bargaining. In practice too, none of the multinational companies with established EWC arrangements have negotiated collective agreements at European level. The nearest to an exception is Danone, the French-based food group, which has agreed a series of joint texts with employee representatives at European level covering a number of industrial relations issues (see box), which provide a framework for negotiations at lower levels of the group.

Second, the demarcation of rights to information and consultation from those to collective negotiation in the EWC Directive, reflects a basic distinction between employee-based structures for consultation, at enterprise and group level, and trade union-based structures for collective bargaining, at either sectoral, regional or national level, entrenched in the industrial relations systems of mainland European countries such as France, Germany and the Netherlands. Even in the Nordic countries such as Sweden, where rights to information and consultation at enterprise and group level are trade union-based, employers have successfully demarcated consultation within the enterprise from collective negotiations at sectoral and intersectoral level. In the UK, in the absence of any general statutory right to information and consultation and negotiation management has been remarkably successful over recent years in (re)defining both the level and scope of collective negotiations. Overall, it seems improbable that management which has successfully enforced such a demarcation between consultation and collective negotiation over several decades, will prove unable to do so at European level in the coming period.

Thirdly, many European trade unions too remain wedded to national systems of collective bargaining, involving an acceptance of the established demarcation between consultation within the enterprise and collective negotiations beyond. Thus, although the ETUC and the European industry federations of trade unions may aspire to promote the coordination of bargaining demands across countries through EWCs, national trade unions may well prove reluctant to yield the necessary authority, or resources, to enable these European-level organisations to pursue a common negotiating agenda in different European countries. The problems encountered at the beginning of the decade by unions in the metal sector in launching and sustaining a common initiative to reduce working hours, faced with differing national priorities and circumstances, testify to the difficulties involved.

A fourth significant factor is the rationale of the devolved or „divisionalised“ management systems adopted, and increasingly extended, by most of Europe's large companies. These involve devolution of responsibility for operating matters and financial performance, in profit and loss terms, to quasi-autonomous business divisions. Increasingly, such devolution is being carried further to smaller, „strategic“ business units, so that large European companies are now made up of a number of profit-responsible strategic business units linked together in divisions or „streams“. The logic of devolving operational and financial responsibility is that unit-level management should, as far as possible, be in a position to determine their own costs - including labour costs - and revenue. This calls into question collective bargaining at higher levels (sectoral, regional or intersectoral) because its role runs counter to this logic of devolved financial responsibility. Also important are the pressures leading to the adoption of these operationally and financially devolved management systems: the intensification of international competition, characterised by greater uncertainty and rapid shifts in demand; accelerated rates of product innovation; and the progressive opening up of regional and international markets. Devolved management systems are a means of transmitting these competitive pressures on large companies

to the individual business units, and of making them more responsive to them - thereby enhancing the adaptive capability of the larger company to changing market circumstances. In these circumstances, managements have sought to develop and strengthen employment systems which are organisation- as distinct from occupation- or industry-based, as a means not only to exercise greater control over costs, but also to develop working arrangements which provide them with the adaptiveness they require. Increasingly, therefore, managements have been pressing to introduce employment and work practices which are tailored to their own business requirements. Such bespoke arrangements are difficult to cater for in higher agreements at any level, let alone the European. The result of such pressure to give business unit management greater control over labour costs, and the autonomy to determine the working arrangements which best suit the needs of the business, has been a marked growth in the incidence of collective bargaining within the enterprise, either at company or at workplace level. In many European countries, this has taken the form of supplementary bargaining, particularly over work and employment practices, within a framework concluded in a multi-employer agreement. In Britain developments have gone further, with sectoral bargaining being almost wholly displaced by collective agreements at company or at workplace level. One effect is that the distinction between consultation within the enterprise and collective bargaining beyond is becoming blurred, as employee representatives within the enterprise increasingly become involved in second-tier negotiations. To a greater or lesser extent amongst large companies, established sectoral and occupational frameworks for industrial relations are tending to be paralleled, or in some cases superseded, by a corporate framework. The context in which EWCs are being established, therefore, is one in which there is substantial pressure from management for a continuation of the decentralisation already occurring in collective bargaining structures across Europe. Faced with such pressures from management, trade unions have rarely been able to resist devolution, in part or in whole, of bargaining to enterprise level. It seems unlikely in this context that unions will be prove capable of confounding management's priorities and require it to engage in collective negotiations at European company level.

Pressures for a European dimension

The resilience of national systems of multi-employer collective bargaining in many European countries, and the demarcation between consultation within the enterprise and collective negotiations beyond; the widespread attachment of trade unions to such systems; and the pressures from management, increasingly organised along operationally and financially devolved lines, to decentralise bargaining structures would seem to make the development of collective bargaining at European company level an unlikely prospect in the immediate future. Yet it is possible to discern some countervailing pressures towards greater coordination of industrial relations and employment practice at European level, most evidently deriving from

changes in international product markets and the response of multinational companies to these.

At first sight, it might be expected that European company-level collective bargaining would be most likely to arise where a European labour market developed for particular groups of workers. In these circumstances, management might see advantages in establishing a minimum floor of conditions, through collective agreement with trade unions, in order to prevent undercutting. Highly-skilled employees, such as technical staff or airline pilots, could become examples, but in practice, there is little evidence that a European labour market will develop for most groups within the workforce over the foreseeable future. Developments in product markets are likely to have more immediate and more widespread implications for collective bargaining.

Intensifying international competition during the 1980s and 1990s reflects growing internationalisation of markets for products. Multinational companies have been active agents in this process, pressing national governments and intergovernmental institutions for measures to open up international markets. Within Europe they were influential proponents of the creation of the single market. In turn, they have responded by adopting continent-wide strategies for production and the servicing of markets across Europe. These developments in production strategy have been accompanied by innovations in management organisation. The primary axis of internal organisation is shifting away from the national subsidiary, which groups all business operations within a particular country, and towards the international business division, which groups operations within the same stream of business across different countries. Prominent companies which have shifted the emphasis from territorial forms of organisation to international business-based forms of organisation include CarnaudMetalBox, General Motors, Shell, Thomson and Unilever. The transnational character of the devolved management systems, and the performance control and coordination exercised by the corporate centre of major multinational companies (MNCs) has important implications for their approaches to industrial relations.

Crucially, these multinational companies now possess the potential to develop organisation-based systems of employment which stretch beyond the confines of national borders, and which are genuinely transnational in nature. A growing number of MNCs have put in place management systems and structures to diffuse best examples of working and employment practice across sites in different European countries. Such systems include the regular convening of meetings of production and personnel managers from sites in different countries, rotation of managerial personnel from one site to another, compilation of manuals of best practice and the assignment of a corporate management task force with a specific remit to identify and diffuse examples of best practice across sites. The emphasis is on implementing work and employment practices, tailored to the business requirements of the MNC, on a site-by-site basis. The process is reinforced by the systems of performance control utilised within major MNCs. Advances in information technology and

communications systems mean that corporate, and divisional, management now have the capability to compare the performance of workforces from sites across Europe, and beyond. Such comparisons are most salient when similar activities are carried out in a number of different locations. The information from these performance comparisons can be used to exert pressure on business unit management and extract concessions in employment and working practices from local workforces, keen to attract future investment. In locating new investments, corporate headquarters can „reward“ strongly performing sites and „punish“ those performing poorly. The exercise of these coercive comparisons provides MNCs with a powerful mechanism to discipline the bargaining behaviour of local managements as well as local workforces. Thus whilst the parameters of this corporate framework are transnational in scope, any negotiation over the implementation of new work and employment practices most commonly occurs at either national enterprise or site level. The potential to develop transnational organisation-based employment systems has translated into explicit policy initiatives in only a few cases. These include companies such as Digital and IBM which have developed an overriding philosophy for the management of human resources, and Ford which introduced employee involvement programmes in similar operations in several European countries under an explicit initiative to deal with a common problem. A further exception is French-based Danone, which has adopted European-level policies on training, equal opportunities, employee information and trade union rights (see box). Unusually, too, these take the form of joint opinions agreed with the International Union of Foodworkers through the company's EWC. As noted earlier, Danone comes closest to collective bargaining at European company level in terms of present practice.

Danone - the shape of things to come

The annual meetings between Danone, the French-based group formerly known as BSN, and the International Union of Foodworkers (IUF) covering the group's food and drink divisions have been the forum for the development of a series of joint texts:

- a „common viewpoint“ (1988) mapped out a programme of joint policy initiatives on specified employment matters.

This was followed by the conclusion of joint texts on:

- a „plan for economic and social information“ (1989)
- an „action programme for the promotion of equality of men and women at the workplace“ (1989)
- a „framework agreement on skills and training“ (1992)
- a „joint declaration on trade union rights“ (1994)

Trade unions are already beginning to respond to the increasing coordination of apparently decentralised operations being exercised by management within MNCs at international level. Most strikingly, the publicity surrounding some instances of „regime shopping“ by MNCs has alerted trade unions and employees to the ways in which managements are deploying cross-border comparisons of labour performance

in their dealings with local workforces. Hoover's 1993 decision to relocate production of a particular line from one of its plants in France to one in Scotland is a prominent example. Decisions by Mercedes Benz and Siemens to locate investments in major new European production facilities outside of Germany have also been interpreted by IG Metall and local works councils as coercive moves aimed at securing cost reductions in their German operations. In MNCs characterised by ever closer integration of production facilities across the European continent, comparisons are becoming evident in the local and national bargaining demands of trade unions. For example, current claims in the British operations of both Ford and General Motors (Vauxhall) base their demands for a reduction in working hours on explicit comparison with company practice in other European countries. And French unions organising in metalworking plants in Alsace which are closely tied in to the operations of their German corporate parents, have launched claims for wage parity. The establishment of European Works Councils will reinforce this process as increasing international integration of production and service provision and accompanying management coordination of working and employment practice across countries is stimulating a trade union response. Arguably, it will do so in two ways:

- first, EWCs mean that management will be under pressure to outline the key elements of their business plans. In explaining the rationale behind investment and divestment decisions, management will have to make explicit the international dimension of its business operations, and the linkages across borders which sustain these; and
- second, EWCs will provide an unprecedented opportunity for employee representatives, including in a substantial number of cases union representatives, to come together on a regular basis. In those MNCs in which trade unions are relatively well organised, the opportunity to meet, exchange information, engage in cross-national comparisons of employment conditions and practice and, potentially, forge common positions is likely to enhance substantially their ability to respond to transnational management initiatives.

Arm's-length bargaining and framework agreements?

The establishment of EWCs will facilitate the deployment of cross-national comparisons of pay, conditions and working practices by trade unions in collective negotiations at national and local levels within MNCs. How will the managements of MNCs react? It is possible to foresee greater intervention from international management, at corporate or divisional level, to coordinate management policy and practice on employment and industrial relations in the individual business operations. Otherwise there is the danger that local management might set damaging precedents, which trade union representatives could subsequently exploit at sites across the enterprise. The overall effect of this „arms-length“ bargaining, in which the parties do not formally negotiate at European level, but in which they influence and anticipate the reactions of each other, could be a growing

convergence in working practice and employment conditions from one European country to another. Even pay could be affected if there were a single currency - differences in pay levels would become more transparent. In these circumstances, EWCs may become the forum for joint opinions or framework agreements on aspects of employment and industrial relations policy. Such framework agreements would, as has occurred at Danone, establish the broad parameters of policy within which negotiations to secure implementation then took place at national or business unit level within the enterprise. This „collective bargaining“ would be markedly different from the contractual arrangements determining pay and conditions which are characteristic of national systems of industrial relations in many European countries. It would nonetheless be very important in setting an overall pattern.