**Works councils in a voluntaristic context: the Swiss case**

***Paper to be presented at the 11th ILERA European Regional Congress***

***Milano, Italy, 8-10 September 2016***

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**Abstract**

Employee representation bodies elected by the whole workforce or a part thereof (e.g. blue collar workers) in an establishment or a company continue to play an important role in social dialogue in Switzerland. In some branches of the manufacturing industry, they have been established in the first half of the 20th century already. Their role cannot be understood without taking into account the basically voluntaristic character of Swiss industrial relations. Around half of the private sector workforce is covered by collective agreements. There are binding as well as non-binding industry-wide collective agreements alongside with company-level collective agreements in industries with no binding sectoral agreement.

Competencies and functions of works councils have developed incrementally, and they range from mere information rights to de facto co-determination (when it comes to dealing with pension fund schemes). Only to a minor extent, they are regulated by the law. This situation sharply contrasts to the one in other continental European countries (e.g. France, Germany, and Austria) where the law defines much clearer how a works council is being established, how it is being elected, and what its rights and responsibilities are. In Switzerland, this is often regulated through collective agreements, and even more often through terms defined on company or establishment level, or in an ad-hoc way. But works councils also exist in companies where there is no collective agreement; here we may speak of “single channel” employee interest representation through works councils, in the absence of recognised trade unions.

This paper presents preliminary findings from a research project on works councils in the private sector in Switzerland, based on the analysis of the provisions on workplace participation and employee representation in collective agreements and on interviews with officials of trade unions and employer organisations.

**1) Employment relations in Switzerland’s private sector**

Switzerland’s socio-economic system has been characterised as “liberal corporatist” (Katzenstein 1985), and the “Varieties of Capitalism” research has labelled it a “Coordinated Market Economy”, though on the very liberal side of the sprectrum (Hall / Gingerich 2009). It may therefore come as a surprise that we speak of “voluntarism” when it comes to characterizing the “Swiss way” of regulating employment relations. It is not so much the highly individualistic ways how actual salaries in the private sectors are negotiated between individual employers and employee (most collective agreements in the manufacturing and in the service sector explicitly state that salaries – except for minimum wages and yearly increases – are subject to individual negotiation) and the low level of protection against dismissal employees enjoy in labour law which makes us characterize employment relations in Switzerland as “voluntaristic”. Voluntarism is rather the principle which characterises overall relations between employer organisations and trade unions or other forms of collective employee interest representation: They agree or not, and the state does influence as little as possible. There is no statutory minimum wage in Switzerland, and only in rare cases, government may interfere in wage-setting – e.g. when there is evidence of repeated cases of substandard wages in a specific sector, and there are no actors who could (or would be willing to) sign a collective agreement with sectoral minimum wages. It is not uncommon that collective agreements – including minimum wage provisions – are extended to a whole sector, or to all employees who are exerting specific functions. Nevertheless the objective conditions for such extension are comparably strict (Schulten 2016), and above all, it has to be asked for by all parties to the agreement. This means that the question whether collective employment relations in a specific sector are to be regulated is mainly left up to the discretion of both employer and employee organisations and their mutual consent.

As a result, the landscape of collective bargaining in Switzerland’s private sector is extremely heterogeneous. We can distinguish four different types of sectors:

1. Sectors with generally applicable (extended) collective agreements (CA) on national level or with several generally applicable CAs on regional levels (sectoral level bargaining and general applicability is predominant): Construction, some small crafts, butchery, hotel / restaurant / catering sector, hairdressing, cleaning, security services
2. Sectors with non-generally applicable sectoral CA on national level and / or with sectoral CAs on regional levels which only in a minority of cases may be generally applicable and, in addition, company level CAs (sectoral level bargaining is predominant or at least occurring, and voluntary applicability is predominant): Most branches of the manufacturing industry (metalworking and engineering, textiles, watchmaking, chemical and pharmaceutical, graphical), banking, some small crafts, parts of the retail sector, logistics, call center services, French-speaking media, healthcare and social services
3. Sectors with some company level CAs (company level bargaining is predominant or at least occurring): Some branches of the manufacturing industry (food and tobacco, building materials), parts of the retail sector, telecom services, public transportation, airport services
4. Sectors with no CAs at all: Insurance, most professional services, agriculture, some small crafts, German-speaking media

In the first group, we find mainly trades which are by nature protected from external competition, or which seek such protection through the implementation of employment standards against “unfair competition” by foreign or domestic employers hiring cheap workforce (Mach / Oesch 2003). This is typically the case in construction as well as in most small crafts and personal services that cannot easily be provided for from abroad. The sectors which are, in contrast, “exposed” to the world market, are mainly to be found in groups 2 and 3 where it is up to the discretion of individual companies and their voluntary associations whether they want to entertain collective employment relations with trade unions or other employee organisations. It must be noted that apart from “classical” trade unions (German: *Gewerkschaften* / French: *syndicats*) rooted in either the socialist or the christian ideological traditions, we also find in-house or company unions (*Hausverbände*) and professional associations (*Berufsverbände*) which partly fulfil trade union functions (e.g. as signing parties in collective agreements) but try to distinguish themselves from the “classical” unions and are not part of one of the umbrella organisations on national level.

**2) A short history of works councils in Switzerland**

The establishment of works councils in Switzerland dates back to the late 19th century when employers in the metalworking and engineering sector in German-speaking regions were confronted by trade union activities within their factories but preferred to negotiate with elected representatives of their own workers rather than with trade union officials from “outside” the company. Historically, works councils were thus a tool to “keep unions out”. Nevertheless, unions were usually strong enough to get their representatives (*Vertrauensleute*) elected to the councils. Employee participation and the establishments of works councils gradually became a subject in CAs, which implied their recognition by the trade unions, despite originally being anti-union bodies – and, on the other side, recognition of workplace participation through employees at the level of employers’ associations and not just at the level of single employers. Formal participation rights were established much later, with a few exceptions only after World War II. But voluntary practices proved effective, and government’s “factory inspectorates” took the existence of works councils into account when reporting on working conditions in the manufacturing sector. In 1944, government officials counted several hundreds of works councils. In 1952, 61% of all factory workers in Switzerland were represented by councils (Hohl 1992). The incidence of works councils was significantly higher in the German-speaking than in the French-speaking part of the country. Competences of these councils were mainly limited to information and consultation, and the focus of their activity, and their dialogue with management, was the workplace rather than the company, workers’ welfare, working conditions, and pay rather than business or technology (Welti 1942). The attempt by trade unions to introduce co-determination in company law, similar to the German model, failed in a popular referendum in the 1970s. The official German term *“Betriebsrat”*, used for works councils in Germany and Austria, has never spread to Switzerland, as if both employers and trade unions wanted to show that the status of elected employee representatives in Switzerland is very different from the one in the neighbouring countries. The same applies to the French official term *“comité d’entreprise”* and *“délégués du personnel”.*

The most widespread German terms were *“Arbeiterkommission”* (exclusively referring to blue collar workers, not in frequent use anymore), *“Personalkommission”* or *“Personalvertretung”* (referring to the whole workforce) or *“Betriebskommission”* (referring to staff involved in production). French and Italian terminology is similar (*“commission d’entreprise”*, *“commission du personnel”* / *“commissione d’azienda”* , *“commissione del personale”*).

Most of these early works councils represented factory workers (blue collars), whereas white collar employees in manufacturing companies were often represented through in-house unions which followed a management-friendly approach and, furthermore, were often supported by management. Employers were fine with having company level social dialogue exclusively with them – in the absence of classical trade unions, so neither employers nor in-house unions saw a reason to establish elected works councils for white collars. This is different from the situation with blue collar workers where employers, in contrast, felt the need to establish elected works councils in order to bypass dialogue with trade unions who in the beginning took a potentially more radical stand than the in-house representatives who first of all were employees subjected to the employer. This was the dominant pattern at least in the German-speaking part Switzerland. In the decades after World War II, works councils were also established in some service industries, e.g. in banking, insurance, as well as in some retail companies. Social research which was undertaken in previous decades, as well as historical research undertaken later, are almost exclusively focussing on the manufacturing industries (BIGA 1973, Müller 1981, Hohl 1992; an exception is Jans 1991).

The situation of non-statutory works councils looks similar to the situation in the United Kingdom which has been labelled as “voluntarist” (Terry 2010, Dickens / Hall 2010), nevertheless elected employee representation bodies in Switzerland have been, and still are, much more frequent and culturally accepted by both employers and trade unions. Switzerland’s system of employee representation clearly belongs to the “dual channel” systems (Traxler et al. 2001), with trade unions (both inside and outside of the company) and elected works councils alongside. Interaction and task division between the two channels, however, varied and still varies greatly between different sectors, and sometimes even companies.

**3) Regulation of workplace participation through law and through collective agreements**

Consistent legal regulation of elected employee representation bodies was only introduced in 1994 with the “Federal Act on Information and Consultation of Employees in Establishments”; until then, the legal status of works councils was mainly defined through CAs or through specific statutes on company level. Literature has made a conceptual distinction between the “pre-statutory *Betriebskommission*” and “statutory *Arbeitnehmervertretung*” and has labelled the former as “hybrid” bodies, as they were, on the one side, usually elected by the whole workforce or clearly defined parts thereof, and on the other side mainly defined through CAs between trade unions and employers, thus were, as institutions, defined rather by voluntary agreement than by law (Traxler et al. 2001). There is no evidence, however, that the change of the legal situation has altered the character of works councils in a way that would allow us to speak of two completely different institutions. Long before 1994, some substantive legal participation rights had been in force, so procedures companies had to follow were prescribed not only by CAs but also by law - mainly on working time and health and safety issues. On a substantive level, the new Act only introduced the workers’ right to being consulted in cases of mass redundancies and transfer of undertakings, adapting Swiss legislation to EU requirements (Geiser 2009).

It remains unclear, however, to which extent legislation introduced before 1994 had influenced the establishment of works councils or similar bodies. In any case, legislation both before and after 1994 arguably limits voluntaristic practices at the workplace level: In a factory with several hundreds of workers it would have been difficult for an employer to comply with the legal requirements on employee participation without having an efficient communication channel to either trade union representatives within the company (sometimes the case in the French-speaking regions) or elected representatives of the workforce. And there is evidence that the content of CAs has been influenced by the new law (Ziltener / Gabathuler 2016): Provisions on works councils within CAs are more frequent than they were before, and these provisions often explicitly refer to the law. Interviews we have conducted with both employer and employee side representatives also show that the content of the law is well known among the actors. Nevertheless, the official legal term for works councils in Switzerland (*Arbeitnehmervertretung / représentation des travailleurs* = “Employee representation”) is only to be found in a minority of cases, both in the terminology used in CAs as in reality on company level. Companies are free to choose whatever name for their elected employee representation bodies – neither legal nor collectively agreed terminology are binding for them. In the same industry, a variety of names can be found. Our analysis of sectoral CAs also shows a big variety not only concerning the content of their provisions on works councils’ participation rights but also concerning the depth of regulation, ranging from no mentioning at all / provisions mainly quoting the law until detailed listings of the subjects of information, consultation, and sometimes also co-determination. In some cases, templates for company level statues are provided. Company level CAs sometimes include statutes that are agreed by the partners to the agreement (i.e. trade unions have a say on the constitution, the rights and competences of works councils), sometimes they refer to statutes to be agreed by management and works council exclusively (i.e. trade unions have no direct say).

**4) Current situation in the private sector**

Works councils are still widespread in manufacturing industry, and today also in some service sectors (telecom, banking, insurance), as well as in large parts of the healthcare, social services, in public transportation and within non-profit organisations. The incidence of works council correlates with company size, but is also path-dependent: In the construction sector, as well as in the hotel / restaurant / catering sector, both dominated by small firms, also most large companies, in which law allows employees to ask for a works council, do not have one – and both trade union and employer association officials have no knowledge about non-union forms of workplace representation in these sectors. Forms and functions of works councils vary even between companies which are rather similar, e.g. the large retail cooperative chains Migros and Coop follow completely different approaches when it comes to employee participation: In Migros, works councils exist at every level and in all companies belonging to the group, and are seen by management as the preferred partners for social dialogue. In Coop, dialogue with trade unions enjoys a higher priority than in Migros, whereas works councils only exist on establishment, not on group level. Furthermore, the focus of activity for works councils is still as much on topics defined by CAs as on topics defined by law. The former include dialogue on salary systems within the company, negotiation of yearly salary increases, supervision of CA implementation on company or establishment level as well as negotiation of exemptions from CA provisions (e.g. on working time) in favour of single employers who claim that they suffer from economic difficulties. These functions, in addition to the traditional ones in the fields of occupational health and safety, collective redundancies or company-level welfare policies, derive from decentralisation provisions that were introduced in to several CAs (salary negotiations in chemical industry, graphical industry, and banking; exemptions in metalworking and graphical industries) in the course of the 1990s. It means that works councils are taking over – often against their own will – functions which are usually reserved to trade unions. (In the metalworking sector, however, the “classical” union function to negotiate salaries had always been delegated to works councils.) This tendency for overall decentralisation (*“Verbetrieblichung”* in German) has been part of efforts by employers to introduce more flexibility into labour relations in Switzerland (Mach 2006). Trade unions used to resist such attempts but proved to be too weak to block them successfully – they were / are hardly able to mobilise for sector-wide industrial action in the manufacturing industries.

All this means an increase in the responsibilities for works councils. This contrasts with a comparably low status of their members. In large companies, works council presidents may be released from their work duties up to 100%, but there are no legal provisions at all, and very little provisions on the level of CAs which allow for more than having meetings during working time and / or a few days of leave per year for specific works councillors’ training. Further resources, such as administrative support paid for by the company (which is normal for works councils in Germany) are provided in even less cases. An issue which has repeatedly been raised by trade unions in the recent years is the protection of works councillors (and other union representatives) against unfair dismissal (SGB 2012). This has led trade unions to deposit a formal complaint against Switzerland at the ILO (Dunand et al. 2015), but also to try to negotiate provisions in CAs (mostly on company level) which offer better protection for works councillors than is foreseen in the law (Unia 2013). Our own analysis shows that such above-standard provisions are more likely in CAs which foresee extended responsibility for works councils with respect to salary negotiations and / or partial exemption from CA on company level (Ziltener / Gabathuler 2016).

**5) Outlook on our research on works councils in Switzerland**

In the past 20 years, almost no research has been done on works councils in Switzerland. There is no systematic overview available of the situation across the different branches of the public, the non-profit, and the private sectors.

In the context of a research project funded by the Swiss National Science Foundation, we aim to map the landscape of works councils in the private sector in Switzerland. Our efforts to collect information from employer organisations and trade unions showed a very mixed picture: In some sectors, even though there was evidence on a certain incidence of works councils, the respective employer organisations have no knowledge at all and refer to their member companies. Trade unions and other employee organisations maintain contacts with their own, and sometimes also with non-unionised works councillors, but their knowledge is limited mainly to companies which are subject to a CA and where they have members in the workforce.

Apart from contacting all employer organisations and all trade unions based in the private sector, we systematically analysed all available CAs in order to assess the relevance of works councils within a certain branch of the private sector (Ziltener / Gabathuler 2016). Indepth analysis of existing works councils, their forms and functions will be undertaken within eight branches / industries – four in the manufacturing, four in the services sector: Metalworking and engineering, chemicals and pharmaceuticals, watchmaking (including suppliers), graphical (printing and bookbinding), telecom services, security services, insurance, retailing. The collective bargaining landscape as well as the forms and functions of works councils vary across these eight industries, but works councils are rooted at least in the larger companies within each of them.

In a further step, we will focus on actual practices of works councils - their internal structures, their interaction with their constituents, with management as well as with trade unions, the issues they are confronted with, and their approaches towards these issues. We plan to undertake case studies in three different priority industries (at least three cases in each one), in order to be able to make comparisons within as well as across industries. With this study, we aim to contribute both to comparative research on workplace-level industrial relations and works councils and to a deeper understanding of the socio-economic system in Switzerland.

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