Employee participation in a voluntarist and non-adversarial context: The Swiss experience

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Abstract

Employee participation rights in Switzerland are codified legally only to a minor extent. However there is a long tradition of works councils at establishment and company level in several branches of manufacturing industry and the service sector, enjoying information and consultation, and sometimes also co-determination rights. These rights are based on sectoral or firm-level collective agreements and internal company regulations as much as on legal provisions. The generally cooperative climate between employers and employees and trade unions provides opportunities for a wide range of forms and practices of employee participation through works councils at firm level.

This paper will give an overview about participation rights in different branches and companies, based on the analysis of collective agreements and internal employee participation regulations and present findings from cases studies undertaken in ten companies, with a special focus on the benefit management may take from participation through a works council.

1) Introduction: 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). Nevertheless, "voluntarism" may be the best term to characterise the overall principle how relations between relations between employer organisations and trade unions or other forms of collective employee interest representation can be characterized, defining voluntarism as a mode of regulation marked by "soft", usually non-binding legal rules and a low level of government interference (Streeck 1992). Actors agree or not – on minimum wages, on working conditions, on the degree of centralisation within a specific industry, 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 to sign a collective agreement (CA) with sectoral minimum wages. It is legally possible that collective agreements – including minimum wage provisions – are extended to a whole sector, or at least to all employees who are exerting specific functions. But 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. Collective bargaining coverage is estimated at about 50%; this is low in comparison to other countries, however stable / slightly increasing. The share of extended CAs is increasing as well.

Whereas employers, and business interest in general, are well organised, Swiss trade unions are rather fragmented, with a "union density" rate estimated around 16%, decreasing in tendency (Visser 2016, ILO 2018): Besides the traditional "socialist" umbrella organisation SGB / USS (*Schweizerischer Gewerkschaftsbund / Union syndicale suisse*), there is one more umbrella organisation, Travailsuisse, which is made up of unions in the "Christian" tradition and some other associations. Besides, there are in-house organisations mainly organising white-collar employees (*Hausverbände*) and professional associations (*Berufsverbände*) which partly fulfil trade union functions but try to distinguish themselves from the "classical" unions (*Gewerkschaften*) and their umbrella organisations considered to be too "political". The division within labour is thus twofold – both ideological ("socialist" vs "Christian") and socio-professional (blue-collar vs white-collar).

Industrial relations in Switzerland are, in general, non-adversarial. Since the end of World War II, Switzerland has enjoyed a long tradition of industrial peace, with a tendency to declare the absence of industrial conflict a part of the national identity (Degen 1987). Strike activity in Switzerland has been rising in the last 25 years

(Rieger 2016), nevertheless most industrial conflicts occur at firm level and are defensive in nature. Only occasionally, strike is used by unions as part of a strategy to achieve more favourable results in collective bargaining.

Last not least, Switzerland has a good labour market performance, with comparably low unemployment rates and high salaries.

2) Workplace participation regulated by law and by collective agreements

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 – following the "paternalistic" model (Rogers / Streeck 1995). 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. 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 between companies.

Consistent legal regulation of elected employee representation bodies was introduced in 1994 with the "Federal Act on Information and Consultation of Employees in Establishments" (*Mitwirkungsgesetz*); until then, the legal status of works councils was mainly defined through CAs or through specific statutes on company level. Nevertheless, some participation rights of employees (and their representatives) had already been regulated by law before 1994, 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). The main innovation in the 1994 law is the legal status of the works council *(Arbeitnehmervertretung / représentation des travailleurs)*; in private sector establishments employing a workforce of more than 50, employees by majority vote enjoy the right to demand the institution of a works council. In the public sector, employee representation is regulated (or not) through specific staff statutes at federal, cantonal and municipal. Substantive legal rights of works councils are weak, mainly limited to information and consultation rights, with not much left to co-determination, and their status is low: Law does not include any concrete provisions about the release from ordinary work duties for works councillors. Another issue is their protection 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 which offer better protection for works councillors than is foreseen in the law (Unia 2013).

There is evidence that the content of CAs has been influenced by the new law (Ziltener / Gabathuler 2018): Provisions on works councils within CAs are more frequent than they were before the 1990s, and these provisions often explicitly refer to the law. Interviews 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*) 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 statutes 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). Substantive rights of works councils as laid down in CAs and internal company regulations often go beyond the legal minimum; therefore, in the voluntarist context of industrial relations in Switzerland, the situation of employee participation cannot be analysed by looking at the law alone.

The following table gives a rough overview on the number of topics subject to either information, consultation, or even co-determination in several CAs:

Table 1: Topics for employee participation, according to law and to several collective agreements

Law	10
CA Metalworking sector (benchmark)	34
CA Basel chemical industry	23
CA Watchmaking industry	21
CA Graphical industry	16
CA Banking	17
CA Swisscom (firm level)	19
CA Migros retail cooperative (firm level)	23
CA Coop retail cooperative (firm level)	15

3) Current situation in the private sector

Despite the 1994 law granting employees the right to be represented through a works council, a large majority of existing works councils have either been established well before the law was in force, or they have been established by unilateral decision of the employer, or by CA. It fits the non-adversarial character of industrial relations in Switzerland as well as the weak position and low level of legal rights of works councils, that no attempts to prevent the establishment of works councils could be observed so far – in contrast to widespread "works council busting" practices in Germany.

Works councils are by tradition frequent 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. It is mainly in large manufacturing companies in the metalworking and chemical / pharmaceutical sectors such as *ABB*, *GE*, *Novartis*, *Roche* and *Lonza*, and in the two large Swiss banks *UBS* and *Credit Suisse* where works councils enjoy comparably generous working conditions, such as a 50% or even 100% release of the president, and administrative support by the company. 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 –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. I call this a "functional trade-off" between unions and works councils.

Works councils are also concerned by decentralisation provisions that were introduced in to several CAs in the course of the 1990s: Salary negotiations in chemical industry, graphical industry, and banking; exemptions in metalworking and graphical industries. 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. Above-standard provisions on the protection of works councillors against unfair dismissals, however, 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 2018).

Our detailed analysis of practices in the metalworking, the insurance, and the telecom sectors show that the function and the practices of works councils vary greatly among these sectors:

1. In the metalworking sector, works councils are mainly dealing with subjects as foreseen in the law and in the respective CA which contains more detailed provisions on employee participation than any other CA (see table 1): They engage in yearly firm-level salary negotiations with management, in consultation procedures in case of mass redundancies, including the negotiation of social plans, they are dealing with shift schedules, safety equipment. Furthermore, they were forced to negotiate firm-specific agreements for temporary extension of standard working time, especially following the "Swiss franc shock" in January 2015 (the sudden appreciation of the Swiss currency after the Swiss National Bank had discontinued the cap of 1,20 CHF / EUR). The existence of a works council is well-known among workers and accepted, even sometimes only passively, by the management. The CA grants the right to 5 days off per year for each member for training which is being provided by trade union structures, but also by the employer organisation (*Swissmem*). As several unions are competing for members within the sector, the profile of a works council is sometimes marked by the unionisation of the respective president and in general by the strength of unions among the respective workforce. On the other hand, works councillors often act independently of their own union, and the spirit of cooperation between differently unionised as well as non-unionised members is generally good.
2. In the insurance sector, the absence of a CA has a high impact in the sense that the quality of both formal competencies and actual practices vary greatly among the different companies. It is remarkable, though, that some of the big insurance companies already had established works councils on a completely voluntary basis before the 1994 law had been introduced. Some of these institutions derived from in-housed employee associations, and they were as busy with dealing employee discounts and organising leisure time activities as well as with negotiating working

conditions with management. Their representatives usually stress that they are “not a trade union”, which of course is obvious, but also that their function at least partly is to replace the missing social dialogue between employers and unions in this sector. Topics they are dealing with range from defending fringe benefits, consulting on mass redundancies, trying to mediate in case of individual conflicts at the workplace, and major and also minor facility management issues (“water-boiler problems”). Salaries are a topic only occasionally, as there is no agreed mechanism (as would be in the context of a CA) with whom and how to negotiate yearly salary increases, or minimum wages. It is particularly interesting to see that the extent to which works councillors feel respected by management correlates with the way how HR management acknowledge that the works council is useful for their daily work, be it as a “sparring partner” giving critical and constructive feedback to various ideas and projects, be it by giving top managers unfiltered access to the views at “grassroots” level, but also by making potentially unpopular management decisions more acceptable to ordinary employees when giving them the “approved by works council” stamp. For this, some managers are ready to give the works council a “goodie” from time to time, in order to make it more respected among the workforce.

3. In the telecom sector which has undergone massive structural changes in the past 20 years from state monopoly (*PTT*) to highly competitive mobile and landline markets with one majority state-owned company (*Swisscom*) with traditionally strong union presence and good working conditions, and three smaller private companies competing for final consumers. Swisscom and two out of the three private companies have signed firm-level CAs, and all the four companies do have works councils. In the companies with a CA, the signing unions (namely *Syndicom*) try to use the works councils as a tool to further build up their presence – be it through election campaigns, be it by using them as an efficient communication channel with the workforce as well as with management. The competencies of the works councils are rather restricted (see table 1: *Swisscom*), due to the fact that some issues such as salary negotiations (routine in the metalworking, generally absent in the insurance sector) and social plan negotiations, but also the definition of works council competencies themselves, are the business of unions.

This overview shows that even though subject to the same legal regulations, the highly voluntarist context of industrial relations in Switzerland offers a wide range of options how works councils operate (if they exist at all) – ranging from tools to “keep unions out” to tools to build up union presence, from well-established institutions in the framework of company-level industrial relations to fragile structures depending on management’s benevolence. The degree of voluntarism is higher in sectors with no CA (such as the insurance sector), and at the same time, a “functional trade-off” between unions and works councils does not work in the absence of unions in a sector.

References

Degen, Bernard (1987): Der Arbeitsfrieden zwischen Mythos und Realität. In: Arbeitsfrieden – Realität eines Mythos. Widerspruch-Sonderband, Zürich: Widerspruch. 11-30.

Dickens, Linda / Hall, Mark (2010): The Changing legal Framework of Employment Relations. In: Colling, Trevor / Terry, Michael (eds): Industrial Relations. 3rd edition. Chichester: Wiley. 298-322.

Dunand, Jean-Philippe et al (2015): Studie über den Schutz der Arbeitnehmervertreterinnen und Arbeitnehmervertreter. Neuchâtel: Centre d’étude des relations de travail.

Geiser, Thomas (2009): Aktuelle Gesetzgebung, Gerichtspraxis und internationaler Kontext. In: Ehrenzeller, Bernhard / Furer, Hans / Geiser, Thomas (eds.): Die Mitwirkung in den Betrieben. Gerichtspraxis, Erfahrungen und Sicht der Sozialpartner. St. Gallen: Universität St. Gallen. 15-58.

Hall, Peter A. / Gingerich, Daniel W. (2009): Varieties of Capitalism and Institutional Complementarities in the Political Economy: An Empirical Analysis. In: B. J. Pol. S. 39, 449-482.

ILO (2018): Industrial relations indicators. Geneva: International Labour Organization (http://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page3.jspx?MBI_ID=9&_afrLoop=1273863555140289&_afrWindowMode=0&_afrWindowId=12p0mrnmd6_100#!%40%40%3F_afrWindowId%3D12p0mrnmd6_100%26_afrLoop%3D1273863555140289%26MBI_ID%3D9%26_afrWindowMode%3D0%26_adf.ctrl-state%3D12p0mrnmd6_144)

Katzenstein, Peter J. (1985): Small States in World Markets. Industrial Policy in Europe. Ithaca / London: Cornell University Press.

Mach, André (2006): La Suisse entre internationalisation et changements politiques internes. La législation sur les cartels et les relations industrielles dans les années 1990. Zürich / Chur: Rüegger.

Mach, André / Oesch, Daniel (2003): Collective Bargaining between Decentralization and Stability: A Sectoral Model Explaining the Swiss Experience during the 1990s. Industrielle Beziehungen 10(1), 160-182.

Rieger, Andreas (2016): The renaissance of strikes in Switzerland. In: Transfer 22(3). 419-423.

Rogers, Joel / Streeck, Wolfgang (1995): The Study of Works Councils: Concepts and Problems. In: J. Rogers, J. / W. Streeck (eds.): Works Councils. Consultation, Representation and Cooperation in Industrial Relations. Chicago and London: Chicago University Press. 3-26.

Schulten, Thorsten (2016): The meaning of extension for the stability of collective bargaining in Europe. Brussels: ETUI Policy Brief No 4/2016.

SGB (2012): Schwarzbuch missbräuchliche Kündigungen: Wer sich wehrt, braucht Schutz. Bern: Schweizerischer Gewerkschaftsbund.

Streeck, Wolfgang (1992) National Diversity, Regime Competition and Institutional Deadlock: Problems in Forming a European Industrial Relations System. Journal of Public Policy 12(4). 301-330.

Terry, Michael (2010): Employee Representation. In: Colling, Trevor / Terry, Michael (eds): Industrial Relations. 3rd edition. Chichester: Wiley. 275-297.

Traxler, Franz / Blaschke, Sabine / Kittel, Bernhard (2001): National Labour Relations in Internationalized Markets. A Comparative Study of Institutions, Change, and Performance. Oxford: University Press

Unia (2013): Leitfaden für GAV-Verhandlungen in der Industrie. Kündigungsschutz für gewerkschaftliche Vertrauensleute und Mitglieder von Personalvertretungen. Bern: Gewerkschaft Unia

Visser, Jelle (2016): Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 51 countries between 1960 and 2014. Amsterdam: University of Amsterdam / AIAS (http://uva-aias.net/en/ictwss)

Ziltener, Patrick / Gabathuler, Heinz (2018): Betriebliche Mitwirkung in der Schweiz – eine Untersuchung der Bestimmungen in Gesamtarbeitsverträgen. Industrielle Beziehungen 25(1) (online first https://www.budrich-journals.de/index.php/indbez/article/view/30017)