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SUMMARY

Coöperation and collective bargaining at plant level on safety and health issues

Since the implementation of the Single European Act, the European Institutions and the member states of the European Communities show a growing awareness of the necessity for an effective European social policy. There is no consensus, however, about the form in which such a social policy should be achieved. Some member states seem to feel that a community social policy should not go beyond the adoption of the rules most necessary to ameliorate the social drawbacks of the completion of the internal market. Other member states and some of the institutions favour, as a counterpart to the economic policy, a more autonomous social policy. This book is written with this last vision in mind.

One of the community social policy issues which has occasioned controversies in the past is the issue of regulation of information, consultation and participation of workers at plant level. Up until now the member states could not reach agreement about several proposed directives on this subject. For this reason the proposed fifth directive on company structure and the proposed Vredeling-Richard directive were never accepted. In both directives the required worker-representation and information and consultation of workers proved to be insurmountable obstacles. Another Commission proposal, on the Societas Europea, which also contained provisions on worker-representation, was put in cold storage for nearly 20 years, and was only revived recently in a radically amended form. It seems that proposals which give an overall regulation for worker participation in any form are not acceptable to member states.

In some social policy directives which were accepted before the implementation of the Single European Act information and consultation provisions were included. These directives (Rl. 75/129 on collective redundancies, Rl. 77/187 on safeguarding employees rights in the event of transfers of undertakings, and Rl. 80/1107 on the protection of workers from the risks relating to exposure to chemical, physical and biological agents in the workplace) covered only a part of labour law regulations and were never intended to regulate the situation more generally. The information and consultation provisions are linked to the national statutory representation systems. They do not create rights to information or to be consulted if no representation legislation or practice existed previously. However, if there

exists worker-representation in any form, the provisions prescribe improvements in the national legislation or practice (depending on the standard in the member state). The directive-provisions did not affect the decision-making power of the employer, because they did not contain obligations to bargain, reach an agreement, or require approval from the workers as condition of implementation of decisions. This is why, in the present writer's view, the directive-provisions were quite weak. It seems, however, that member states are prepared to accept statutory information and consultation requirements if these requirements embrace just a part of the field of labour law.

The most elaborate part of community legislation in the social field is health and safety at work. Even before the implementation of the Single European Act, several directives on the protection of health and safety had been accepted. One of them is mentioned above, others provided more specific standards of protection. The Single European Act itself modified the EEC-treaty by including a specific legal basis for directives to protect the health and safety of workers. This article enables the Council to adopt these directives by a qualified majority. This example demonstrate that however difficult it may be to achieve social policy measures in general, measures on the protection of safety and health of workers seem to be less controversial.

Accordingly the question arises whether there could be a possibility to achieve worker-participation provisions which go beyond information and consultation rights of workers and constitute a right to a far reaching influence on the decision-making power of the employer. The next question is whether these rights could be granted not only within the borders of the member states, but also across national borders. If the latter would be the case such provisions could create worker-participation in health and safety in multinational companies. Before any conclusions can be reached about acceptability by the member states of such provisions it is necessary to examine the mechanisms by which worker representation is regulated in the member states.

To compare the mechanisms by which worker represention is reached in the member states it is necessary to describe the kind of representation systems within the various member states. In Chapter III an overview is given of these representation systems. Two kinds of systems are analysed: representation through a works council (based on statutory provisions or on national collective agreement) and representation through shop stewards or other trade union representatives (based on statutory provisions, collective agreements or voluntary action). Apart from those representatives who represent the workers in general, a lot of countries do have specific representation in safety and health matters. If there is a specific health and safety representation it is based on statutory provisions. The conclusion of this Chapter is that representation at plant level is common in the member states, but the form it has taken in general differs widely.

The IVth and Vth Chapter treat the mechanism by which representation is achieved. A division in rights is made. In Chapter IV those mechanisms which are important in general economic and social issues as well in the means to effect them in law are examined. In Chapter V those instruments which are important for influencing health and safety matters specifically will be focused upon.

To make comparison between the schemes in the various member states possible the rate of influence of the various powers of the representatives on the employers decision has to be considered. The powers considered are the right to information, the right to be consulted, the right to bargain (and conclude agreements) about health and safety matters and the right of approval of decisions of the employer in health and safety matters. One may question whether the right to bargain is comparable with the right to approve proposals made by the employer. The origin of the first right is entirely different from the second. Nevertheless, when stripped from their ideological background, in the present writer's view, both rights are comparable on their merits. One can compare them bearing in mind the extent of influence upon the employers decision. The right to approve proposals is the stronger of the two rights unless the right to bargain is accompanied by an obligation to conclude an agreement. The conclusion of this part of the chapter is that in most member states worker-representatives do have the statutory right to be consulted on health and safety matters. In a few member states they have the right to approve proposals and in most of the other countries they have the right or the possibility to bargain about these matters. These rights are based on statutory provisions and national collective agreements. Collective bargaining takes place also voluntarily.

The second part of Chapter IV deals with the enforcement of the rights by legal procedure or through industrial action. In most countries worker-representatives have the possibility to enforce their rights by (simple) legal proceedings. Only in Great Britain enforcement by the representatives takes place mainly through industrial action.

Chapter V deals with some powers which are especially important in health and safety matters. The examined powers are: the right to supervise health and safety measures in the enterprise, the right of representatives to close down (part of) the enterprise, and the right to appeal to the labour inspectorate (including the obligation of the inspectors to react). Also the rôle of the occupational health services is examined.

Chapter V focuses also upon the position of the individual worker within the representation system. Because the individual worker has to rely a great deal on his representatives, he carries the risk that his difficulties are not properly dealt with. Also in the systems there is a chance that the worker (especially the atypical worker, such as the part-timer, the homebased and the flexi-time worker) is not represented at all, because of the pre-

conditions which are imposed before representation becomes operative. In this chapter typical individual rights such as the right to suspend work and the right to complain within the enterprise are examined.

From this chapter the following conclusions are drawn: worker-representatives have the right to supervise the health and safety measures in the enterprise. Only in Denmark, Spain and in France have the representatives the power to shut down (part of) the enteprise in the case of imminent danger. In other countries this power is granted to the labour inspectorate. In most countries the labour inspectorate do not have the obligation to react if they receive a request to take action from the worker-representatives. In all member states, though there are too few inpectors to enforce health and safety effectively. Beneath this, the double rôle of advisor and controller causes problems in the relationship with the representatives.

The individual worker has very few possibilities to do anything about working-conditions if representatives do not pay attention to the employees problems. This can be difficult in particular if the worker is inadequately represented. In the event of imminent danger the employees in all member states do have the right to suspend working. A legal right of complaint within the enterprise is only established in West-Germany. A possible solution to the problem of representation of workers might be found by encouraging representation through homogeneous groups, such as employees in the same kind of professions or work-situations.

In Chapter VI the overall conclusions of the previous chapters are examined with a view to exploring a possible community directive on worker participation in safety and health matters. Such a directive might be based on the recent adopted article 118A of the EEC-treaty. Whether this is possible depends on the interpretation of two terms of the article; namely, minimum requirements and working environment. The first term, in the present writer's view, should be seen in relation to the distribution of powers between the member states and the community. In that context the term "minimum requirements" means only that member states are always allowed to maintain a higher level of protection. The second term: "working environment" should, in the present writers view, be interpreted as broadly as possible. Not only physical health and safety but also psychological health and the social aspects of the working environment should be covered by article 118A. If this is the case a directive on worker participation in safety and health based on the national legislation and practices is one possibility.

This directive should at least contain the following rights: the right to information, the right to be consulted and the right to participate in decisions about health and safety measures. Participation could be established in three ways: co-determination, the right to approve proposals regarding the general policy in health and safety matters put forward by the enterprise or the right to bargain collectively, with an obligation to reach

an agreement, on the enterprise policy in health and safety matters. Furthermore a right to appeal to the labour inspectorate, with an obligation upon the inspectors to react should be established.

By defining the concept of company in a broad way, such a directive might apply not only to enterprises but also to holdings with daughters in more than one member state. The idea would be then that representatives of the employees of all daughters would be involved in determining the enterprise-policy at the highest level according to the laws of the member state in which the parent-enterprise is established. In this way worker-participation in multinationals in health and safety matters would be realised in a concrete way.

In the following part of this chapter recently adopted directives are examined against the possible draft for community legislation. The older directives are, as has already been explained above, a lot weaker then the draft, because they are linked to the national systems. The most important recent directive is directive 89/391, which contains provisions on worker participation. These are a right to information, a right to be consulted and a right to balanced participation when responding to problems in accordance with the legislation or practices of the member states. Although here is also a linkage with the national systems the directive is going beyond a mere right of consultation. In the present authors view here a right to deliberate with the employer is granted. Nevertheless influence in the way proposed above which would affect the decision-making power of the employer is not granted.

Despite the requirements for worker-participation in the new directives, these provisions are weak when examined against the drafted proposal. Not only the decision-making power of the employer remains intact, but also the concept of concerns is not defined. This means in principle that the term concern, or enterprise, is defined at the national level. So no border-crossing participation has been achieved through the new directive.

In Chapter VII these conclusions are elaborated and a concrete directive proposal based on the above mentioned ideas is drafted.