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The responses of German trade unions to ‘Diversity Management’ strategies: A strategy strengthened by Co-determination or a strategy to undermine it?

**Introduction**

This paper on trade unions and ‘Diversity Management’ strategies in Germany is part of a doctoral project researching the responses of trade unions to the discourses and policies of ‘Diversity Management’ in France, Germany and Sweden. ‘Diversity Management’ was originally developed by human resource consultants in the US, followed by the UK and other Anglo-Saxon countries, as a ‘new and improved approach’ to equality in the workplace, the principal message of which in the Anglo-American version is that a diverse workforce is good for company performance and should be harnessed to this end (Kandola and Fullerton 1998). With much help from the European Commission, the diversity concept has since come to dominate discussions about equality, discrimination and integration in many European countries. There has, however, been very little research into the impact of social dialogue on ‘Diversity Management’ strategies and vice versa, despite the importance of trade unions and social dialogue for the negotiation and implementation of equality policies and legislation in many European countries. The inclusion of trade unions in a joint regulatory framework for equality is crucial given the limitations of the business case, unilateral employer initiatives and legal regulation for achieving substantive equality outcomes (Dickens 1999). Whilst most unions in Europe have historically prioritised the interests of male, native-born, full-time employees and still have some way to go in adequately representing the interests of disadvantaged groups (Hyman 1994), these problems have been acknowledged and are being addressed (Dickens 1999). Unions have a vital role to live up to, one which their own legitimacy and survival most likely depends on, in providing a ‘voice mechanism’ for disadvantaged groups. Their

views of the Managing Diversity approach to equality are therefore worthy of exploration.

Using discourse analysis and Scott's (2008) three pillar framework for institutions the doctoral thesis examines the regulative, normative and cultural-cognitive institutional framework for anti-discrimination and integration policies in France, Germany and Sweden. I argue that as these institutional frameworks differ from country to country, so too do 'Diversity Management' discourses, policies and practices, and therefore also trade union responses to them.

The empirical contribution of the research has implications for the policy and practice of stakeholders by explaining how different institutional frameworks for employee representation affect the development of diversity discourses and thus, ultimately, employment equality. Do diversity discourses within these regimes help trade unions give effective voice to disadvantaged groups? And are diversity discourses strengthening or undermining employee representation regimes?

This paper discusses the findings for Germany based on discourse analysis of documentary data<sup>1</sup> and interviews carried out in 2009 with trade unionists responsible for issues of discrimination, integration and immigration. Interviewees came from the four largest German trade unions: DGB (German Trade Union Confederation), Ver.Di (services), IG Metall, and IG BCE (chemicals), as well as four German companies which have Diversity Management policies and have signed the German 'Diversity Charter' (Lufthansa, Volkswagen, BASF, Kommerz-Dresdner Bank).

## **Methodology and theoretical framework**

### *Discourse analysis*

"Diversity" or "Managing Diversity/ Diversity Management" is both a discourse and a policy practice. My research focuses on the discourses of diversity because,

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<sup>1</sup> (Collective agreements, official statements from trade unions, employers, employer organisations, government agencies and other stakeholder organisations, press releases, stakeholder websites, consultant and practitioner literature, media outputs and academic literature)

as Greene and Kirton (2004:5) argue, “we cannot properly understand the policy measures organisations utilise and the way that stakeholders challenge them without appreciation of the discourses actors draw upon to rationalise and justify their positions”.

Different discourses provide “diverse representations of social life” (Fairclough 2001:123), or particular ways of talking about, understanding and constructing the social world, which “exist side by side or struggle for the right to define truth” (Jørgensen and Philips 2002:13). “Diversity” or “Managing Diversity/ Diversity Management” is a discourse in the sense that it represents a particular way of talking about, understanding and constructing (the truth about) equality and fairness. It can take different forms in different cultural contexts, there may be competing or conflicting discourses of diversity, they can be located at different levels (e.g. in socio-political debates or in management discourses), and employed by different actors (politicians, management, consultants, academics, trade unions).

My research analyses trade union perceptions of discourses (and practices) of diversity, but it is also applied to the discourses trade unions draw upon themselves to respond to diversity discourses and policies, as well as the way they themselves use diversity discourses. What role do trade unions have as actors in the production of diversity discourses or counter-discourses?

### *Neo-institutional theory*

A neo-institutional theoretical framework focuses on the “historical accretion of past practices and understandings that set conditions on action” (Barley and Tolbert 1997:99), and takes a social constructionist position in which “the individual is always cause as well as effect of the institution” (Cooley 1902/1956: 313-311 quoted in Scott 2008:9). For my research this means analysing the institutions which determine trade unions’ reactions to diversity discourses in different cultural contexts, as well as analysing trade unions’ role as actors in creating and maintaining these institutions and their role in the institutionalization of diversity discourses.

Scott (2008:51) has produced a framework for institutional analysis in which institutions have three pillars or elements - regulative, normative and cultural-cognitive. The regulative element of institutions is manifested in rules, which are legally sanctioned and which people are coerced to comply with because they fear punishment if they do not. The normative element is about values and norms, socially binding moral expectations, which people comply with because they consider this to be appropriate behaviour. The cultural-cognitive element of institutions has a “moral and ontological status of taken-for-granted facts” (Barley and Tolbert 1997:99), it is concerned with routines and scripts for behaviour; “compliance occurs in many circumstances because other types of behaviour are inconceivable; routines are followed because they are taken for granted as ‘the way we do things’” (Scott 2008:58). Whereas ‘old’ institutional theory in sociology focussed on the production and operation of rules and norms, neo-institutional theory in sociology distinguishes itself through its emphasis on the cultural-cognitive element of institutions. (see e.g. DiMaggio and Powell 1991, Jepperson 1991, Scott 2008, Tolbert and Zucker 1996).

#### *Combining neo-institutional theory with discourse analysis*

Berger and Luckmann (1966) recognized that institutionalization occurs as actors accept shared definitions of social reality, which can only be constructed through discursive processes. However, discourse analysis has only recently begun to be applied to institutional research (Lawrence and Suddaby 2005). According to Phillips et al (2004: 635), “most institutional theory has been dominated by realist investigations in which the examination of organizational practices has been disconnected from the discursive practices that constitute them”.

Phillips et al (2004) argue that institutions are always (in literate societies) discursive; discourses enact institutions by making “certain ways of thinking and acting possible, and others impossible or costly. When sanctions are sufficiently robust, an institution exists... In other words, while all institutions are discursive products, not all products of discourse are institutions” (2004:638). Highly

institutionalized discourses “present a more unified view of some aspect of social reality, which becomes reified and taken for granted” (p.644).

As Phillips et al (2004) point out, the production and consumption of a discourse will depend on how it relates to other existing discourses (interdiscursivity), and particularly to what Fairclough (1992) calls the ‘established discourses’, which it needs to draw on for legitimacy and meaning. I argue that this interdiscursivity of diversity discourses with institutionalized discourses is crucial for an understanding of trade unions’ responses to the discourses of diversity (and hence the reason for combining discourse analysis with institutional theory).

### **Conceptualisations and criticisms of ‘diversity management’ (DM) in the Anglo-American literature**

Four essential components are commonly ascribed to the DM discourse in the Anglo-American literature (Greene and Kirton 2004, CIPD 2005, Mor Barak 2005): it is voluntary and top-down in nature; it serves business objectives; it values difference rather than sameness; and it sees differences as being individual rather than group-based - encompassing not only all visible differences such as gender, disability, race, age but also an infinite number of invisible differences such as sexual orientation, religion, life-style, family status, work style, etc.

Several criticisms have been made of this version of DM. One of the most frequently expressed criticisms is that it replaces moral justifications with business ones (Kirton and Greene 2004). As Dickens (1999) points out, business case arguments can vary as labour or product markets change, giving rise to ‘fair weather’ equality action. Business cases can even be articulated against equality action. Moreover, “organisations can and do obtain cost benefits from, for example, ...the undervaluing of women’s labour and the exploitation of women and some ethnic minority workers as a cheap flexible workforce” (p.10). Social justice and business arguments converge when organisations feel that demonstrating their ethical behaviour is important for their image or their acceptance in society. In such a case institutional pressure may lead to a merely superficial adoption of diversity discourse (Bellard & Ruling 2001).

DM is also criticised as representing a “soft option” for employers (Liff 1997). Its emphasis on a top-down, management-led approach, gives managers the power to define problematic areas, so that they can favour more attractive elements of diversity and avoid those which are more controversial. There is a danger that DM will sidestep some of the stronger elements of equal opportunities policies, being “restricted to the feel-good ‘celebrating cultural diversity’ type” (Wrench 2003:11). When the DM approach is a meritocratic one motivated by the quest for talents, there is a danger that “the ‘other’ is invited to the organization but is only tolerated insofar as he or she enriches the centre, so the asymmetric positions of power are maintained” (Kamp & Hagedorn-Rasmussen 2004:529). In this case, just as traditional liberal equal opportunities policies have been criticised for judging equality or ‘sameness’ against the norm of the white able-bodied male, DM judges ‘difference’ against the same dominant norm and may use it to reassert inferiority and justify exclusion (Liff and Wajqman 1996). When DM approaches link expectations of performance to ethnic or social group background and the sets of qualities attributed to these backgrounds, stereotypes are reinforced: “If being different becomes a central argument for occupying a position within the organisation, the implication is that conditions that create differences are both positive and necessary” (De los Reyes 2001, p.170).

Most Anglo-American advocates of DM claim that the key to its success is in seeing all individuals as uniquely different (CIPD 2005). Critics have responded that by removing attention from discriminated social groups, the burden of being discriminated has to be borne by the individual alone. An individualised approach undermines collective support, isolating the weakest and most disadvantaged (Kamp and Hagedorn-Rasmussen 2004, Liff 1999, Kirton and Greene 2004). Furthermore, an individualist approach treats all differences as equally significant, trivialising diversity so that no organisational change is considered necessary and ignoring the fact that some groups have suffered historically from greater prejudice and discrimination than others (Greene and Kirton 2004).

## **Trade union responses to diversity and ‘diversity management’ policies in Europe**

The most developed research into trade union views of DM has been carried out in the UK (Greene and Kirton 2004, 2006, Kirton et al 2005) and Denmark (Wrench 2003, 2004, Greene, Kirton and Wrench 2005).

For the UK unionists interviewed by Greene and Kirton (2004), MD is typically perceived as a purely managerialist approach which emphasises the business case rather than the social justice case for equality. Kirton et al (2005) found sceptical views among trade unionists about the practice of diversity policies, which were thought to be mere window-dressing. These views were mixed with pragmatic attitudes that “in practice diversity was simply a renaming of the traditional “equal opportunities” discourse” (Kirton and Greene 2006:436). The individualist approach and the way that diversity approaches in the UK are wrapped in the discourse of human resource management has aroused the suspicion of British unions for whom racism and discrimination “should be combated, not managed” (Wrench 2003 p.103). Oikelome’s (2006) article on the views of black members of the TUC confirms Greene and Kirton’s findings of the hostility amongst UK unionists to DM.

The Danish unionists, however, were strongly in favour of DM as a policy approach and seemed to accept it uncritically as the way forward in Denmark (Greene et al 2005). Wrench (2004) puts this down to immigration being a relatively new phenomenon in Denmark so that the Danish unions have not had the same long history of struggles as UK unions to achieve reasonably strong anti-racist and anti-discrimination policies. For the Danish unions then, DM is not seen as something that could undermine their previous efforts (ibid). Danish activists expressed no concerns about the individualised focus of DM and revealed more positive views about the business rationale, which Greene et al (2005) ascribe to the Nordic tradition of consensus and cooperation with employers. They question, however, whether the acknowledgement of different cultural contexts means we should uncritically accept unions’ different responses to DM.

My view is that Greene et al have focused too much on the Anglo-American discourse(s) of DM when analysing trade union responses in Denmark, and not taken enough account of how different institutional frameworks shape diversity discourse(s) differently in different countries. I have already made this argument in a previous paper on trade union reactions to DM in France (Stringfellow 2009). In that paper I argued that the discourse of diversity in France (and therefore trade unions' reactions to it) is very different to the discourse of diversity in the UK.

In France (see Stringfellow 2009) and Sweden (Stringfellow, forthcoming), the predominant discourse of 'diversity' has been a socio-political one (rather than a managerial one) within the context of debates and discourses about a 'crisis of integration'. In France, this crisis of integration was interpreted as a crisis of the assimilationist 'Republican model', and in Sweden as the 'failure of multiculturalism'. In both countries there had been recent riots in suburbs with concentrated populations of immigrants, drawing mass media attention. In both countries 'diversity' was presented as a solution to these crises - in France by the political Right, and in Sweden by the political Left.

In France, the political Left (including the trade unions) initially distanced itself from the diversity discourse until the social partners negotiated a national level agreement in 2006 on "Diversity in companies". With this agreement, unions and employers jointly defined the concept of 'diversity' in a manner which reaffirmed the 'Republican model'. Prominent advocates of diversity (e.g. the government-nominated 'Diversity Commissioner' and the HR Directors of the largest French companies) insisted that 'diversity' should be the subject of social dialogue and that business case arguments were secondary to social cohesion arguments. 'Diversity' therefore resulted in an enlargement of the scope of social dialogue. The diversity discourse in France also seemed to open up new possibilities for positive action initiatives with regard to ethnic minorities. More recently, the political Right in France has, however, dropped the discourse of diversity in favour of a discourse of 'security', including initiatives such as "ban the burqa" and "deport illegally-resident Roma people to Rumania".

In Sweden, the diversity discourse was introduced by the political Left as a new



and better form of multiculturalism - one which breaks down barriers between 'cultural groups' and values all cultures equally, as opposed to the 'old' multiculturalism which had merely strengthened "them and us" mentalities. The Swedish social partners negotiated a diversity agreement as early as 1998. However, when 'diversity' did not live up to expectations and only "contributed to ethnify more the country" (interviews), it was discarded by the union confederations (and subsequently as a result also by the Social Democrat government) in favour of an "equal rights, equal value" discourse. The 1998 agreement was re-written in 2003 to expunge all elements of a diversity discourse. As in France, however, the Swedish unionists I interviewed considered that the 'diversity' concept had been useful in that it had brought employers out of denial about discrimination. The current centre-right Swedish government seems to have abandoned 'diversity' in favour of *utanförskap* ('outsiderness'), a welfare discourse which equates *utanförskap* with welfare abuse and benefit dependency. Cultural differences between native Swedes and immigrants are constructed as another cause of *utanförskap*, whilst violence and criminality are the consequences (Davidsson 2009). "Utanförskap has been constructed as a defined space which contains people that have been defined as culturally different from a majority that holds jobs. In contrary to the people in *utanförskap*, the majority is never constructed as problematic in any way" (ibid).

I now extend the comparison to Germany.

### **Diversity discourses in Germany**

In France and Sweden, the management discourse of Diversity Management was largely over-shadowed and even dominated by the socio-political discourse of diversity. My interviewees in France and Sweden had either never heard of 'Diversity Management' or saw no difference between it and the socio-political 'diversity' discourse. In Germany, on the other hand, there appeared to be (at least from the viewpoint of the trade unions) a clearer conceptual separation between the socio-political debate about 'diversity' and the management strategy known as 'Diversity Management'.

It is likely that this is because the socio-political debates about diversity in France and Sweden were in response to what was perceived as an urgent crisis of integration, whereas such a crisis never happened in Germany. Whilst the riots in France did raise some concern in Germany that Germany's own problems of integration could also result in violence (Spiegel-online 27.11.2007), this did not happen and was never really considered a serious threat. Wolfgang Schäuble<sup>2</sup> (Spiegel-online 27.11.07) and Daniel Cohn-Bendit<sup>3</sup> (Spiegel-online 05.11.05) for example, believed that the social and urban planning problems, ghettoisation, unemployment and lack of training opportunities for young people from immigrant communities were far worse in France than in Germany and that there was therefore less potential for explosion. The president of the Turkish community in Germany believes that there is "more social control through families" in Germany than in France as young people with immigrant background in Germany do not want to destroy what their parents have built up there (Spiegel-online 29.11.07).

The Turks are the biggest<sup>4</sup> and most poorly integrated<sup>5</sup> immigrant group in Germany. They came to Germany as *Gastarbeiter* through bilateral agreements between Germany and Turkey since 1961. Whereas the largest immigrant groups in France came from the former colonies, spoke French, had strong cultural attachments to France, had often fought for France in the Second World War and had high expectations about their rights to integration (Rothe 1996), Turkish immigrants in Germany came from a completely independent country and were on strictly controlled temporary work contracts. The Turkish immigrants in Germany were able to settle in the cities rather than being marginalised in slums and emergency housing way outside the cities as in France (Rothe 1996)<sup>6</sup>. However,

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<sup>2</sup> German Interior Minister, Christian Democrats.

<sup>3</sup> Franco-German MEP, Green Party.

<sup>4</sup> Approx. 2.5 million people with Turkish nationality or parents with Turkish nationality and approx. 3% of the German population.

<sup>5</sup> Measured in terms of educational achievement and employment (Spiegel-online 26.01.2009 p.32-35).

<sup>6</sup> In Sweden, labour immigrants were allowed to come to Sweden on a permanent basis (rather than on a *Gastarbeiter* status) until 1971, when labour immigration was prohibited. The vast majority of non-EU immigrants since 1971 have come to Sweden as refugees and "were allocated to parts of the country with few available jobs and high rates of unemployment among native Swedes... Refugees who had been placed in a municipality were not allowed to move elsewhere because the municipality would lose its subsidy" (Westin 2006).

they came on the understanding that they were not expected to stay or to integrate. No integration policies were put in place until relatively recently and it was only in 2001 that Germany officially accepted that it is a country of immigration (Wrench 2002:101). The first generation of Turkish immigrants therefore planned to return to their homeland when they had earned enough money to secure their future there. As few of them were ever able to realise this goal, many ended up staying in Germany far longer than they wanted but never gave up the intention of returning (Hunn 2005). It is only since 2000 that children born in Germany of Turkish parents automatically have German nationality. Given these circumstances it is hardly surprising that many young Turkish people born in Germany have had problems with integration into German society (Hunn 2005).

In 2008 the Turkish President gave a speech to the Turkish community in Cologne warning them against being assimilated in Germany, which caused a great deal of controversy (Die Welt 11.02.08). It caused a great deal less controversy, however, than the recent statements and publications by the chairman of the German Federal Bank and former Social Democrat politician, Thilo Sarrazin. In his book, *“Deutschland schafft sich ab”* (“Germany is abolishing itself”), Sarrazin blames the failure of integration in Germany on Muslim immigrants, accusing them of not wanting to integrate and declaring that integration is 90% the responsibility of the person being integrated. He has also stated in interviews that certain ethnic groups are genetically less intelligent than others and that these groups are making Germany increasingly stupid because they have more children than the genetically more intelligent Germans (Spiegel-online 30.08.2010). Despite being sacked<sup>7</sup> as chairman of the German Federal Bank for these statements, Sarrazin and his anti-Muslim and anti-immigrant discourse have huge popular support<sup>8</sup> and, as is currently the case all over Europe, are doing a successful job of distracting Germans from the real causes of the economic crisis. The mainstream German political parties on both sides, as everywhere else in Europe, have readily ‘given in’ to populist pressures and declared that “integration is to be the mega-issue” of

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<sup>7</sup> And the sacking may yet be ruled illegal. The Federal President has been called in to decide on the matter but Sarrazin claims the Constitutional Court would have to over-rule the Federal President in Sarrazin’s favour.

<sup>8</sup> According to a survey for the *Bild* newspaper, 18% of Germans would vote for a political party led by Sarrazin.

the next few years. Socio-political discourses about the richness and benefits of ‘diversity’ have gone out the window.

As in Sweden, the diversity discourse came into vogue amongst German politicians before the economic crisis and in the midst of a debate about what form multiculturalism should take in Germany and whether it had already ‘failed’.<sup>9</sup> According to Lanz (2007) those proclaiming the death of multiculturalism in Germany usually choose to ignore “that the term multicultural is filled with every possible, and often contradictory, content according to one’s political position” (my translation). The Social Democrat Heinz Buschkowsky, for example, says he stands for a multi-ethnic or multicultural society where “many cultures live peacefully with one another” under “a common democratic framework of laws and values”. But a multicultural society where “many people bring their own life-designs and cultures into the community and from that a new multicultural identity is created, cannot exist. That would be to deny that people only feel secure in their own trusted culture” (ibid, my translation).

Those like Buschowsky who claim that multiculturalism has failed are usually referring to the ‘melting pot of hybrid cultures’ variety of multiculturalism. But this variety of multiculturalism has never existed in Germany. As in Sweden (Stringfellow, forthcoming), multiculturalism in Germany has always been a hierarchical concept, based on strong ethno-cultural perceptions of ‘us’ and ‘them’ (Horn 2008), where ‘culture’ is a determining characteristic which is inescapably coupled with ‘ethnicity’, and the ‘German culture’ is the paternalistic ‘*Leitkultur*’ which tolerates and sets the parameters for the other cultures within it:

“The value system which is meant here is not democratically negotiated, and where necessary renewed, between the members of society – which includes immigrants - but rather merely allows for adaptation to [the value system] which already exists... From the correctly made criticism that German multiculturalism has ignored or culturally consumed immigrants, the problematic conclusion has been drawn that commitment to Western values must be demanded of immigrants. As

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<sup>9</sup> Strongly influenced by the assassination of Theo van Gogh in the Netherlands in 2004 (Lanz 2007).

long as immigrants are generalised as members of homogenous ethno-cultures who deviate from ‘our’ values, demands from the majority for integration will go hand in hand with discriminating attributions. In this way natio-ethno-cultural boundaries are strengthened. Thus the ‘parallel societies’ are discursively created by precisely those politicians who claim to talk about the problems of immigration ‘without tabus’ and who demand more integration-willingness from immigrants without reflecting on their own claims to dominance” (Lanz 2007, my translation).

The debate in Sweden about the failure of multiculturalism took place slightly earlier than in Germany. Swedish critics of the hierarchical “them and us” version of multiculturalism in Sweden were heard by the Swedish Social Democrat government, which responded with an explicit decision to move from a discourse of multiculturalism to what was thought to be a counter discourse of diversity (which then turned out not to be a counter discourse at all and so was dropped too, see above). In Germany, however, critics of the hierarchical variant of German multiculturalism do not seem to have had any impact outside the field of sociology. Whilst politicians amongst both the Social Democrats and the Christian Democrats seem to prefer the ‘distinct cultures living separately side by side and all conforming to the values of the dominant culture’ variant, the contradictory definitions of multiculturalism in Germany are reflected in the various uses of the term ‘diversity’. And whilst the term ‘multiculturalism’ is itself no longer politically in vogue, its content lives on in the currently popular concept of ‘intercultural dialogue’, which emphasises the differences between the Islamic and the western worlds and seeks to avoid conflict through dialogue between the two. Again, there are contradictory and competing uses of the term ‘intercultural dialogue’ (above all between sociologists and politicians), which map on to those of ‘multiculturalism’ (i.e. ‘melting pot of hybrid cultures’ versus ‘distinct cultures within a dominant cultural framework’) (Horn 2008, Kordes and Polat 2006, Bommes 2006).

Discourses of multiculturalism where ‘others’ have to adapt to ‘our values’ and where “integration is 90% their responsibility” go hand in hand with discourses which present citizenship not as a democratic right to participation and thus the

pre-requisite to integration, but as membership of a club for those who have the right characteristics, are competent enough to integrate themselves and will not be a burden on the state (Gerdes and Faist 2008). Such discourses are in turn framed in “repressive liberalism” (Joppke 2007) discourses based on the principle of the transfer of as much responsibility as possible from the State to the private economy and the individual (Gerdes and Faist 2008).

A striking example is the ‘New Social Market Economy Initiative’ (INSM) of the German employer associations, which was founded in 2000 with an annual budget of around 10 million euros and the aim of persuading the German public of the need for economic reforms (i.e. deregulation). The campaign has been very professionally orchestrated by PR agencies and has invested hugely in PR in the mass media, including talk shows, soap operas<sup>10</sup> and MTV. “Ambassadors” of the initiative are spread widely across social groups and ensure its permanent presence (Speth 2004). The campaign’s “professed goal is actually a restoration of the ‘old’ social market economy... The one that existed before it was ‘hijacked’ by special interest and redistributive groups” (Kindermann 2003:15). Hans Tietmeyer, former Bundesbank president and head of the INSM, explains that “the new social market economy is identical with the Anglo-Saxon, the American principle” (Tietmeyer 2001:22). The INSM campaign “aims to engage with, and transform, prevailing societal norms of social justice. The first component is that a social market is a free one, not one burdened by regulation and welfare-state interventionism” (Kindermann 2003:18).

The German employer associations’ huge campaign (see Raasch and Rastetter 2009) against the Anti-discrimination Law implementing the EU Directives is part of the ideology and orchestration of the INSM.<sup>11</sup> According to the employers association, the BDA, their principal problem with the Anti-discrimination Law is the reversal of the burden of proof making it the employers’ responsibility to prove that discrimination has not taken place rather than the employee’s responsibility to

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<sup>10</sup> The INSM paid just under 60,000 euros to the television channel ARD to influence the dialogue of one of the most popular German soap operas, *Marienhof*.

<sup>11</sup> The German employers associations succeeded in delaying the law until August 2006, considerably later than the deadline for transposition.

prove that it has.<sup>12</sup> The Federal Anti-Discrimination Agency (ADS), which was set up to implement the Anti-discrimination Law, was given only very limited competences in comparison to other EU countries (Bambal 2009). Given the decentralised federal structure of the German *Laender*, it is remarkable that the ADS existed only at national level, without any equivalent advisory bodies at regional level. Even more remarkable was the position of the first Director of the ADS, Martina Koeppen, concerning the role of the agency. In an interview with the *Frankfurter Allgemeine Zeitung*, she warned against stricter discrimination rules, which she believed would be a blow to the German economy” and according to Bambal (2009), “Koeppen justified protection from discrimination purely from an economic perspective – other than mentions of economic profitability she never spoke out publicly for comprehensive protection” (my translation). For the first three years, the website of the ADS declared that “a lasting alliance with employers was the central and comprehensive concern” of the agency, and whilst employers, politicians and members of the church were invited to the first congress of the ADS (in the atrium of the Deutsche Bank), requests for invitations from NGOs and trade unions were ignored (ibid).

### **The German ‘Diversity Charter’**

This unilateral employer approach to anti-discrimination and the free market capitalism discourse and ideology of the INSM are also reflected perfectly in the BDA’s approach to ‘Diversity Management’ and in the German ‘Diversity Charter’.

In December 2006 the German government and German employers declared that they were imitating the 2004 initiative of the French employers by producing a ‘Diversity Charter’. Unlike the French Diversity Charter, however, the German Diversity Charter makes no mention of social dialogue on the issue of diversity, nor has it been followed (as it was in France in 2006) by national level negotiation

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<sup>12</sup> [http://www.bda-online.de/www/arbeitgeber.nsf/id/DE\\_Antidiskriminierung](http://www.bda-online.de/www/arbeitgeber.nsf/id/DE_Antidiskriminierung) As far as I have been able to ascertain, Germany is the only country which has objected to the reversal of the burden of proof in the EU directive.

of a ‘Diversity Agreement’. In fact, there has been a very notable absence (compared with France and Sweden) of trade union involvement in the ‘Diversity’ initiatives of the German government and employers.

The BDA’s webpage devoted to “Diversity in the economy”<sup>13</sup> does not contain a single non-business argument for companies to engage with DM. It does, however, point out that “the active appreciation of diversity amongst the workforce can increase the success of the company”. It goes on to strongly imply that if a diversity approach does not have the effect of increasing the success of the company, it is not worth pursuing:

“Companies, which integrate a Diversity approach into their personnel policy, primarily interpret the diversity of the employees as a business opportunity for all areas of the company”.

The BDA goes on to explain that the Charter was initiated as a “fundamental commitment to the economic usefulness of diversity and commitment to tolerance, fairness and appreciation of people in companies and in public institutions.” And just in case the reader has still not understood the message that Diversity Management means putting economic arguments first, the BDA goes on to add:

“These fora are especially to be used in order to emphatically remind everyone involved of the economic and integrated character of Diversity Management. Diversity, even cultural diversity, only leads to competitive advantage for the company if relevant business-economic problems can be sufficiently taken into account. The goal of diversity is not diversity at any price and or merely for diversity’s sake, but is aligned with concrete goals such as the improvement of innovative capacity, the strengthening of employer brands or better sales approaches.”

This analysis of the socio-political and socio-economic discourses framing the Diversity Management discourse in Germany has shown that it has been employed by political and economic actors who emphasise cultural boundaries and the dominance of a *Leitkultur*, who want to weaken anti-discrimination legislation,

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<sup>13</sup> All quotes from this page are my translations.



make employers unilaterally responsible for anti-discrimination policies, and define ‘diversity’ as a strategy which first and foremost serves business objectives. I now turn to an analysis of the responses of German trade unions to the discourse of Diversity Management.

### **German trade unions and Diversity Management**

Interviewees from the three largest unions, (DGB, Ver.Di and IGM) had very clear definitions of DM as a pure top-down “management tool” or “strategy” which has nothing to do with anti-discrimination:

“...that has to be said very clearly, it does not come from anti-discrimination policy. ... but rather how the potential can better be used for company profit.” (DGB)

“DM as a management strategy has a specific objective, that is the success of the company and all the other terms (equality, anti-discrimination, equal opportunities) are different facets of an emancipation process of the individual and that is something fundamentally different.” (Ver.Di)

“It isn’t really about justice. Its about ‘how can I take customer groups and other... into account in my company strategy?’ Its about waking the potential of the workforce and serving customers.” (IGM)

These interviewees maintained that ‘diversity’ had therefore not really entered the vocabulary of their union:

“I would distance myself from the term for trade union work, we have to have our own terms for what we want to achieve politically for people.” (Ver.Di)

“In our opinion though it is not a term which is often used for our anti-discrimination and equality measures, ...our concepts are equal opportunities and equal treatment.” (DGB)

At company level, however, interviewees did not have the same understanding of the distinction between ‘diversity’ as a socio-political discourse and ‘DM’ as a management strategy:

“Diversity Management means creating space for diversity, going on the offensive to create room for all minorities, to make them equal and to create equal opportunities for them and to give them special support.” (Lufthansa)

“They (the employer) tried at the time... to use the term to emphasise the importance of the issue, somehow the issue seemed more important when it was put under this banner than it had done in the past because relatively little had been done in the past.” (Dresdner)

Concerning the use of the ‘business case’ or economic arguments for diversity, there was a range of responses. Only one interviewee (Ver.Di) said she would never use economic arguments “out of principle” and that business case arguments could be dangerous because “rights do not stem from economic success but rather from national and international laws, the dignity of the person.” The other interviewees had a more pragmatic approach saying either that they had always had to use business arguments because they would not get anywhere with employers otherwise, or that they used economic arguments where it served their objectives. For the Lufthansa interviewee the problem with business case arguments is that they are only fair weather arguments and are quickly dropped in times of economic difficulty. For many of the interviewees one problematic business argument is that a DM policy is good for the company’s image, as this often leads to empty declarations which are not implemented.

All except the IGBCE and BASF interviewees recognised that business arguments could conflict with moral arguments and therefore needed to be used carefully:

“you have to see what you can do with it, so that I don’t instrumentalise diversity e.g. ‘as long as it helps you to sell more cars to gay people or migrants its great but if its really about equal pay then its not great.”  
(IGM)

For the DGB interviewee the only danger of business arguments was in the potential for people to be essentialised according to their ethnic background:

“As for the question of competences, there we have a bit of a problem with that not because we think people don’t have competences but because the presupposition in some management strategies is a classification according to ethnic origin. ... people with social and cultural backgrounds are thus reduced to their ethnic origin.”

The Ver.Di interviewee felt that expecting certain competences from people according to stereotypes was a common aspect of the diversity discourse:

“The most common argument I’ve heard is that DM helps companies to produce products which correspond to the diversity of the customers in

the market. For example ‘men would never want pink cars but women like pink cars!’”

The IGBCE and BASF interviewees apparently did not see this as a problem:

“when one engages with biculturalism, bilingualism, due to globalisation these people can be much better used because they bring more with them than those who don’t have that. And then for example a young person who comes here doesn’t have to work on the assembly line, he can be put in an office and work on the business they have with Turkey because he knows the mentality and the language and can successfully negotiate when it comes to selling products abroad. That’s our argument, bilingualism, that it should be better used, the potential which is already there in the companies.” (IGBCE)

For the IGBCE, BASF and Volkswagen interviewees, DM is a win-win situation in which there is no conflict between economic and moral arguments. This absence of conflict is explained by their understanding of business arguments; for these interviewees the social argument for diversity *is* the business argument, i.e. if the workers are treated fairly - in good times as well as bad - they will be more motivated, there will be less conflict and the company will therefore run more effectively and productively. The business argument is therefore that what is good for the workers is good for the company, rather than that the diversity of the workers must be used to serve business objectives:

“Diversity, in sum, is the success of the company, nothing else. If you have a company where there are always frictions then they do everything except work efficiently. That’s when you get sabotage. ... That’s why we also have from the IGBCE a project called “Good Work”. Its the question “what is good work?” That there are jobs, good working conditions, good pay, equal pay. And then we present it to the employers and then we see “aha, we have common fields of action” ... More participation brings the company further and creates a greater degree of employee satisfaction and that is also the side effect of what we’re trying to do with diversity. ... in the end they see that the workers will only follow them if they always see that there is a fair balance between the social obligations of the company and the employer interests.” (BASF)

The usefulness of the diversity discourse for these interviewees was that for the first time there was a discourse with which they could make this argument to employers:

“with diversity, the issue has been given a new push, because it comes from America this diversity term, and because of that it has become more well-known and that is an opportunity for us because everyone is

talking about diversity and so we can expand the agreements that we already have.” (IGBCE)

Whilst some interviewees felt that ‘Diversity Management’ had provided them with a new discourse in which to couch their ‘old’ demands to the employers, only the DGB and IGBCE interviewees felt that the diversity concept had actually had any effect on the way their unions dealt with questions of diversity and non-discrimination. For the DGB interviewee this was by helping his union to move from an equal treatment to a more equal opportunities approach:

“Yes in so far as, because through that we could more clearly recognise that the old concept of equal treatment had to be supplemented, which we had already done before but the diversity concept strengthened us a bit in that, a bit in the change from equal treatment to equal opportunities.” (DGB)

For the IGBCE interviewee, the positive language of diversity had made it easier to sell his anti-discrimination initiatives to his own members:

“anti-discrimination was perceived as too negative by our representatives in the works councils because they told us there was no discrimination in their companies and if an anti-discrimination agreement were negotiated then they said that means they are automatically admitting that people were discriminated against in their company and that isn’t so.” (IGBCE)

For the IGM interviewee, even the positive language of diversity had not managed to overcome the lack of interest or awareness amongst her union’s members (with some exceptions such as VW) about discrimination:

“I think that our works councils are not very occupied with that. And when it does come they sometimes even block it. And there’s no awareness about discrimination. That’s what I experience, I carry out trainings on the subject. ... Many of our works councillors are Germans, they find it normal that its like that. And many of the representatives in the works councils with migrant background, they avoid conflict, because there are conflicts. And the explanations are very often performance explanations, e.g. ‘they’re not well trained, they can’t speak German’, with such explanations they try to justify things.” (IGM)

It should be noted that BASF and VW are two of Germany’s largest and most successful companies and have weathered the economic crisis better than most others. Both the BASF and VW interviewees put this down to strong works councils, co-determination and social dialogue which have resulted in the ‘high road’ strategies of the company. At the initiative of the IGBCE interviewee, the

trade union negotiated a 'Diversity Management' agreement for the chemicals sector in 2008. According to the other interviewees, however, such social dialogue on the subject of diversity was the exception in Germany. On the contrary, in the experience of the DGB and Ver.Di interviewees, the Diversity Charter was being used to avoid equality legislation, social dialogue and the co-determination system:

“it must also be said that this concept of the Charter from our viewpoint is also a bit of a counter attack against the attempt via the General Equal Treatment Law to somehow establish a broader campaign for equal treatment. And some of the companies who have signed (the Diversity Charter) have said to us ‘For us its about voluntariness, and we have absolutely no wish for any kind of legal regulation which would force us into anything’. And in so far we have been relatively sceptical about this charter from the beginning because when the management of a company commits itself on a voluntary basis to a general declaration ... then our Works Councillors in the companies get nothing from that, because they have no legal possibilities to react when for example certain population groups are excluded from training. ... they are partly using the Diversity Charter as a counter-argument (to anti-discrimination agreements). They say ‘why do we need to sign an agreement? We’ve signed the Diversity Charter and that’s enough’.” (DGB)

“among the advocates of diversity there is the opinion that this law (which regulates special rights for disabled people at work) should be abolished... under the cover of diversity they say “everyone should be able to use their abilities without limitation, so why do we need the Disabled workers’ law? That only hinders them”. And in the large companies there is a special representative for the disabled workers and if the law was abolished the representative would of course also go. In the statements of these people its often a case of institutionalised possibilities of interest representation of certain groups should be changed through a voluntary DM.” (Ver.Di)

There was also experience of the Diversity Charter being used to exclude trade unions from the discussion altogether:

“At first I thought that (diversity) could be an idea where social partners could do something together... But it didn’t come to that. There was considerable financial support from the EU and this support in Germany ... was given unilaterally to the employers so that they could polish their image. ...they organised an event with support from the Ministry, I called and wrote to the Ministry to say I was interested and I would like to be there and they never even sent an answer although I’m the responsible person for this issue in one of the biggest trade unions in Germany. Its obvious they don’t want any cooperation, that’s clear.” (Ver.Di)

Although the IGBCE interviewee was asked whether his union would sign the Charter in its capacity as an employer...

“I wasn’t against that, but when I asked what preconditions there are, she said to me that there weren’t any at all, and I was like ‘what do you mean none at all?! ... who checks afterwards, who monitors it and says have you fulfilled your commitment or not?’. ... Just so that they can say ‘look isn’t it a fantastic thing, the trade unions have signed it too!’ I’m too smart for that.” (IGBCE)

The main point to come out of the analysis in this section is that where the co-determination system and social dialogue are (still) strong, trade unions in Germany are able to co-define the ‘Diversity Management’ discourse and use it to pursue their own equality and anti-discrimination agendas. Where this is not the case, however, Diversity Management can and is being used as a strategy to take equality and anti-discrimination protection out of the sphere of co-determination so that works councils and trade unions can do little to combat the dangers inherent in the diversity discourse (reducing people to their ethnic origin, reinforcing stereotypes, prioritising business objectives, being only a fair weather discourse, amounting to nothing more than PR).

## **Conclusion**

Trade unions cannot use diversity discourses to give effective voice to disadvantaged groups if Diversity Management is being used to exclude trade unions from the discussion. And where DM is being pushed as a voluntary employer initiative and alternative to anti-discrimination legislation, it is doubtful that it will improve the situation of disadvantaged groups very much either. Given the very alarming increase in islamophobic and anti-immigration discourses since the start of the economic crisis, claims by German advocates of Diversity Management that companies practising DM “make an important contribution to the socio-political discussion about cultural diversity and have the lasting effect of preventing political decision-makers falling back into a ‘monocultural era’” (Fick 2008, my translation) appear to have been over-optimistic. Where the diversity discourse is being championed by a political right who drop it for a discourse of “ban the burqa” and “expel the Roma” as soon as it appears politically expedient,

its usefulness as a tool for promoting integration should also be cause for scepticism.

From a comparative employment relations perspective, this research has tried to answer two questions:

- Whether diversity policies are based on social dialogue or voluntary employer-led initiatives.
- Whether diversity discourses are rejected or accepted by trade unions.

Looking at the table of institutional variables below, we see that neither the strength of the employment relations system, nor the framework for equality/anti-discrimination legislation<sup>14</sup>, nor the history of immigration, nor whether a country has an ideology of multiculturalism or assimilation, correlates to whether the diversity approach is primarily based on social dialogue or a voluntary employer-led approach.

	<b>IR system</b>	<b>Equality legislation</b>	<b>Immigration history</b>	<b>Multi-culturalism</b>	<b>Urgent social crisis of integration</b>	<b>Diversity approach</b>	<b>Unions accept or reject diversity discourse</b>
<b>FR</b>	Weak	Weak	Colonialist	No	Yes	Social dialogue	Accept 'diversity'
<b>SE</b>	Strong	Strong	Recent	Officially, yes	Yes	Social dialogue	Reject 'diversity'
<b>DE</b>	Strong	Weak	Gastarbeiter	Of a sort...	No	Employer-led voluntary	Reject MD

Although the strength of the IR framework is not the determining factor, DM can be used to weaken IR frameworks where there is no urgent crisis of social cohesion (manifested in outbreaks of violence). This suggests that if there were no social crisis of integration, the diversity discourses in France and Sweden would probably also have been based on a voluntary employer-led approach.

<sup>14</sup> Strong meaning legal frameworks for positive action, positive discrimination or duties to promote.

Social crises of integration are framed in institutionalised (cultural-cognitive) discourses about multiculturalism versus assimilationism. The theoretical point made in this paper is therefore that the cultural-cognitive institutional pillar, manifested in ideological discourses about multiculturalism, integration, ‘social market economies’, etc., is the most crucial one (rather than regulative or normative institutions such as employment relations systems) for understanding why trade unions appropriate or reject discourses of diversity, and why diversity initiatives are manifested through social dialogue and joint regulation in some countries and through voluntary, top-down management-led initiatives in others.<sup>15</sup> Indeed, the regulative and normative institutions in the form of co-determination and social dialogue are being undermined in Germany by these cultural-cognitive institutions, which can be explained with Scott’s (2008) theory of pillar alignment:

“when the pillars are aligned, the strength of their combined forces can be formidable ... Equally important, the pillars may be misaligned: ... As Strang and Sine (2002:49) point out: “where cognitive, normative and regulative supports are not well-aligned, they provide resources that different actors can employ for different ends”. Such situations exhibit both confusion and conflict, and provide conditions that are highly likely to give rise to institutional change.” Scott (2008:62)

The findings of this study therefore support Ackers’ (2002) call for the field of industrial relations (in Britain at least) to integrate the study of work with the wider study of society and culture, as is traditionally the case in continental Europe.

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<sup>15</sup> Which rather contradicts my conclusions in the paper I wrote on France (Stringfellow 2009).



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