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Lights and shadows of direct participation in foreign companies in the Czech Republic

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Introduction

The post-Soviet bloc new member states of the European Union differ from most of the old member states for the weaker ‘embeddedness’ of their employee participation structures, and for the relative weakness of organised labour. This allows employers to often choose their preferred form of employee participation, including direct participation, and affects the possibility of transferring participation mechanisms from western Europe.

The access to the European Union introduced three important changes. First, EU legislation on Information and Consultation of Employees was introduced, opening the possibility of statutory works councils in countries where these were not foreseen. Second, employees of multinational companies were included into the European Works Councils, where these existed or could be created. Third, more indirectly, the increase in economic and industrial integration within the single market, and larger flows of foreign direct investment, increase the scope for the transfer, direct or adapted, of participation mechanisms from western Europe, including direct participation. If developments occurred on all these three dimensions, we could assist to the development of a ‘European’, multiple-pillar model of participation in the NMS (Gill and Krieger 2000).

The paper discusses the current developments and the possibilities of the new member states constituting a test bed for new management-led solutions, or conversely of upgrade of participation rights. After a review of the issues, it will focus on the Czech Republic through case studies of German and Anglo-American investors in the finance and metalworking sectors.

Recent developments in employee participation in the new EU member states

Implementation of the European Directive on Information and Consultation

The Framework Directive on information and consultation (2002/14/EC) was expected to affect the new post-communist member states more than the old ones, as in the majority of them (the exceptions being Hungary and Slovenia) trade unions were the only channel of employee representation, which might now be replaced by a dual channel. However, such transfer has not occurred, at least not in a way that makes the NMS more similar to the German model (Rogers and Streeck 1995).¹

¹ This account largely draws on a previous account of the transfer of the EU *social acquis* to the NMS (Meardi 2007).

Promoters of the transfer of the dual channel into the NMS (e.g. Tholen 2007) may be neglecting that works councils have historically been an effective channel for employee voice only in countries where they have been preceded and supported by a strong labour movement (e.g. Germany). In countries where union penetration is low, works councils have mostly been manipulative tools in employers' hands (Freeman and Medoff, 1984). The actual relationship between works councils and trade unions is more problematic, and while being generally one of complementarity (Brewster *et al.*, 2007), the actual dynamics depend on the specific contexts and legislations. In post-communist countries (including in East Germany, where works councils undermine unions more often than in West Germany), the context is rather negative, as private employers are already reluctant to negotiate with trade unions. Even in the 'best case' Hungary, where the dual system had been introduced 'endogenously' in the 1990s, works councils failed to play the expected role wherever unions were absent.

While the Directive was officially meant to set a minimum floor of rights for employees in the EU, several NMS governments have been quick at exploiting the opportunity to undermine, rather than reinforce, employee prerogatives. Governments' initial proposals tried to replace the single channel with a dual-channel system in which the establishment of a works council could have easily made the unions disposable. The specific proposed laws allowing works councils to replace the prerogatives of existing unions were particularly dangerous, as they would have opened an avenue for union-avoidance techniques and 'yellow', or at least ineffective, works councils. Although other possible transpositions introducing works councils *while* strengthening unions were available, for instance along the Italian RSU or the South African Workplace Forums examples, both guaranteeing union presence in the works councils, this option was not considered. Anti-union legislative proposals were pushed by governments in Poland, Czech Republic (this country had started the legislation process well before EU accession), Slovakia and Estonia. Only after strong union opposition (which in the case of Estonia, where the proposed law restricted the prerogatives of trade unions, also required the solidarity intervention of international unions) were such proposals amended and replaced by 'residual' works councils systems, which give priority to unions as employee representatives in workplaces (Carley and Hall 2008). Only Bulgaria and Estonia introduced a dual channel that guarantees union presence but still raises some union concerns.

The legal framework has since been changed in some countries by interventions from the Constitutional Courts, reintroducing threats for trade unions. In the Czech Republic, in March 2008 the Constitutional Court decided that a works council can be established at an employer's business and can also operate alongside a trade union, which raised preoccupation from the trade unions. In Poland, in July 2008 the Constitutional Court started the exam of the same issue, and many legal experts expect it to take a similar decision to its Czech counterpart's. However, not all Courts decisions have been in this direction. An earlier Polish ruling increased the scope of information and consultation rights, which initial legislation had established in a very vague form.

The implementation of the new I&C bodies seems to be proceeding slowly. In the Baltic states, it is reported that employees lack the assertiveness and information to take action demanding I&C rights, and the lack of participation and voice has been documented on the Health and Safety issue (Woolfson *et al.* 2008). In Slovakia and

Poland few companies have introduced innovations. In Poland, according to data from the State Labour Inspectorate, about 2,000 I&C bodies (out of at least 17,000 companies covered by the legislation, i.e. with over 50 employees) have been constituted, but 90% of them are simply ratifications of previously existing union bodies. Moreover, the remaining 10% appear to be weaker and less active than union bodies (Surdykowska 2008): the expectation that works councils would not be an effective tool for employee voice seems therefore confirmed.

The extension of European Works Councils

The process of enlarging the European Works Councils (EWC) to employees from the NMS had started voluntarily in many companies before EU accession, raising some expectations of side-effects for employee participation (Meardi 2004). Notably, the degree of information obtained by NMS representatives could have allowed them to strengthen their local bargaining position.

However, in the last few years, in spite of the enlargement that increases the number of companies covered by the EWC Directive, the process of creation of new EWC has significantly slowed down. Only a handful of EWC have been created in companies based in the NMS. The practice in the EWCs including NMS representatives is varied (Voss 2006), but importantly the ‘pro-active’ EWCs, affecting industrial relations transnationally and locally, appear to be from the same few companies that had enlarged the EWC before 2004. There are some cases of productive cross-border co-operation among trade unions within the EWCs (Fichter and Meardi 2008, Meardi et al. 2009a, Fetzer 2008, Gajewska 2008), but in most cases resources and networks are too weak to lead to active solidarity.

Indirect effects from foreign investors

Apart from the statutory EWC, foreign investors may transfer or introduce other practices, or cultures, of employee participation. Research in the automotive sector has showed that strategies from foreign investors in this field are pragmatic and imprecise, so that, for instance, it is difficult to distinguish German from US approaches (Tholen 2007, Meardi et al. 2009b). Expectations that western European investors might have transferred a culture of participation and social dialogue proved to be naïve. A graphic tale of the resulting confusion, among NMS employee representatives, about MNC’s intentions has been published in a Polish union magazine:

‘In our company there are no trade unions. The owner is an Austrian firm, that is from a country where there is a long tradition of social dialogue. Hence the feeling that works councils’ prerogatives and competences should be well known to the employer. In conformity to the law, the employer organized the elections and the first meeting of the council. After that we heard: ‘we have organized you, the rest depends on you, we’ll wait for the effects of your activity’. We asked ourselves what’s this council for at all, because the employees imagine that we are some sort of social affairs commission, while the employer treats us as – even if they don’t say so openly – rather an opponent, not as a consultant and partner. Basically we appear as a body that threatens complaints. We can’t fulfill the expectations of either side, because in practice we have no powers, that would

allow us to do it.’ Anna Lewandowska, Works Council of TU Compensa SA. (Dołowska 2007)

Other effects might be expected from companies from other countries than western continental Europe. Anglo-American companies have their own industrial relations and HRM specificities that are sometimes exported abroad (Almond and Ferner 2006). Specifically, Anglo-American companies, with no statutory works councils at home, have been pioneering on forms of direct participation. Research on British-based multinationals confirms the frequency of direct participation practices in foreign subsidiaries, and that when combined with absence of unions or works councils (as may be expected in Central Eastern Europe), these translate in strongly management-led employment relations (Wood and Fenton-O’Creevy 2005).

Case studies from the Czech Republic

The Czech Republic is an interesting case for the study of developments in employee participation. Among the post-Soviet bloc EU member states, it is the economically most advanced, but with a particular hostility to collective forms of participation. In 2004, the Czech Agency for Foreign Investment even mentioned explicitly as one of the country’s attractions the fact of having the fastest decline in union membership (it currently does so only implicitly). Its geographic position in the centre of Europe and close to the core markets of Germany and Austria makes it also particularly subject to cross-border influences. Therefore, it provides a relevant test bed for the development of the different forms of employee participation mentioned in the previous section.

This section presents findings from research on Anglo-American, Austrian and German investors in the finance and automotive sectors.² The research looks at both sector and country-of-origin effects in the field of employee participation. The twelve case studies allow a comparison between the rather well-known automotive components sector and the finance sector, where international restructuring is of major importance but attention to cross-border industrial relations effects has been rarer (Arrowsmith and Marginson 2006), as well as a comparison between Austria, Germany and UK/US in terms of country of origin (although this paper will focus on the German and UK/US cases only). The research involved interviews with managers and employee representatives in the Czech sites and in the German or British headquarters or subsidiaries, and was carried out in 2007-08. The automotive sector companies are all component-makers, while the finance companies come from the banking, insurance and personal credit sub-sectors.

As a first general finding, none of the foreign investors appears to have had a clear strategy on industrial relations transfer, nor to have chosen the Czech Republic because of its industrial relations features. This seems to confirm the sceptical view of ‘regime shopping’ by multinational companies (Traxler and Woitech 2000) rather than the more alarmist one (Cooke and Noble 1998).

Employee participation in German-owned companies

² The research project ‘Market Efficiency and Employee Participation Rights’ is funded by the Austrian Federal Ministry for Science and Research.

The two German manufacturing companies (D-CAR1 and D-CAR2) are not small, with around one thousand (of whom 50% in Germany) and nine thousands (of whom 30% in Germany) employees worldwide respectively. But they are already typical of the large number of German medium sized companies, which at the same time are strongly shaped by the German culture, and employ German HR managers abroad, but do not transfer German industrial relations practices internationally. **D-CAR1** is the only of the four German case studies, with unionised Czech workplaces: three of its four Czech plants have trade unions. However, unionisation is very low and therefore there is no full-time facility for any trade union representatives, although these are allowed to attend training. Industrial relations are co-operative but with very little negotiation power for the union. The employer has transferred some practices into the Czech subsidiaries (over 1,500 employees), but very selectively: for instance, a suggestion scheme is reproduced in the Czech Republic, but while it is subject to co-determination and collective agreement in the German operations, in the Czech Republic it is unilaterally managed and remains voluntary. In its foreign operations, the company respects trade unions where they exist, but never increases their participation rights above what the local law says (and seems to have even sought to prevent unionisation in its Turkish site.) The German sites are under strong competitive pressures and relocation threats, which translated into concession bargaining, but Czech and German employee representatives have hardly ever met in the fifteen years since the beginning of German investments in the Czech Republic. Only recently, the initiative for a creation of a EWC was taken, with no support from management. There has been no support for the Czech unions from the German works council or union.

D-CAR2 declares to be a supporter of 'strong works councils' in its German operations, but has introduced no independent employee representation in the Czech Republic (where there are 300 employees). A range of direct participation mechanisms have been introduced instead. As a (clearly paternalistic) compensatory mechanism for the lack of collective representation, it appears that the bilingual assistant to the production manager is often a liaison between employees and management, whereby she takes the role of confidant and information channel. The company has no EWC and there is no cross-border employee representative co-operation either. The cases shows that in companies where trade unions do not have the critical mass, political capacities and organisation resources of the large corporation, building cross-border links is a hard and slow process, even between geographically proximate countries, and in companies where there is strong cross-border competition and there are work-based cross-border contacts between employees (and even, at D-CAR2, social contacts, as company-organised soccer tournaments and summer parties.)

In the finance sector, the two German insurance companies display little developments for independent employee representation. In **D-INS1** there is a EWC, but the Czech operations (with only 81 employees) are not represented. More worryingly, the German employee representatives do not even know whether an employee representation exists in the Czech subsidiary. Similarly, the Czech employee representatives in the supervisory board have only a very vague idea of what a EWC is. The members of the supervisory boards are the only (statutory) form of employee representation in the Czech operations, and they are managers. When an attempt of unionisation had been made, the personnel manager (Czech and popular among local employees) had threatened to leave

the company. In **D-INS2**, which is bigger, more internationalised and has 700 employees in the Czech Republic, the situation is better for employee representatives. The HR department itself took the initiative to organise the elections of a Czech representative in the EWC, and even more importantly, the EWC appears to have affected a degree of ‘dissemination’ of co-determination practices across the European operations. These effects are hardly perceived in the Czech context though, where there is no trade union nor works council. In a way similar to **D-CAR2**, the HR department claims fulfil the role of works council, as employees can turn to it for advice and it can mediate between employees and plant management. At **D-INS2** the Czech representatives have no information on the industrial relations practices in other countries, and have received no form of assistance or co-operation from their western counterparts.

Employee participation in Anglo-American companies

The Anglo-American manufacturing case studies differ from the German ones in two respects. First, in this case employee information and participation rights are actually stronger in the Czech Republic than in the British sites: even if the British factories are strongly unionised, their relations with management are purely of collective bargaining on wages and working conditions, with very little information on work organisation or on restructuring. The Czech unions, by contrast, even if heirs of the communist-time ones, have developed strong participation activities, without however becoming deferential: at **US-CAR** there have been strike threats in the past, even if not actual strikes, and at **UK-CAR** they appear better informed and more active than in the British plant. Secondly, the companies have a declared preference for direct participation over indirect, especially through individual interviews and job satisfaction surveys. The same direct participation methods reveal however limitations and a social demand for more information, which at **US-CAR** has translated in broader scope for trade unions. High turnover and difficult retention work in the same way, forcing the employers to develop communication and participation further, and with the trade union organising own interviews with leaving employees, which then inspire union requests in negotiations. The EWCs are not particularly strong, though, reflecting relatively little power and capabilities from the western employee representatives. In both companies, an ironic fact is that while western managers resist the EWC and see it as an impediment and a cost, the Czech managers see an advantage in it: the Czech representatives, by being informed of the high job insecurity in the West, due to restructuring and relocations, might come to appreciate more their own conditions. In a situation of overall weak trade union power, the information effect of the EWC could therefore have a ‘backfiring’ moderating impact on eastern representatives, instead of motivating them to raise social standards towards western levels.

In the finance sector Anglo-American companies, the preference for direct participation is even clearer. Both companies are hardly unionised in the West. **US-BAN** explicitly rejects trade unions as a ‘third, external part’ distorting the direct unitaristic relationship between employer and employees, and only accepts them when imposed by the law or by inherited conditions. Its 3,000 Czech employees have no form of collective representation besides the statutory elected representative in the supervisory board, who is a manager. Interestingly, this elected representative tells to be asked by employees to demand higher salaries, and therefore to play a collective bargaining role, which

apparently, to a small extent, he does play. The situation may change: in line with the general trend of unionisation in the Czech banking sector, at the time the research was being concluded a union organising effort was taking place. **UK-FIN** introduced a works-council like 'Employee Forum' in most of its European operations. Interestingly, this was first experimented in Poland and then introduced back in the UK and in other countries including the Czech Republic. In spite of the big importance given to these bodies, their actual working is questionable: in the UK, it had been completely restructured after little time and was not meeting at the time of the research; in the Czech Republic, its mandate had expired two years earlier, all representatives had long left the company, and no new elections had been yet organised because management prioritised the conduction of an employee survey, a more important direct communication tool. As a simple consequence of the weakness of independent employee representation, in these two cases there are no EWCs, nor any other form of cross-border networking among employee representatives. UK-FIN's management is aware of the possibility of a EWC in the future, but employee representatives are too focussed on their national situation to be interested in it. Although in these companies there is very little internal competition as the markets are distinct and the services are provided in loco, some areas of the American company (Research & Development, Information Technologies) are affected by relocations, and more back-office operations are threatened to relocation to even lower-labour cost countries than the Czech Republic, notably Romania and Bulgaria.

Table 1 – Forms of employee participation in Czech subsidiaries of MNCs

Company	Indirect participation	Direct participation	Transnational participation
D-CAR1 Car parts (Tier 1,2) 1500 employees Greenfield	Trade union: low membership no F-T reps	Continuous improvement process Suggestion scheme	No EWC yet (but being created) No cross-border union contacts
D-CAR2 Car parts (Tier2) 300 employees Greenfield	None	Works meetings Open doors Petitions Autonomous groups Mailbox	No EWC No cross-border union contacts
D-INS1 Insurance 80 employees Greenfield	None [apart employee representatives in supervisory board]	Workshops Teamwork meetings	EWC, but Czech subsidiary not represented
D-INS2 Insurance 700 employees Greenfield	None	Suggestion scheme Appraisal interviews Surveys	Active EWC
UK-CAR Car parts (Tier 1) 600 employees Brownfield	Trade union : 55% unionisation, 1 FT rep	Satisfaction survey & feedback Works meetings	Active EWC
US-CAR Car parts (Tier 1) 700 employees Brownfield	Trade union: 40% unionization Time-off provision for union reps.	Employee survey & feedback Works meetings	Active EWC
US-BAN Bank 3000 employees Brownfield	None [apart from employee representative in supervisory board]	Employee survey & feedback Works meeting Appraisal interviews Open doors	No EWC No cross-border union contacts
UK-FIN Personal credit 500 employees Greenfield	Non-statutory Employee Forum [but not re-elected for the last 3 years]	Engagement survey Open doors	No EWC No cross-border union contacts

Discussion and conclusion

The overall picture (Table 1) shows that the legislation on works councils linked to the EU Directive on Information and Consultation of Employees has had virtually no impact in these companies. Employee participation depends either on pre-existing union presence (in manufacturing brownfield sites), or on informal and employer-led solutions. Where unions exist, they are not particularly strong but they know how to play their role: Czech union reps actually emerge as better informed and more active than their British counterparts. The EWCs, where they exist, have little impact as these companies do not have strong cross-border union networks. Most investors have a pragmatic approach to employee representatives, with the exception of the explicit anti-unionism of US-BAN.

The direct influences from foreign patterns are more visible on direct participation or management-led indirect participation. UK-FIN had introduced a voluntary Employee Forum, although its limitations are apparent in the fact that it has not met in the last three

years. More actively used are forms of individual participation, especially surveys and related feedback meetings in the Anglo-American companies. Sometimes, such forms of participation are implemented in a more employer-led form than in the West, like in the case of suggestion schemes at D-CAR1. The success of these forms of participation is debatable: for instance, in some cases (D-CAR2 being an exception) Czech employees do not appear to actively participate in works meetings.

Although the Czech operations of these companies are overall successful, the prevalence of direct participation does not seem to have avoided a 'representation gap' and (apart from the small insurance company D-INS1) a demand for collective services in the workplaces, in a situation similar to that of the USA (Freeman and al. 2007). The employee representative in the supervisory board of US-BAN is asked to play a collective bargaining role, although this is not part of its role. Even more strangely, sections of management (at D-CAR2 and D-INS2) are requested to play representative and mediation functions. At US-BAN, an attempt at creating a trade union occurred (the outcome is still unknown), and at US-CAR employee surveys revealed dissatisfaction with the existing degree of information. Employee demands for more participation might not matter to management, if they were not combined with high and often increasing levels of turn-over. Retention is a major preoccupation for all employers researched, reflecting the tight Czech labour market. Managers report that direct participation solutions are a part of their retention strategies: if they appear to be insufficient, more experimentation may follow. In this regard, the Czech Republic appears to have only started its expected laboratory role, and it is still early to say whether it will entail a downwards or upwards development in employee participation rights.

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