

THE ROLE OF NATIONAL AND EUROPEAN EMPLOYER ORGANISATIONS

IN THE 21st CENTURY

Renate Hornung-Draus*

WARWICK PAPERS IN INDUSTRIAL RELATIONS

NUMBER 73

March 2004

Industrial Relations Research Unit
University of Warwick
Coventry
CV4 7AL
UK

* Director European and International Affairs, Confederation of German Employers, BDA

Preface

This Warwick Paper publishes the text of the third Warwick-Acas Lowry Lecture which was delivered on 15th March 2004 by Renate Hornung-Draus, the European and International Affairs Director of the Confederation of German Employers (BDA), to an invited audience at the University of Warwick.

The annual Lecture is organised by the Industrial Relations Research Unit together with Acas and named in honour of Sir Part Lowry. A former Chair of Acas, Sir Pat was for many years an honorary Professor at Warwick, a long standing member of the Business School's Advisory Board and a source of valued counsel to IRRU in its work. His outstanding contribution to the practice of industrial relations commenced when he joined the EEF in 1938. Following the second world war, he went on to become the Federation's Director of Industrial Relations. He left in 1970 to join British Leyland as Director of Industrial Relations. From there Sir Pat was appointed as Chair of Acas.

Whilst management has widely been seen to be initiating industrial relations change in recent years, renewal of the role of employers' organisations has received rather less attention. Yet, Renate Hornung-Draus establishes how in Europe's largest economy employers' organisations have been elaborating and implementing a reform agenda which, while markedly shifting the balance between the sector and company levels of negotiation, does so within a collectively agreed framework which is common across employers within a given sector. She draws attention to the more complex and diffuse roles that employers' organisations are required to play in the first decade of the 21st century, confronted by increased tensions between member companies, reflecting developments in competition and supply-chains, and new challenges such as 'corporate social responsibility' arising from both domestic and international pressures. As a former Social Affairs Director of UNICE, Ms Hornung-Draus insightfully reflects on the differing trajectory taken by employers' organisations at European level, which are now assuming a concertation role under the EU's social dialogue which seemingly accords more closely with that prevailing at national level in a number of member states. One implication of wider industrial relations significance is that the EU and national levels are becoming more intertwined than hitherto.

Jim Arrowsmith
Paul Marginson

I. INTRODUCTION

I am very pleased to be able to speak tonight about employer organisations and their changing role in the 21st century. This is all the more so since I cannot avoid the impression that parts of the academic industrial relations community seems to be somewhat biased towards believing that the employer organisations are about to disappear: The draft programme for the recent IIRA World Congress, which was held in Berlin last September (2003), contained up until very late a track which was entitled „The end of employer organisations“. It was only after I intervened and drew the attention of the IIRA programme committee to the fact that this title did not reflect reality – neither in the USA nor in Europe or in other parts of the world -, that this was changed into the more adequate title of „Collective Actors in Industrial Relations: What Future?“. In fact, I can assure you that – contrary to what used to be fashionable thinking in the 1990s - employer organisations, just as trade unions, are not about to disappear as collective actors. However, they are undergoing profound changes in order to adapt to the changing economic, social and political environment.

Tonight, I would like to talk about the challenges facing employer organisations at national level (using the example of Germany) and at European level, their responses to these challenges and new roles for them emerging in this process. I will argue that the traditional roles of employer organisations – just like those of the trade unions – are being challenged by:

- globalisation, i.e. the increasing internationalisation even of small businesses and the cost pressures resulting from intensified international competition;
- the changing architecture of production, i.e. the development of outsourcing, network structures, increasingly complex supply chains – although I wonder whether the trend towards outsourcing is not in the process of being reversed at least partially¹⁾ - and the resulting intensification of conflicts of interest between suppliers and customers within the employer organisations even at sectoral level;
- the emergence of new social actors (NGOs) representing „stakeholders“ other than employees and interacting with companies;

In other words, employer organisations have to handle an increasingly complex and diversified reality both with regard to their membership, i.e. the companies, and with regard to the social, economic and political environment in which they are operating.

II. NATIONAL EMPLOYER ORGANISATIONS – THE EXAMPLE OF GERMANY

II.1. Collective bargaining remains a major pillar of employer organisations' functions, but requires fundamental changes of the rules of the game

The principal function of employer organisations in Post-War Germany has been to conclude collective agreements with the trade unions which set the working conditions for member companies at sectoral level. The added value for companies has consisted in the:

- protection from industrial disputes
- reduction of transaction costs
- establishment of a level playing field with regard to labour costs.

In the 1990s the traditional collective agreements came under severe pressure both from the cost competition induced by globalisation and from the process of German reunification ²⁾. This has led employers together with the trade unions to introduce elements of *flexibility* – particularly with regard to working time arrangements – and of *diversity* by way of opening clauses for companies facing difficult economic situations.

Coverage of collective agreements stabilised

Looking at the situation today, the good news is that these reforms have managed to limit the erosion of the collective bargaining system. The latest study of the Nürnberg Institut für Arbeitsmarkt- und Berufsforschung (IAB) ³⁾ shows that the coverage of collective agreements in Germany has been stabilised both in West and in East Germany: In 2002 43% of companies employing 68% of the active work force were covered by a collective agreement

at branch (40%) or firm (3%) level. In addition, 24% of companies employing 17 % of the work force (i.e. mostly SMEs) applied the working conditions of collective agreements without being legally covered by them (because they are not members of an employers' organisation). These figures correspond to those of 1999 and show that the erosion which had taken place in the second half of the 1990s has come to a halt.

It is interesting to look at the East-West-situation, because it gives an insight into the importance of collective agreements in Germany even beyond the legal coverage: In Eastern Germany (the „New Bundesländer“) only 24% of companies and 55% of employees are legally covered by a collective agreement as compared to Western Germany with 46% of companies and 70% of employees. But the number of companies using the collective agreement as a reference without being legally covered is significantly higher in the East with 34% of companies and 24% of employees, than in the West with 22% of companies and 16% of employees.

Another positive aspect confirming the stabilisation of the German collective bargaining system is that according to a recent survey ⁴⁾ German SMEs, which are an essential component of Germany's economic tissue, do not consider the collective agreements to be a cause for their economic problems. The main problems in their view are the intensifying international competition, too complicated tax laws and red tape from the State bureaucracy.

Warning signs

However, there are serious signs of warning which, in the employers' view, require a continued effort to reform the collective bargaining system. One of them is the finding of the IAB that the number of companies covered by collective agreements, which can afford to offer working conditions above those collectively agreed has been decreasing significantly over the last ten years and is now only 45% in Western Germany and 19% in Eastern Germany. Furthermore, the difference between the collectively agreed wages and the wages actually paid by these companies has been reduced from 13,4% to 10,8%. This tendency shows that the purpose of collective agreements to provide *minimum* working conditions is jeopardised.

Another dangerous signal is the continuing loss of employment, particularly in the manufacturing sector: In 2003 the metal processing, electronic and engineering industry, which is the most important sector in Germany, lost 6.000 jobs per month on average, and an increasing number of firms, even SMEs envisage to shift production from Germany to other less expensive countries as a way to address cost pressure. Of course, direct labour costs and working conditions are only part of the picture, but they constitute a non-negligible element for companies' decisions.

The employers' concept for modernising the collective bargaining system

Employers respond to these challenges with a number of proposals for reform. The first and most controversial request is the general admission of the opening clause for company level „*pacts for employment*“ (Betriebliche Bündnisse für Arbeit). Such opening clauses allowing individual companies to deviate from the collective agreement exist already in most German collective agreements. However, they are conditional upon the demonstration by the company that it is in economic difficulties and upon the approval by the signatories of the collective agreement in question (trade union and employer organisation). These conditions account for the very limited use of the existing arrangements: no company wants to have to declare publicly that it is facing economic difficulties – this would damage its situation even more. This is why the BDA is asking for a legal re-definition of the *principle of favourability* (Günstigkeitsprinzip) in the sense that any agreement between management and the works council to deviate from an existing collective agreement in order to safeguard employment in the firm should be considered more favourable and should therefore be allowed under the Collective Agreements Act. This change does *not* imply to decentralise the collective negotiations including industrial action to the level of the firm and to give up the traditional German „dual model of IR“ with the separation of roles between the works councils and the sectoral trade unions, which is what certain individuals, most prominently the President of BDI are asking for, when they request the deletion of § 77.3 of the German Works Constitution Act (Betriebsverfassungsgesetz). The vast majority of the companies in Germany are opposed to giving up the protection which this dual model gives them against trade union pressure on individual companies.

BDA President Dieter Hundt and DGB Chairman Michael Sommer made a great effort to agree on a common line in order to address this issue in a joint recommendation of BDA and DGB last December in order to demonstrate that the social partners are able to modernise their system without State interference. Unfortunately the exercise failed mainly due to the resistance of the most radical unions within the DGB: the rivaling IG-Metall and Ver.di. Employers therefore now ask the legislator to make the necessary change in the German Collective Agreements Act.

Another important aspect of modernising the system of collective bargaining refers to the industrial disputes. Due to globalisation companies have become much more vulnerable for losing clients to foreign competitors in case of industrial action. In addition, trade unions tend to make widespread use of so-called warning strikes, which accompany the negotiations and go against the „ultima ratio“ principle which stipulates that a strike should only be allowed after all attempts to reach compromise in a negotiation have failed.. Employers therefore look for ways to reinforce the *ultima ratio-principle* of strikes by proposing that warning strikes should only be allowed after the failure of a *conciliation procedure*, a standard form of which would have to be defined in the Collective Agreements Act.

In addition to these more fundamental changes of the system, other elements of adapting the contents of collective agreements to the changing economic reality have been agreed by the social partners: The distinction between blue-collar and white-collar workers has been ended, already several years ago in the chemical industry, and more recently in the metal processing, electronic and engineering industry. Furthermore, the latest metal agreement foresees the possibility for voluntary company level „pacts for employment“ between management and the works council to increase the average working time from the currently agreed 35 hours up to 40 hours for up to 50 % of the workforce in a firm in order to address bottle-necks, strengthen competitiveness or promote employment.

Codetermination in supervisory boards no longer appropriate

Making a small detour from the classical collective bargaining system, I would like to address the issue of codetermination in supervisory boards of German companies. Clearly, this model is no longer appropriate in the context of internationally operating businesses, since by law only German workers are represented in the supervisory board of large corporations, while the

increasing number of workers outside Germany are not represented in this structure. There is an increasing debate in Germany as to whether in this new economic context it would not be wiser to abandon the obsolete system of German codetermination in favour of a truly transnational information and consultation body for employees as we know it for example from the European Works Councils.

This should also be a concern for trade unions too, if they have a truly international approach. Unfortunately the German trade union movement is divided internally between modernisers and radicalising traditionalists, and this division has been aggravated in the recent process of trade union restructuring.

To sum up on this point, I come to the conclusion that a modernised version of collective bargaining will continue to be an important function of German employer organisations in the 21st century, even if it will no longer be their only core business.

II.2. New roles for employer organisations

Since the 1990s employer organisations in Germany and throughout Europe have developed a number of new roles and profiles ⁵⁾: services to companies like counselling in labour law, the provision of training courses, the creation of parallel employer organisations outside the scope of the Collective Agreements Act in order to gain or retain those companies which did not want to be covered by collective agreements (this phenomenon was a „safety valve“ for employer organisations in certain regions – notably Eastern Germany, and certain sectors undergoing crisis and restructuring, the strengthening of the political lobbying function.

CSR creates a new and complex role for employer organisations

However, I would like to look more in detail now at a completely new role which seems to be emerging for employer organisations in the context of the development of the CSR-debate. With globalisation and the increasingly international operations of companies, the debate of the social responsibility of companies, particularly in developing countries has become an important issue. In addition to the trade unions other actors such as consumer, social and environmental NGOs are now scrutinizing companies' activities and behaviour throughout the

world and all along the supply chains. This phenomenon is no longer limited to companies close to the consumer, e.g. retail trade, garment and sports wear, but has now expanded to cover all types of companies, even banks and insurances. In this context employer organisations can provide added value to companies in several respects: Firstly they give guidance on the contents and interpretation of universally agreed core labour standards and on how these standards can be „translated“ meaningful benchmarks for company practice and individual company level codes of conduct. Employer organisations also protect companies from unreasonable NGO demands and help to solve conflicts with NGOs about socially responsible behaviour which have the potential to inflict serious damage to companies.

In some German sectors employer organisations have even developed, at the request of member companies, a specific mechanism for monitoring the application of codes of conduct on CSR in order to improve the transparency and credibility of the companies' CSR-practices.

This development will in my view have a significant impact on employer organisations in two respects: firstly, the predominance of the purely national perspective of employer organisations' activities will be complemented by an increasing attention paid to problems arising for companies in other parts of the world in relation with CSR and to international labour standards. Secondly – leaving aside relations with the government -, trade unions, while still being the main partner of employer organisations, will no longer be their only interlocutor: employer organisations have already entered into dialogue with NGOs in order to defend the companies's interests in the context of CSR. To avoid any misunderstanding: the relation with NGOs is of a totally different nature as compared to that with the trade unions; it is much more political and diffuse and will never lead to anything comparable with binding collective agreements. But the importance of this activity will increase over the years to come.

Implementation of European social regulation

In contrast with the well known and often quoted assertion of some Industrial Relations scholars that European integration undermines national industrial relations systems, I would like to argue that the European social regulation may give rise to new roles for national

collective actors, although these roles do not, of course, correspond to the traditional collective bargaining function, to which the above mentioned scholars seem to be referring.

One example for the impetus given by EU-legislation to national social partner agreements was given by John Monks in his ACAS-Lowry lecture of last year: The Information and Consultation directive has led to the negotiation between the CBI and the TUC of a joint framework for implementing the directive.

Another example for new tasks of employer organisations induced by the EU-level regulation is the implementation of voluntary framework agreements or frameworks of action, such as the lifelong learning framework or the telework agreement. Employer organisations have a task of making sure that these agreements are actually implemented by companies, be it via national collective agreements, joint social partner recommendations or conferences and seminars about best practice. They have to report to their European organisations about the measures taken to implement these texts.

Finally, a number of European directives provide for opening clauses or derogations which can be implemented only via collective agreements within the national framework, for instance in the Working time directive, the possibility to extend the reference period beyond 4 months.

III. EMPLOYER ORGANISATIONS AT EUROPEAN LEVEL

This leads me to my last point: the changing roles of employer organisations at European level. In some ways, the developments taking place at European level go in the opposite direction compared to those just described at the national level. While employer organisations at national level have moved from a clearcut collective bargaining profile towards a more politicised, diffuse and complex profile, employer organisations at EU-level – UNICE as the major horizontal organisation in particular, have moved from a pure political lobbying activity directed towards the EU-institutions (Commission, EP and Council) to a more active profile as social partners focusing on developing the social dialogue with ETUC at EU-level.

There are several examples of this shift towards a more proactive stance as social partners:

The joint social partner recommendation of the 31st of October 1991 to the Intergovernmental Conference which was eventually incorporated into the social chapter of the Maastricht Treaty was the first recognition by employer organisations that European level agreements between social partners as an alternative to Council regulations could be useful in certain circumstances given the significant extension of competences for the EU in the social field, which was also decided in the Maastricht Treaty. It paved the way for a more active negotiating role of employers and trade unions at EU-level.

However, in the first years this new option was handled in a very cautious way: negotiations were taken up only after the second consultation by the Commission and agreements were implemented only via a Council directive. Such agreements were negotiated on parental leave, part time work, and fixed term contracts.

In 2002 UNICE developed a more comprehensive and proactive strategy for the social dialogue which included the use of more diversified tools of the social dialogue (agreements leading to directives, framework agreements to be implemented by the national member organisations, frameworks of action, points for orientation, guidelines, codes of conduct, etc.), the active proposal of negotiations, where appropriate, and the establishment of a multi-annual work programme for the social dialogue, in order to set the agenda in an autonomous way and to avoid the previous dependence on the Commission's initiatives. This new strategy led to the presentation to the Commission of the joint work programme of the Social Dialogue on 28 November 2002.

UNICE has itself offered negotiations to ETUC about telework - leading to a framework agreement - and about the social aspects of enterprise restructuring – leading to joint points for orientation for companies.

The role of employer organisations as collective actors in the European Social Dialogue is, of course, linked to the extension of EU-competencies in the social field and the ability of the social partners to better handle the requirements arising from the diversity of national industrial relations systems affected by the European social regulation. By contrast to the national employer organisations, the European employer organisations' activities in the Social Dialogue are not driven by the need to protect companies against trade union demands and

industrial action – to date there is no EU-level right to industrial action, and the national traditions of industrial relations are too diverse to permit the creation of a single European right to strike - , but rather by the need to exert control and influence over the legislative initiatives of the European institutions. Even in the 21st century they will therefore not replace the national layer of collective bargaining on wages and working conditions, but their action will be related to and motivated by the social policy agenda of the European institutions.

* * * * *

Notes

1) Companies are discovering that outsourcing often reduces efficiency and increases costs: „Selbst ist die Belegschaft“ in: Die Zeit Nr. 47 13. November 2003, „Der Katzenjammer nach dem Outsourcen“ in: Handelsblatt 5./6. Dezember 2003

2) Cf. Renate Hornung-Draus, Between e-economy, Euro and enlargement. Where are employer organisations in Europe heading?, in: Industrielle Beziehungen Jg. 9, Heft 2, 2002, pp. 209 ff.

3) Cf. IAB Betriebspanel 2002

4) Cf. Manager Magazin December 2003

5) Cf. Renate Hornung-Draus, op.cit., pp. 214 ff.