National Institutions and the Introduction of European Works Councils – a Swedish Perspective

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INTRODUCTION

EU-level legislation is often described as causing converging pressure on the economic and political organisation in the member states. One example of such a challenge is the introduction of European Works Councils (EWCs), which has been described as a mean to create European industrial relations (Cf. Lecher et al. 2002). However, the character of the European directive provided an opportunity to adapt the rules regarding these transnational employee participation arrangements to the legislation and practice of the national systems of employee participation in the affected countries. The flexibility set down in the implementation process is also the reason for the description of the EWC directive as a legislative method characterised by a combination of "hard" and "soft" regulation (Vos 2006), and the EWCs have accordingly been said to be shaped by both "top-down" and "bottom -up" pressures (Marginson and Sisson 2004). The EWCs might thus be considered as an example of an area in which national factors have a substantial effect on the development of international arrangements.

Besides previous research that stresses that the character of the EWC directive implies that national factors will be crucial for the development of these arrangements (Streeck 1997; 1998), there are examples of studies that emphasise the role of domestic systems of employee participation in shaping the attitudes held and positions taken by national employee and employer representatives (see Bicknell and Knudsen 2006; Hall et al 2003) in relation to the EWCs.

Although the importance of the influence of national factors on the EWCs has been questioned (see Pulignano 2007; Stoop 2004), and despite the fact that the EWC directive might been seen as a challenge to the domestic employee participation arrangements in some member states (Bicknell and Knudsen 2006; Rönnmar 2008), it is still fruitful to further investigate the role of country-specific factors for the implementation of EWCs in order to understand the development of these arrangements. The focus in this paper is on how the "single-channel" system of representation, i.e. that all forms of employee representation is channelled via the trade union organisations, that characterises Swedish employee participation has shaped the handling of the EWC issue in the national context. Departing from an analytical framework that defines institutions as "rules" and perceptions that guide social actors in the handling of certain situations (see Barley and Tolbert 1997), the paper illustrates how the prominent role given to trade unions in the national system of employee participation influenced the views and reasoning of the groups involved with the EWC issue in the Swedish context regarding how to handle the EWC issue. However, the results of the paper also indicate that the EWCs were described as something clearly different from domestic employee participation arrangements and that they therefore should be treated accordingly, i.e. that the practice implied by the national institutions was not seen as applicable to the EWCs. By complementing previous studies on the introduction of EWCs, the approach applied in thispaper contributes to EWC research in general, as well as to the debate on the persistence of national industrial relations characteristics.

BACKGROUND

The European directive on the establishment of European Works Councils (European Directive 94/45/EC) wasadopted in 1994 and aimed to improve the right to information and consultation for employees of multinational companies in Europe. Although the provisions in the directive contained rules regarding the establishment and work of the EWCs, the flexible character of the implementation process allowed the member states to transpose the directive provisions into the domestic context in a way that suited national legislation and practice, and also gave the local labour market a large role in the development of work practices. (See Barnard 2006, ch. 15). One area where the national legislation and practice of the countries affected by the EWC directive, as well as the organisation of the councils, differed was the role given to trade unions in the establishment and work of the EWCs.

Although the directive text explicitly stated that some of its provisions would be transposed into the national context in accordance with legislation and practice in the affected countries, it had a clear focus on employee representatives and gave no formal role to trade union organisations, which was the prime channel of employee representation in several EU member states. Despite a recent proposal for a revision of the EWC directive (see COM (2008) 419) suggesting that the rights and obligations of employee representatives and trade unions should be clarified, the focus on employee representatives rather than on trade unions in the original directive might thus be seen as in conflict with the rules and practices of some national employee participation systems (cf. Bicknell and Knudsen 2006).

The European countries are, in general, divided into two different groups based on the role of trade unions in national employee representation and participation. There are "single-channel" countries, where all forms of employee representation is channelled via the established trade union organisations, and "dual-channel" countries, in which there are works councils that supply employees with an extra channel of representation in addition to trade unions (see Gold 2007 pp. 19–20). The Nordic countries, which are dominated by strong trade unions, are examples of countries with a "single-channel" system, and Germany, which has a works councils system based on legislation, can be mentioned as a representative of the latter group. Since the EWCs focuses on employee representatives and not trade unions, it can thus be said that the structure of these European information and consultation bodies "fits" the domestic systems of "dual-channel" countries better than it does member states where trade unions are the prime channel for employee influence.

In Sweden, employee representation is channelled via the trade unions, and there are no form s of representation for employees outside the established organisations. Since a large majority of Swedish employees are members of national trade unions, most are represented through these organisations, which are given a privileged role in national legislation. These organisations are also the prime actors in the national system of employee participation, which rests on the national Co-Determination Act as well as on complementing "co-determination agreements". Although the national co-determination legislation is the foundation of the Swedish system of employee participation, more informal arrangements are also important, and trade union and management representatives at the local level handle employee participation with much autonomy from the national level (see Levinson 2000).

Even though EU-level legislation has challenged the role given to trade unions in Sweden and also caused some minor changes in the national legislation, the prominent position of the established employee organisations remains intact (cf. Rönnmar 2008). Previous research on the implementation of EWCs in Sweden has moreover suggested that the "single-channel" system present in the country had an impact on the transposition of the EWC directive into national legislation (Blanke 1999; Knudsen and Bruun 1998), as well as on the actions taken by groups and organisations involved in the establishment and work of the EWCs (see Huzzard and Docherty 2005). However, these studies give limited attention to the way in which the national institutions affected the groups and organisations involved with the EWCs in the national context and how they shaped the handling of this issue. By focusing on the views and reasoning that underlie the actions taken by the groups and organisations involved in the implementation of EWCs in Sweden, thispaper analyses the role of the national institutions for the treatment of this issue. The focus is on the arguments concerning the role of trade union organisations in EWC work and the potential conflict between the national employee participation arrangements and the provisions of the EWC directive.

METHOD AND USE OF SOURCES

In order say something about the role of the national employee participation institutions for the handling of the EWC issue in the Swedish context, this paper focuses on the views and reasoning of the groups and organisations involved in EWC implementation regarding the proper way of organising EWC work. The paper examines groups involved in all stages of the implementation process, i.e. the transposition of the provisions in the EWC directive into the national context, as well as the establishment and work of EWCs in multinational companies based in Sweden. By focusing on the influence of the national "single-channel" system on the arguments regarding the rules set down in the Swedish EWC legislation, as well as on the views and reasoning underlying the actions taken by the groups involved with EWC matters at the company level, the paper illustrates how, and to what extent, the national institutions guided the treatment of this matter. Although there are other elements of the Swedish system of employee participation that might have been important for the actions taken by the Swedish groups and organisations involved with thismatter, this paper limits the analysis to the influence of the prominent position given to established trade union organisations in national employee participation arrangements. The focus on this particular aspect of the Swedish institutional structure will also provide an illustrative example of the fact that the diversity between national arrangements and the EWCs was used as a justification for a slightly different treatment of the these European forums compared to similar arrangements in the domestic context.

The results presented below are based on the findings of the author's forthcoming doctoral thesis, which makes use of both interviews and written material. The analysis of the arguments presented during the legislative process isbased on official documents, such as the government bill, records from the parliamentary debate et cetera. The transposition of the provisions in the EWC directive into Swedish legislation started in 1995 with the Social Democratic government's appointment of the so-called Labour Law Commission. In addition to the assignment of presenting proposalson how to adapt the Swedish labour law to the future, the commission was to present a first draft of the Swedish EWC Act. According to Swedish legislative practice, a number of organisations and authorities, e.g. trade union confederations, employer organisations and government agencies, were then given the opportunity to comment on the legislative proposal. Based on the given remarks, the government then presented their bill, which was followed by a debate in Swedish parliament. The proposals presented by the Labour Law Commission and the Social Democratic government, as well as the comments made by trade union confederations, employer organisations, government authorities and members of political parties provide an opportunity to illustrate the influence of the national institutions on the arguments regarding how to implement the provisions in the EWC directive into national legislation.

The analysis of the views and reasoning that underlay the actions taken during the establishment and work of the EWCs focuses on the national labour market organisations, as well as on employee and management representatives at the company level, and is based on interviews. National officials from trade unions that organise employees in several different sectors and local representatives involved in EWC work in four Swedish-based multinationals as well as representatives of employer organisations active in the same

sectors and management representatives of the different companies, have been interviewed. By focusing on the views and reasoning that underlay the actions taken in relation to the EWC issue, the interview material has been used to analyse how, and to what extent, the national institutions, which give trade union organisations a prominent role in employee participation arrangements, guided the actions taken in relation to the EWCs.

RESULTS

Arguments Concerning the Swedish EWC Legislation

The Swedish EWC legislation gives trade unions with collective agreements the right to appoint the Swedish employee representatives of both the Special Negotiating Bodies (SNBs), which is a group of employee representatives responsible for the negotiations with management regarding the establishment of EWCs, and the members of the actual councils. This rule was first proposed by the Labour Law Commission, which argued that the prominent role given to trade unions in relation to this matter would be line with the Swedish system of employee participation. Although the final legislation followed the commission's proposal, its propositions regarding the appointment of EWC members met with criticism as well as support during the different stages of the legislative process.

The role given to established trade union organisations by the Labour Law Commission was, naturally, supported by the blue collar Swedish Trade Union Confederation (LO), as well as by the white collar Swedish Confederation for Professional Employees (TCO). In addition, even though they pointed out that it should be seen as natural that EWC members also would be employees of the companies where the councils are set up, the national trade union confederations stated that any attempt to include a rule that explicitly made such demands was to be seen as an attack on the employees' right to organise. It thus seems as if the trade union confederations saw a threat in the focus on employee representatives that was set down in the EWC directive.

Contrary to their trade union counterparts, the Swedish Employers' Confederation (SAF) and the Swedish Engineering Employers' Association (VI) criticised the Labour Law Commission's proposal, which was said to create a risk that a trade union affiliated minority of the employees in the affected companies might end up representing a majority of the workforce. Instead of letting the trade unions appoint the EWC members, VI suggested moreover that "company elections" should be held, which was a proposal that clearly deviated from the "single-channel" system that was in place in Sweden. The employer organisations also commented on the criteria that an employee representative would have to meet in order to be a member of an EWC. However, unlike the trade union confederations, the employers stated that there should be rules stating that all EWC members should be employees of the companies where EWCs were set up.

The arguments put forth by the employer organisations regarding the role given to trade unions were supported by some government authorities as well. For example, both the Faculty of Law at Lund University and the Swedish Labour Court stressed the need for forms of representation for all employees and suggested that the rules in the Labour Law Commission's proposals should be changed accordingly.

In line with the arguments of the trade union confederations, the Social Democratic government supported the rules that had been proposed by the Labour Law Commission regarding trade union involvement in the appointment of employee representatives The critical remarks that had been made by several groups were met by the argument that the high degree of organisation in Sweden made these objections irrelevant. The government, on the other hand, did agree with the comments made by the employer organisations, which insisted that only employees of a company should be allowed to be appointed as members of

that company's EWC, and stated that this demand was in line with the provisions set down in the European directive and that such a rule therefore would to be included in the Swedish EWC legislation.

The prominent role given to trade union organisations was nonetheless a point of discussion during the parliamentary process as well. Members of the Moderate Party (Moderaterna) argued, in the same manner as the employer organisations had done, against the rules suggested by the government bill. They moreover criticised the government not only for favouring the interests of the trade unions, but also for following their comments to a large extent. However, members of the governing Social Democrats met thiscriticism by arguing that the proposed legislation was in line with a well-established Swedish tradition, which implied that trade unions should be seen as the natural channel of representation for employees and that no EU-level legislation should be allowed to change this practice. Despite the criticism, a large majority of the parliament voted in favour of the proposed legislation and the role given to trade unions in relation to the EWCs.

The Views of the National Labour Market Organisations

The interviews made with representatives of national trade unions and employer organisations revealed both differences and similarities in the views concerning how to organise EWC work. However, the comments made by representatives of the employer organisations did not explicitly address the question of whether or not trade unions should be seen a the prime channel of representation for employees instead the interviewees stressed that all practical matters relating to the EWCs should be handled by the management of the companies affected by the rules in the EWC directive and the national legislation.

Contrary to the somewhat hesitant view expressed by representatives of the national employer organisations, the interviews made with officials of the national trade unions revealed more definite views on the proper way of organising EWC work in general and the role of trade unions in relation to the European information and consultation forums in particular. A number of national trade unionists stated for example that there had been an ambition to keep a clear trade union influence over the councils work. The reasons behind this goal was said to be the importance of keeping employers from playing employees in different countries against one another, as well as the clear benefits of creating an international trade union network at the company level. Also the protection of the national trade union organisation was mentioned. An important part of this goal, which can be connected to the "single-channel" system present at the national level, was moreover said to be the efforts to keep non-trade union members from being appointed as employee representatives in the EWCs. EWC members that were not trade unions members were said to lack a proper mandate for their participation in EWC work and it was moreover said that they often turned out be loyal to the employer rather than to their fellow employees. Although the national trade unionists stated that it was important to develop an understanding of international differences in trade union cultures among the EWC members, the Swedish "single-channel" system was thus seen as the most natural way of securing employee involvement in company matters. This ambition was also evident in the discussions of the negative aspects of the EWC directive, and some trade union officials said that one of the most important matters if the legislation was going to be revised was that trade unions should be given clearer recognition, which is a demand that have been met by the present modification of the EWC directive.

The Reasoning at the Company Level

The role of trade unions in relation to the EWCs was a matter of discussion at the company level as well. Since all Swedish employee representatives, in accordance with the national EWC legislation, were local trade unionists, it might be said that the national system of

employee participation had a clear impact on the organisation of EWC work. Some of the employee representatives that had been involved with the EWC issue in the selected Swedish-based multinationals argued moreover that it should be seen as important to keep employee representative that were not trade union members out of the councils work. These doubts, which questioned the loyalty of employee representatives who were not trade union members, were also in line with the views expressed by national trade union officials discussed above.

However, even though trade union influence over the EWCs was supported by some interviewees, and despite the fact that local employee representatives said that contacts had been made with external trade union organisations in relation to EWC work it was also stated that there should be a focus on local matters and that the councils were to be handled primarily by employees of the companies where EWCs were set up. In addition, some of the Swedish EWC members described how they, together with the employers, had tried to prevent the involvement of external trade union organisations in the establishment and work of EWCs.

Other interviewees downplayed the value of demanding that EWC members should have trade union experience and stated that there had been no specific problems connected to the participation of non-trade union employee representatives. The involvement of external trade unions was, on the other hand, mentioned as a negative factor by some Swedish EWC members, who stated that trade unionists who were not employees of the companies where councils were set up often followed an agenda that was not always in the interests of the workforce. Instead it was stressed that it should be seen as more important that the persons who represented the employees within the EWCs had a good knowledge of the working conditions and the company organisation than that they had long experience of trade union work. In line with these arguments, some employee representatives described the EWCs as "employee forums", rather than frameworks for international trade union cooperation, and stated that the purpose of these arrangements should be seen as different from the functions provided by national employee participation.

Like the comments made by the local trade unionists involved in EWC work, the reasoning of the management of the selected companies displayed some diversity regarding the relationship between trade unions, EWCs members and the work of the councils. A common view among the employer representatives was nevertheless that EWC work ought to concentrate on establishing a dialogue between the workforce of the company and the management. However, the reasoning regarding the role of trade union organisations in this process revealed a number of different standpoints.

There were, for example, management representatives who described their companies' EWCs as "trade union forums" and, even though there was a focus on establishing a dialogue between the employees and the management, allowed for the participation of trade union officials that were not employees. These external participants were, however, not given the right to take part in the actual work of the councils. The generous attitude towards the employee organisations was moreover said to be a part of a tradition of management-trade union cooperation within the company that was closely connected to previously established forms of transnational employee participation.

Even though there was no criticism of the fact that the national trade unions were given the right to appoint the Swedish members of the EWCs, several management representatives were nevertheless critical to the involvement of external, national as well as international, employee organisations in the establishment and work of the councils. It was moreover, in relation to this matter, argued that the EWCs should be seen as means of communication between companies and their employees and not as trade union bodies. The work of the EWCs should therefore concentrate on matters relating to company affairs, and broader

trade union issues were to be avoided. The EWCs were moreover said to be aimed at different functions than the more developed system of employee participation in place at the domestic level. In addition, several management representatives described how they actively tried to prevent external employee organisations from taking control over EWC work and that there was an ambition to avoid the councils developing into trade union forums that resembled "European bargaining delegations".

Although there were some exceptions, the interviews with management representatives of the Swedish-based multinationals included in the study indicated that the companies saw the EWCs foremost as forums for employer-employee communication, which was a way of reasoning that was also manifested in the attempts to keep external trade unions from interfering with EWC work. Despite the fact that the trade union background of the Swedish EWC members was not seen as an apparent problem, it was considered important that the persons representing the workforce in the councils should be employees of the companies where these arrangements had been set up, a view that was also shared by some Swedish employee representatives. In addition, both employee and employer representatives pointed out that EWCs should be seen as something different than the national system of employee participation.

CONCLUDING DISCUSSION

Since the "single-channel" form of employee representation, which gives established trade union organisations a prominent role, is one of the most apparent characteristics of the Swedish system of employee participation, it is a reasonable assertion that it influenced the handling of the EWC issue as well. By focusing on the views and reasoning that underlay the actions taken by the groups and organisations involved in the implementation of EWCs, this paper has examined the role of the national institutions, i.e. "rules" regarding how to organise employee participation, for this process. Through the examination of the arguments presented during the transposition of the provisions of the EWC directive into national legislation, as well as of the views and reasoning concerning the establishment and work of EWCs, the results presented in the paper provide some support for the proposition that national institutions, i.e. the "single-channel" system of representation, influenced the views concerning the proper organisation of the international EWCs, but show also that the EWCs were described as something different from the national arrangements and therefore should be treated in a partly different way.

One of the most apparent examples of how the national system of employee participation was used as a reference for the handling of the EWC issue were the arguments presented by the national trade union confederations, as well as by the industrial employee organisations that took part in the establishment and work of the EWCs. The remarks made by the confederations in relation to the Labour Law Commission's proposal for a national EWC legislation, and the views expressed by national trade union officials concerning the proper way of organising EWC activities, stressed that trade unions should be seen as the natural form of employee representation in relation to the EWCs. In addition, the latter stated that it was important that EWC delegates should be trade union members, which would guarantee that the councils were not to be used by employers in pursuit of their own interests. Although these comments might be interpreted as a mere defence of the position given to the trade union organisations within the national context, they can also be seen as an indication that the "single-channel" system present at the domestic level was seen as the proper way of securing employee interestsin relation to EWC work. The references made to national tradition and practice in the Labour Law Commission's proposal, as well as in the government bill, which both assigned to the trade unions the role of appointing the employee representatives that would be involved in the establishment and work of the EWCs, supports this conclusion.

However, disregarding the remarks made by the trade union confederations, the Social Democratic government decided to include rules in their proposal for EWC legislation that demanded that EWC members should be employees of the companies where councils were set up, a demand that was in line with the suggestions made by the employer organisations. In addition to their demands for changes in the criteria that had to be met by the EWC members, the employer organisations criticised the role given to trade unions in the appointment of employee representatives, which were said to be provisions that implied a risk that a majority of the employees would be represented by trade unions that only had support from a minority of the workforce. This objection to the proposed legislation was also supported by the remarks made by some government authorities as well as by conservative politicians and contained an implicit criticism of the use of the "single-channel" system that was in place in Sweden as a role model for the organisation of EWC work. Although the rules that were proposed by the Social Democratic government were adopted by the Swedish parliament, the comments made during the legislative process thus indicate that there was no national consensus regarding the role given to trade unions in the Swedish EWC legislation, nor concerning the ambition to use the national institutions as role model for the rules on this matter.

Even though some of the trade unionists that were involved in the establishment and work of EWCs in the companies included in the study supported the goal that employees who were not members of a trade union should not be allowed as EWC members, and despite there being some support for the involvement of external trade unions in EWC work, the reasoning of the groups involved with the matter at the company level indicated a break with the trade union focus of the national system as well. For example, both employee and management representatives said that the role of external trade unions should be limited. In addition, members of management in the selected companies, as well as some local trade unionists, stated that the EWCs should not be seen as trade union forum s, but rather as communication channels between employees and employers. Although the Swedish EWC delegates were trade union members as well, which implied some amount of trade union influence over the councils' work, it was nonetheless said that it was more important that the employee representatives had good knowledge of the companies where they worked than that they had a trade union background.

Although the results showed that there are companies where external trade unions are allowed to take part in EWC work, and where the EWCs are described as "trade union forums", this was not the normal state of affairs within all of the studied companies. The opposition against the involvement of external trade union officials in EWC work might be traced to the local focus of the national system of employee participation. However, the statements that focused on the experience and knowledge of the EWC members, rather than on their trade union background, suggest a break with the Swedish tradition. The description of the EWCs as something that should perform a different function compared to the Swedish employee participation system indicates moreover that the EWCs were not seen as "extensions" or European versions of the employee participation arrangements that were in place in the national context. This break with the national "single-channel" system might instead be interpreted as an effect of the "top-down" pressures (see Marginson and Sisson 2004) created by the EWC directive. The differences in the views and reasoning of the employee and employer representatives that had been involved in the establishment and work of EWCs in the companies included in the study might also be seen as support for the contributions of previous research that have stressed the role of company-specific circumstances over national factors when it comes to the outcome of EWC implementation. (See Stoop 2004 for an example).

While there were other elements of the Swedish system of employee participation that might have had an effect on how the national groups and organisationsperceived and handled the EWC issue, the focus on the influence of the national "single-channel" system during the

different stages of implementation provides an illustration of one aspect of the role of national factors for the development of EWCs. The results indicate that the national system of employee participation played a role for the rules in the Swedish EWC legislation, but that there was no national consensus on the position given to trade unions in the text. Despite the fact that the national trade unions stated that they had tried to retain an influence over EWC work, the views and reasoning at the company level suggest that the domestic institutions was not seen as a role model for the way of appointing EWC members, nor for the concrete involvement of external organisations in EWC work, in the multinationals included in the study. Thus, the findings of the paper provide support that national institutions influenced the handling of the EWC issue, but at the same time indicate that the different character of the EWCs also encouraged the national groups and organisations to disregard the national practices when organising EWC work. These results might thus be connected to research (cf. Wailes 2008) that has pointed out that the development of industrial relations arrangements is shaped by a number of different factors that not necessarily are to be associated with national institutions.

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