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First steps to a European Level of collective bargaining in Health and Safety

Health and safety belong to the central and classic topics of the labour law. Already within the 19th century these were some of the most important topics developing an autonomous labour law in Great Britain, France and Germany and – later on – in most of the other European countries. One expected public authorities to control the activities of the employers and to array elemental safety-measures. Very early supra-national activities were started to secure an international standard of safety (Berliner Konferenz 1890).

I. Markers on the road – the ILO Conventions

Since the foundation of the ILO occupational health and safety takes an important place in her activities and international. In the beginning the elemental ILO OHS-conventions start with convention 81 (labour inspection). After 1970 several European countries started new initiations in occupational health and safety. They intended to enforce an adequate arrangement of the working places. The new documentations of the ILO underline the participation of the employees. Even though they differ in concreto, all conclude the importance of the topic. In the convention 155 concerning Occupational Safety and Health and the Working Environment Art. 20 demands “ Co-operation between management and workers and/or their representatives within the undertaking shall be an essential element of organisational and other measures taken in pursuance”. At least the 2006 concluded Convention 187 -Promotional Framework for Occupational Safety and Health Convention - 2006 points out that arrangements to promote, at the level of the undertaking, cooperation between management, workers and their representatives are an essential element of workplace-related prevention measures. The ILO-Documents demonstrate the **development from inspection to participation now to arrangements**. Each step amends the previous one, because regulation and inspection are the necessary basis for arrangements.

II. The EU-directives and the workers participation in health and safety

An important date for health and safety in the European labour law was 1986. The insertion of a new article 118a into the Treaty of Rome by the Single European Act of 1986 gave the opportunity for new legally binding measures to be adopted. In the 30 years from 1957 until 1987 only six directives on health and safety at work had been adopted. In the 20 years between 1987 and 2007 more than 20 directives were adopted.

The first directives connect health and safety with the market-opening-policy. Whereas existing national health and safety provisions providing protection against the risks caused by machinery must be approximated to ensure free movement of machinery without lowering existing justified levels of protection in the Member States; whereas the provisions of this Directive concerning the design and construction of machinery, essential for a safer working environment shall be accompanied by specific provisions concerning the prevention of certain risks to which workers can be exposed at work, as well as by provisions based on the organization of safety of workers in the working environment. These directives strengthened market surveillance as an essential part of the Occupational Health and Safety Policy. This instrument shall not be discussed in my paper,

The general directive in the European OSH-policy is the framework directive 89/391/EEC of 12th June 1989. This directive is the basis of the new health and safety law in Europe. This directive obliges the employer to a prevention-policy which contains all the steps or measures taken or planned at all stages of work in the undertaking to prevent or reduce occupational risks.

Important elements of this policy are avoiding risks, evaluating the risks which cannot be avoided, combating the risks at source, adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health, adapting to technical progress and giving collective protective measures priority over individual protective measures.

The question of workers' participation was 1989 heavily discussed. In article 11 of the framework directive was a compromise formulated which is the basis of the European health and safety law until today. Employers shall consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work. This presupposes the consultation of workers, the right of workers and/or their representatives to make proposals and "balanced participation" in accordance with national laws and/or practices. All the following directives array that consultation of workers and workers' participation shall take place in accordance with Art. 11 of the framework directive.

III. Collective Agreement in the EU – member states

Since 1989 the rights of workers and workers representatives were enhanced in several European States and the European Court of Justice strengthened these rights. In some states, for example Sweden and the Netherlands, OSH is a topic in collective agreements (arbo covenants-NL). In such agreements the parties formulate aims which are to achieve in a fixed time; after this time they have to evaluate the measures and the success. In the Netherlands often the arbo covenants are arranged as tripartite agreements. In the first years after 1990 we find similar practices in East Germany and in some of the new member states in central and eastern Europe. Traditional OSH-Policy was often technical and static; agreements are a method of transformation and to stipulate organisational and structural change.

IV. The European Social Dialogue

A second example for the increasing of collective bargaining in the European health and safety law are the agreements which were signed by the social partners in the European social dialogue (art. 139 EC). There are three general agreements: telework (2002), framework agreement on work-related stress (2004) and framework agreement on harassment and violence at work (2007). These agreements rule new problems which are not exactly defined in the national law. There was no majority in the European Council of Ministers; these agreements are affected by soft law, not legally binding but binding the organisations by treaty.

Procedures are an important part of the three agreements. Therefore they are an instrument of information and innovation, they are not a very suitable procedure to enforce individual rights.

In the first agreement “Telework” is recognized that the employer is responsible for the protection of the occupational health and safety of the teleworker. The employer informs the teleworker of the company’s policy on occupational health and safety. In order to verify that the reputable health and safety provisions are correctly applied the employer, workers representatives and other relevant authorities have access to the telework place. The teleworker is entitled to request inspection visits. We see a composition of collective rights by the worker’s representatives and individual rights for the teleworker. The European social partners were obliged, to give four years later a report of the implementation of the European framework agreement on telework. In Germany the social partners reported that in the most cases telework is ruled by law (Arbeitsschutzgesetz). We find in some cases collective agreements which rule the working conditions. In these agreements the employer is responsible for the working conditions and the working equipment. The access of worker’s representatives to the telework place is recognized. In the general report a few countries declared the teleworker responsible for the equipment. In the most countries the responsibility of the employer is clearly recognized.

The framework agreement work-related stress concedes the complexity of the stress phenomenon, nevertheless the parties recognise that the general duty of employers to protect the OSH may include problems of work-related stress. Addressing problems of work-related stress may be carried out within an overall process of risk assessment. This can involve an analysis of factors such as work organisation and processes, working time arrangements, degree of autonomy, communication (uncertainty about what is expected at work) and subjective factors (emotional and social pressures). Likewise is the complexity of various measures to reduce problems of work-related stress; these measures can be collective, individual or both. Important elements are management and communication measures, training managers and workers and provision of information and consultation procedures. The members of the parties are obliged to implement this agreement and to report on the implementation.

In a similar manner the parties signed in April 2007 the framework agreement on harassment and violence at work. They identified harassment and violence as unacceptable; they recognised the employers duty to protect workers against harassment and violence in the workplace. Employers need to have a clear statement against violence at the workplace, they have to establish in consultation with workers and their representatives suitable procedures. The member organisations have to implement the agreement and to report on the implementation.

In his paper “The European Framework of Employment Protection” Manfred Weiss describes the function of these three voluntary agreements: “They are an offer for the actors on national scale to give them guidance and to enrich their imagination”. I agree his view of these voluntary and general agreements. First experiences with the voluntary agreements demonstrate the key role of the national actors and their imagination. In Germany were some collective agreements to telework fixed, whereas we find a lack of interplant collective agreements to work-related stress. This is a problem of the states with a technical OHS-tradition who are nearly unable to perceive the impact of the organisational and goal-oriented rules of the Framework Directive.

In the last ten years we find not only the general social dialogue but also sectoral social dialogue. For example we find solutions for the working times for international railways. The

commission accepted this agreement in the directive 2005/47/EC. The European Transport Workers' Federation (ETF) and the Community of European Railways (CER) concluded an agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services. This agreement contains regulations concerning night shifts and breaks and also the parties' obligation to evaluate and review the provisions of this agreement two years after its signing.

A remarkable example for the new forms of multi-sector European social dialogue is the agreement on the prevention of occupational exposure to Crystalline Silica (in German Quarzfeinstaub). This substance is important in the glass industry, in foundries and the cement and ceramic industry. We find some cancer risks which are not exactly researched. The commission proved strong measures in the enlargement of the cancer directive. In this situation the employers and their organisations started consultations with the unions. In 2006 they signed a collective agreement on "workers health protection to the good handling and use of Crystalline Silica". It is the first agreement of this type which is published in the Official Journal of the European Union (17.11.2006 – C 279/2).

Employers are responsible for Good Practices which are formulated in a more than 100 pages document of detailed Good Practices. The parties of the agreement will cooperate to enhance the knowledge about health effects of Crystalline Silica in particular by research, monitoring, and dissemination of Good Practices. The parties recognize the need for European Crystalline Silica prevention strategy. Each side will install a monitoring system for the application of the Good Practices and they will report the results after two years – first time in 2008. We find the Good Practices on a special web-side www.nepsi.eu. These practices are highly detailed and especially important for countries in which the employment protection isn't strongly fixed. This special agreement is a remarkable example of the new type of collective bargaining in health and safety law. This agreement wouldn't be signed without the pressure of the European commission which announced specific regulations if the parties don't find a suitable agreement.

V. The European Work Councils

A third example for the increasing of the collective bargaining in the European health and safety law can be seen in the development of the European Works Councils. In the meantime there are almost 1.000 European Work Councils in the European Community which act very different. In most of the cases they are interested in consultancy and soft-law; nevertheless, in recent years, there are cumulative examples (like General Motors; EADS) where the European Works councils participated in current conflicts as well. The paramount topics refer to the safeguarding of jobs, agreements concerning the preservation of places and personnel reduction.

In nearly 30 % of the European Works Councils Health and Safety Topics are discussed. In general we find exchange of experiences and of national Good Practices. Only in a few cases we find agreements regulating the responsibility and the general duties of the employer. Concrete requirements like in the Silica-agreement are still missing. In this field there is no similar pressure of the European commission. Public discussions and debates may be helpful. Recently started negotiations in the European meat industry, after critical media coverage informed about missing hygienic practices in the meat industry. Useful could be a connection between the European voluntary agreements of the Social Dialogue and the organized discussion inside the European Work Councils.

This short overview shows three types of collective bargaining in the OSH-policy in Europe. Prevention by agreement is a new concept of OSH-Policy. It amends the prevention by public regulation and inspection and by internal participation by workers/safety representatives and/or workers. Now we see only first steps to this new concept. It is especially useful to new problems like work-related stress or violence at the workplace, because this concept enables the parties to arrange adequate procedures in searching new solutions to new problems. Participation and arrangements are important instruments on the way to OHS-Process Regulation. Such arrangements can effectively increase in the shadow of harmonized law with strict duties to the employer.