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Digitalisation: challenges for company codetermination

Manuela Maschke

Manuela Maschke is Head of Work and Codetermination Unit at Hans Böckler Foundation, Düsseldorf, Germany.

Key points

Effective worker participation can make digitalisation a programme for success for companies and employees alike. There are already many examples of negotiated solutions on the company level.

There are many ways in which works councils and the system of codetermination contribute to improving working conditions and, by means of company agreements, obtain transparency, fair treatment, equal opportunities, commitments and protection. Works councils balance interests, defuse conflicts and tangibly shape working and living environments. Within the framework of the current debate on digitalization a key concern is to develop company codetermination in such a way that it is able to cope with changing company structures, due to which, for example, works council rights and rights protection can no longer be exercised.

Such challenges include cloud-based IT systems in which applications are not managed by the company itself but by a third party; international companies in which there is no authorised negotiating partner on the employer side or no competent authority at national level; companies where the basis for interest representation has been atomised by increasing numbers of non-core workers (for example, temporary work, work contracts, outsourcing, crowdwork); firms which impede the establishment of works councils; and situations when workers' competences cease to be sufficient to meet the challenges of the future.

Negotiating the new world of work

Improved qualifications and individual living standards have changed what people are looking for from their work. People want to participate more closely in shaping their work and working conditions. That opens up new opportunities for new forms of participation to reinforce collective company codetermination, not to replace it. Codetermination can be designed in such a way that workforces feel that their interests are being represented and at the same time are able to participate actively. And that benefits the company and its prosperity. On this basis, there can be no democracy in the workplace without collective interest representation both inside and outside the company; on the contrary, only this can create the conditions

and freedom of movement for individual participation and protection of rights. In this context involvement should not be restricted to or equated with material participation in the company. Material or financial participation in the company entails the assumption of financial risk by the employees, not just the possibility of profit sharing. Employees in any case face the risk of unemployment and with financial participation they face the added risk – in the worst case – of losing their capital contribution in the event of a crisis.

Today it remains open which predicted scenarios among those that are theoretically conceivable and have been debated politically will become reality in the future. It depends what groundwork is laid today and what procedures and processes come into being in company practice. Opportunities arise from finding solutions jointly with works councils because they know 'their' company and the employees. Involving works councils in processes at an early stage is thus forward-looking because what is at issue is the design of good working conditions and safeguarding jobs. Trust-based cooperation is the yardstick here. If the work environment is revamped or there are plans to do so the employees, their works councils and the social partners must be brought on board if it is to succeed. Guidelines for compromises on flexibility might include:

- bolstering the basic rights of works councils by enabling to operate on an equal footing. This would require resources: competent staff, money and training for the works council;

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- creating fair working conditions for heterogeneous workforce structures by extending participatory rights to 'employee-like' persons and the self-employed;
- boosting codetermination rights with regard to key issues, such as use of technology, training/qualifications, safeguarding employment, work organisation, personnel allocation and agreed targets, as well as in relation to outsourcing, data protection and health and safety;
- discussions on flexible working time, as well as work intensification and personnel allocation, together with increasing self-determination by providing various options over the life course;
- preventing evasion of company codetermination both on national and European levels;
- reducing collective agreement-free and works council-free zones, concluding collective agreements, not overturning them.

Studies confirm that only companies that think beyond their own sector and make consistent use of the potential of advancing digitalisation remain future-oriented (BDI 2015: 50). To that extent there are options available for employees. Solutions can be developed that are in line with new technological and work-organisational challenges and, at the same time, do justice to the needs and wishes of working people, maintaining competitiveness, shaping working conditions and safeguarding jobs.

The fact that works councils, as competent negotiating partners, are able to work out good solutions with employers is illustrated by company practice in Germany. In order for it to work properly, for them to be taken seriously and so that they are able to muster sound arguments codetermination rights and partners are necessary. Important partners include personnel directors with responsibility for employees on the board of the company, supervisory boards subject to codetermination and external trade unions with organisational heft, from which binding collective agreements and pressure can be brought to bear.

Examples of negotiated solutions on the company level

ICT framework agreement, use of email: The tendency is for works and staff councils to be involved at an earlier stage than was the case 10 to 15 years ago. This is suggested by an analysis of 140 agreements: how technology is used is more of a priority issue today, with less emphasis on domination and control. Some regulations provide for active employee participation, beyond statutory codetermination processes, in shaping company ICT and even in IT project development. Central regulations are dedicated to data protection, the evaluation of protocols and the avoidance of performance and behavioural controls. The acceleration of working processes by email and internet use, as well as growing work intensification are not considered in most agreements on email use.

Use and management of mobile devices: Mobile device management makes it possible to centrally manage and monitor

all mobile devices with applications and configurations. The introduction and application of MDM systems is subject to codetermination. To date, only a few agreements have taken up the issue extensively. So far, ergonomic aspects have not been regulated, in particular in the case of devices with small displays with which emails are edited; nor has protection against strain, for example, affecting eyes, muscle tension or postural problems. Questions concerning legal data protection and behavioural and performance controls by means of software used to manage devices often remain unanswered. The use of apps on smartphones and tablets has barely featured so far.

Use and handling of social media applications: With regard to social media applications interest representatives and employers often face a fait accompli because use is already well under way. Although numerous matters subject to codetermination are affected the assumption is that the guidelines were produced relatively quickly in order to give the rapidly increasing use a legal underpinning and to summarise the most important rules of the game.

Data protection and control: Many regulations are devoted to data protection, the evaluation of protocols and the prevention of performance and behavioural controls. In the ideal case, a hierarchy of agreements emerges, with coordinated flexible regulations that create binding structures, transparency and efficiency. This is no substitute for real codetermination rights, however, which enable negotiations in the first place. Data security and employee data protection belong together and are relevant to employees and works councils. Competence for this is required on both sides in the enterprise. Resource and time problems in works councils are growing because the digital penetration of processes and the rate of ICT innovation is enormous. The burden at the enterprise level needs to be lightened and thus strengthened by means of framework collective agreements and legal regulations. Performance and behavioural control, as well as handling data protection are not only technical issues, but above all political ones. In the future, it will presumably be even more important to think about workloads and health and data protection hand in hand. It must be ensured and remain the case that any data gathered on employees' health and sickness may not be evaluated. There is a difficult balance to be struck between protection of employees from too much control and the prevention of abuse and crime arising from too little control. This was shown relatively recently by the EU's anti-terror regulations.

Automation, standardisation and new production systems: What kind of work organisation is actually put into practice is not entirely determinate. It depends on what choices businesses make, which directions are taken early on and from what perspective they view production and work. A wide area for real company codetermination opens up if participation by employees and works councils is taken seriously. For company codetermination an important field of action is manifest. When it comes to introduction and implementation, however, works councils are not always really involved. A necessary route to that end consists of laying down robust institutions for codetermination in company agreements, establishing structures and expanding training. In many companies existing company agreements – for example, on the measurement of performance via performance indicators, autonomous teamwork

and again on data protection and performance and behavioural control – must be further developed.

Quality management and continuous improvement processes: Continuous improvement processes (CIP), employee suggestions schemes and quality management (QM) provide many participation-oriented elements for improved work and performance processes. It is emphasised remarkably frequently in agreements that the process overall should encourage employees to be creative and motivated and that success is possible only on that basis. QM and CIP to that extent represent key areas of codetermination for companies' future viability. The specific forms of employee and works council participation in development and design are defined, as well as protection provisions to prevent negative consequences for employees, especially from performance and behavioural monitoring. Also important here is loss of functions, qualifications and income, not to mention jobs. QM and CIP were oriented towards the further development of employees' competences and capabilities and not primarily the detection of mistakes and of 'somebody to blame'. Employees and works councils are involved in structural development as much as possible, for example, by means of parity-based governance bodies and the right of interest representatives to participate in all subordinate project and decision-making bodies. From the employees' standpoint these are important aims for the future.

Constant accessibility: Constant accessibility means that the place and time of service provision are extremely flexible. That affects codetermination with regard to working time and use of technology. Most company agreements are blind to these areas. Company codetermination must be expanded here and embedded in collective agreements. Collective agreements that enable codetermination with regard to the delimitation of services are important instruments for binding the provision of services once more to the agreed working time. A wide variety of far-reaching regulations are used to try to get a grip on constant accessibility. If working time is recorded precisely it is possible to delimit it again and some sort of balance can be found. Both individual freedom for determining the time, place and organisation of work needs to be obtained and protection from excessive removal of lines of demarcation, flexibility and work intensification. Time buffers, inaccessibility and regulations on absence in order to get a grip on constant accessibility take effect when compliance with laws and directives is an issue in the company in any case, and company agreements on flexible working time organisation are practiced. Compliance also means respecting codetermination.

Flexible organisation of working time: Organisation of working time is a core element of collective bargaining. Parties at the company level regulate how flexibility can be implemented, whose framework conditions were in the best case laid down in the collective agreement. Companies today use various working time accounts in parallel as a kind of coherent overall concept. Because time sovereignty is very important to employees most agreements regulate procedures for time compensation. Often, everyday disputes revolve around compliance with and implementation of agreed guidelines and around how a measure of self-determined working time can nevertheless be set against the priority of company interests and implemented. To that extent collective agreements

that enable codetermination with regard to the delimitation of services and set limits are important instruments.

Demographic change: In practice there are many different concepts of varying scope and varying degrees of progress with implementation. Here, too, it is evident that good practice in the company goes hand in hand with making resources available: companies materially support carers' loss of earnings, finance child care services and provide support contributions or flexible working time arrangements.

Integrating different groups of employees: Regulations exist both at branch and collective agreement level and in company agreements. Pioneers in this respect were, for example, the steel industry and the chemical industry. Many companies are launching measures with age structure analyses. These provide for collective agreements and company agreements in order to derive, first, current status and then projections for the future, training and job grades.

Health and safety at work: The approaches here are also diverse. The focus often lies on improvements in the individual behaviour of employees (health promotion, sports activities, nutrition and so on). However, the improvements in employment relations and working conditions that are hazardous to health, over which individuals can exert limited influence, always have priority in accordance with the Occupational Health and Safety Act. Psychological stress has not been on the agenda of company actors for long. In the future it will presumably become more relevant to engage in common efforts to tackle stress at work, health and safety and data protection. It must be ensured and continue to be the case that workers are protected.

Entitlements to self-determined living and working: Employees are being given more and more responsibility by means of target agreements. The results of work rather than working time are the focus. In this way not only does the ability to direct one's own work increase automatically, but the danger increases of overburdening oneself, against one's better judgement. The price of the gain in freedom of choice and sovereignty over time, from the standpoint of employees, may be on-call working, unpaid overtime and constant accessibility.

An increase in working time flexibility that enables people to plan their lives better can help to give them some relief in their rather less flexible private lives. It is very often the case, for example, that people are given the option of using time worked and saved in working time accounts for shorter or longer leisure time. Temporary workers often fall off the radar because they are excluded from long term-oriented company regulations. For temporary agency workers many rules simply do not exist. Working-life accounts are provided for more often in large companies. If one wants to be more accommodating with regard to people's life course with flexibilised working time, then not least, besides organising working time for very heterogeneous needs, the organisation of work and sufficient staffing levels in the company have to be made an issue, so that shorter working time for some does not result in a heavier burden for others.

Working in a more self-determined way also entails organising working conditions and freedom of choice for people in precarious

employment in such a way that they have some prospect of acquiring self-determinable and optional planning horizons. Company agreements can include minimum standards for employment contracts and information and codetermination rights for works councils. This enables participation in personnel planning and subcontracting. The works council's right of information is not adequate, however, if it turns out that employment contracts are used to outsource core competences of the company. Real codetermination rights, for example, concerning job security must be established so that companies do not undermine the basis of their own existence.

Dual training and dual study: Dual training has a key role to play. Companies must train their employees well and bolster dual training and invest in company training and further training. The current debate harbours the danger that the dual training system in Germany will be undermined if its strengths in particular for the tough challenges of tomorrow are not recognised by political actors and businesses and developed constructively. Possible shortcomings can be discerned less in relation to people than in terms of the conditions for work organisation in the company itself. In many company agreements it is clear that there is scarcely a topic of regulation that is dealt with in such detail and safeguards as dual training.

Continuing training in the enterprise: The core of current debates in one collective bargaining round in 2015 was the question: who decides who will do what further training? It is already evident here how important it is how the points are set right at the start with regard to who will turn out to be the winners and who the losers from digitalization. In German metal and electrical industry the regional collective agreements on training concluded in early 2015 make unpaid leave possible for personal further training and now also part-time working for up to seven years. In some of these agreements, wage and time units can be saved in individual training-time accounts.

Conclusion

Company practice shows that works councils can come up with good solutions as competent negotiating partners with the employer. Scope for more autonomy for employees should not be confused with the preservation of rights and with democracy in the workplace. If there are to be real negotiations on interests then hard codetermination rights are necessary. Company codetermination is conditional on the existence of a works council. Good company agreements are conditional on a binding framework that opens up room to manoeuvre, created by means of social partner collective agreements. Practice developed in branch collective agreements and specific company agreements has extended room to manoeuvre for all companies in a given branch, even for companies outside collective agreements that at least take their bearings from collective agreement benchmarks. Statutory framework conditions must function complementarily to this as guides and interception lines, because the company arena should not be too conflictual.

Digitalisation and changing values are not limited to the work environment. Processes of change in the world of work are interwoven with social change in all its variety. Social security systems, culture

and education, security, infrastructure and so on, as well as democracy and participation are the key structural characteristics of modern society and that includes the world of work. The effects of action and activities today on work and business in the future are unknown. All the more does it all depend on the responsibility taken in particular by the social partners and parties in the workplace. If the employee side is not involved in decision-making or if it is treated merely as a junior partner the challenges will not be met. (Company) codetermination is the path that has proved its worth with regard to effective working and social relations. Accordingly, it must be developed and taken further in joint responsibility.

Digitalisation can turn out to be a programme for success for companies and employees alike, if participation by employees and works councils is promoted. Whether many people or only a few benefit from this depends on whether the social partners and the political authorities campaign for codetermination rights and plot a policy course for further development and reinforcement accordingly.

People want to have more of a say in the design and organisation of their work and working conditions. This opens up opportunities for new forms of participation enhancing collective company codetermination, not substituting it. Codetermination has proved itself both in the workplace and in society at large. But it still has some way to go. Codetermination is the democratic organisational principle in a social market economy.

References

- BDI (2015) Zukunft durch Industrie: den Wandel als Chance begreifen - Herausforderungen und Implikationen, Berlin, Bundesverband der Deutschen Industrie e.V.
- BMAS (2015) Grünbuch Arbeiten 4.0, Berlin, Bundesministerium für Arbeit und Soziales. <http://www.bmas.de/DE/Service/Medien/Publikationen/A872-gruenbuch-arbeiten-vier-null.html>
- Boes A. and Bultemeier A. (2008) Anerkennung im System permanenter Bewährung. <http://www.isf-muenchen.de/pdf/boes-bultemeier-erkennung.pdf>
- Ellguth P. and Kohaut S. (2015) Tarifbindung und betriebliche Interessenvertretung: Ergebnisse aus dem IAB-Betriebspanel 2014, WSI-Mitteilungen, 4/2015, 290–297.
- Maschke M. and Werner N. (2015) Arbeiten 4.0: Diskurs und Praxis in Betriebsvereinbarungen, Report 14, Düsseldorf, Hans-Böckler-Stiftung. <http://www.boeckler.de/51937.htm?produkt=HBS-006187&chunk=2&jahr=>
- Nebe K. (2014) Industrie 4.0 – Betriebsverfassung 4.0?, Vortrag Rechtspolitischer Kongress 'Demokratisierung von Gesellschaft und Arbeitswelt: Impulse für eine soziale Rechtspolitik', Berlin, 25-26 March 2014.
- Neckel S. and Wagner G. (2014) Burnout. Soziales Leiden an Wachstum und Wettbewerb, WSI-Mitteilungen, 7/2014, 536–542.

Pfeiffer S. (2015) Im Gespräch mit Detlef Wetzel, in Wetzel D. (2015) Arbeit 4.0: was Beschäftigte und Unternehmen verändern müssen, Freiburg, Herder, 28–44.

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The editor responsible for this issue is Jan Drahokoupil, jdrahokoupil@etui.org

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