



## **EFBWW Policy on Worker Participation and Health and Safety Management Systems**

### **I. Introduction**

Companies are in private ownership and therefore, all relevant decisions regarding the workplace are decisions taken in the exclusive domain of the employer. But all consequences of these decisions are extremely relevant for workers. One could say that all relevant aspects of the working and subsequently the living conditions are affected by these decisions. Therefore, from the beginning of the industrial revolution the question of democratisation of industrial relations has been an important item for the workers' movement.

Looking back and comparing the former situation of workers and their rights at the workplace with today some remarkable progress has been reached. This progress was, of course, backed by different drivers like the democratisation of societies the technological development and others but however, it is mainly the result of collective and continuously action of the trade union movement.

On the one hand the reached level of participation brought real progress in terms of more democratic industrial relations but however, is still insufficient, especially if it comes to the question of co-determination. On the other hand the existing level is jeopardized by some political and economic developments.

Among others, this is:

- ✚ the EU-Policy of “better regulation”/“simplification”. The “High Level Group” has presented its results in specific reports for all policy areas. This report, which is expressly dealing with OSH is questioning some of the (positive) cornerstones of the EU-policy in OSH.
- ✚ the general tendency on the European level to replace strict regulations by soft regulation, i.e. voluntary agreements, social partner agreements and a wide application of the subsidiary principle.
- ✚ the current as well as possible future crisis can undermine the existing levels of participation by, for example an increasing use of precarious forms of employment.

Therefore, a solid legal basis, including all relevant aspects of participation, is a vital basis to further industrial democracy. The EFBWW is not against the subsidiary-principle, where it works and EFBWW is not against voluntary agreements, benchmarking and self-regulation, where it works. But EFBWW is convinced that, because of the imbalance of power between the employer – as the owner of a company – and the workers, all aspect of industrial relations needs to be backed by a clear legislative framework. Those legislative framework needs to cover individual as well as collective rights and will be the backbone for the democratisation of the workplace.

Against this background and acknowledging that an advanced use of Occupational Safety and Health Management Systems (OSHMS) has to be diagnosed, EFBWWs' Executive Committee has agreed on this paper, formulating our view and positions on the relation between OSHMS and worker participation.

## II. Forms of participation

There are different levels and different models of worker participation in general and equally in OSH. All these models have their own history and they back on specific cultural moments and traditions as well as on a specific general legal system and, not at least, on political decisions and the periodical confirmation of these decisions.

- ✚ A first parameter for making a distinction between these different models is whether there is a constitution for the worker participation on company level or not. This representation can be via trade unions representatives or by electing candidates from the work force, independent on their trade union membership.
  - § The legal basis is the backbone for every kind of participation and the European legislation has provided a common fundament, based on minimum requirements
  - § In the future, this European fundament should be widened and deepened
  - § Even though, also the legal foundation can be deteriorated by political decisions, generally the legal basis provides general framework conditions for all workers, independent on their status or the sector in which they are working.
- ✚ Worker participation can also be based on collective agreements. This model is working in some countries and a strong position of workers' representatives has been reached on this basis. In some countries, the legal basis is exceeded by specific stipulations in collective agreements. These regulations in collective agreements, sometimes, create the basis for changes in the law.
  - § Collective Agreements play an important role and workers are directly involved in their negotiations
  - § This kind of legal instrument is easier to change and to adopt to changing conditions at the workplace
  - § Depending on the landscape of collective agreements a fragmentation of specific participation rights and the establishment of different levels of participation are possible negative aspects.
- ✚ An instrument that became more recent popular is voluntary agreements and instruments. These instruments have been partly promoted by companies but partly also by trade unions.
  - § One positive aspect of these instruments is that both parties are positively bound to the specific agreement – it is (normally) a result of their own negotiations
  - § Where voluntary agreements are not replacing other (legal) instruments, these agreements can provide additional rights or structures for participation
  - § Related to these instrument, an important role of trade unions is to create a relation between these company instruments with the overall and legal discussion on participation
  - § A particular problem is the use of voluntary agreements for publicity reasons, without real changes in the companies practice; they mainly have no legal status and therefore, workers are not in a position to enforce their rights.

✚ Another question is whether worker participation is an individual or a collective right. Being convinced that collective rights are fundamental for industrial democracy and the basis for individual rights we also see the specific value of individual rights. Nowadays you will find numerous work situations and jobs where people are acting very independent and not bounded by strict rules. They are self-confident in the organisation of their own work and therefore, they also demand a saying regarding their working conditions.

§ Individual rights are important for the single worker, in his daily work situation but also in firms where no works council exist

§ Today, the specific right of an individual play an increasing role and fits together with the basic idea of trade unionism to improve the autonomy of workers

§ Individual rights also play an important role in modern health and safety strategies, more focussing on the active role of all workers, for example in the whole process of risk assessments

§ On the other hand individual rights are more vulnerable than collective rights and, especially precarious workers are normally not in the position to enjoy any individual rights at the workplace

✚ Worker participation can also be fostered practically at the work place in an informal way . A changed role of the workforce, including more responsibility about many questions of the work organisation, visible in many areas of the production but also in services, is he background for this development.

EFBWW is positive against this trend since it is steps in direction to more autonomy. However, this trend is not general and participation based on this tendency is most vulnerable. This trend is also reversible and within the last decade those tendencies of regression could be seen in some industries, mainly related to new forms or work organisations. Therefore, EFBWW is convinced that a strong legal basis and collective rights are backing individual rights at the workplace best.

✚ Another aspect of distinction is the degree of participation. In Europe, different forms have developed over the decades and each creates a specific frame for the relations between management and workers' representatives/workers and they also shape the respective practise of participation. A coarse distinction can be made by the following levels of participation:

§ Information

§ consultation

§ co-determination

In General, EFBWW is in favour of strong legislative requirements as a kind of basic conditions for the other forms and aspects of participation, mainly because of the following aspects:

§ It is vital for reaching the same level of rights for all workers

§ It is inseparable connected with its judicial enforceability

§ It can create the basis for other instruments, i.e. voluntary agreements, additional rights at the work place and others.

In this respect it is worth mentioning the main legislative acts on EU-level That creates the common ground. This EU-legislative framework consists on, among others:

- § Consultation rights regarding collective redundancies (89/59/EC)
- § Workers' involvement on health and safety (89/381/EC)
- § The participation of workers in "European Companies" (2001/86/EC)
- § The transfer of undertakings (2001/23/EC)
- § A framework directive on information and consultation (2002/14/EC)
- § The installation of European Works Councils (2009/38/EC)

### III. Worker Participation in OSH

In most European countries particular bodies, dealing with Occupational Safety and Health (OSH) are existing. One finds very specific national cultures in all European countries and these cultures are not adjustable.

- § In some countries OSH is the task of the general body of worker representation and in some countries specialized OSH representation is installed.
- § In some countries safety reps are in charge and in some other countries OSH-committees are installed.
- § In some countries safety reps have a trade union mandate in some not.
- § The role of external bodies and whether trade union reps are involved in these bodies also differs from one to the other country.
- § Very intrinsic structures and proceedings have been developed and also a particular environment for OSH exists, including information sources and supporting institutions. However, the EU-legislation has created a framework of minimum requirements regarding the participation of workers. This is a common point of departure for further progress in this area. Regarding this, again we have to mention the so called Framework Directive (89/381/EC) and all the single directives, based on Article 16 of the Framework Directive
- § This European legislation is also backed by the European Charta of Fundamental Rights which proclaims (Art. 27) the right of workers and their representatives to be informed and consulted by the employers. This existing framework does not mean that regression and steps backwards are impossible. In this respect two developments are worth mentioning.

Far away from being comprehensive, further improvement of this framework is requested. In this respect EFBWW is focussing on the following aspects:

- ✚ Workers and their representatives have a comprehensive right to know. Existing legislative requirements, as they are formulated in the Framework Directive and the daughter Directive according to Article 16 of the Framework Directive, have to be specified.
- ✚ Information about all changes, initiated by the employer and relevant for OSH, has to be delivered at an early stage, giving workers the opportunity to influence the decision making process.
- ✚ The last point also comprises the following aspects, that all have strong influence on the working conditions respectively health and safety:
  - § new buildings, conversions and expansions of the production, administrative and other operating spaces,
  - § technical installations,

- § working procedures and work sequences or
- § the workplaces
- § with timely presentation of the necessary documents
- ✚ In all aspects and phases of the risk assessment, workers and their representatives have to be actively involved. This regards the evaluation, the assessment itself, the definition of measures for the improvement of working conditions, the implementation of these measures and follow-up activities.
- ✚ Even though one will find legal requirements, regulations, guides or advice for most OSH issues, the employer has mostly a wide range of possible action. In all questions where the employer has room to manoeuvre, workers shall be consulted. Additionally, they need an own right for initiating consultations on these questions.
- ✚ Workers' representatives needs the right to initiate consultations and negotiations with the employers if they demonstrate that working conditions are not in line with existing law or standards or if they can show that working conditions jeopardize workers' health.
- ✚ Worker participation can also be fostered practically at the work place. A changed role of the workforce, including more responsibility about many questions of the work organisation, visible in many areas of the production but also in services, is the background for this development.

#### **IV. Occupational Safety and Health Management Systems (OSHMS)**

Occupational Safety and Health Management Systems have been developed in high risk productions of big companies, mainly in the chemical sector. In the beginning, they focused mainly on safe processes and accident prevention. Today, other sectors and also smaller companies are implementing OSHMS. Furthermore, today the scope is more comprehensive, sometimes they cover all aspects of OSH.

In general EFBWW considers OSHMS as a Janus-faced instrument. The potentially positive effect is the installation of standards for the health and safety organisation on company level. Creating standards for the evaluation of risks, the installation of work places and processes can help to make work safer. But we also see some possible negative effects. A management system is run by the management and maybe existing health and safety structures will be partly replaced. Beside this, company management sometimes tend to formulate strategic aims and concrete targets exclusively, once they have decided to feel responsible for an issue. Then, worker participation becomes a residual.

However, in 2000 the ILO has published a guide for the application of OSHMS. In this guide one will find detailed requirements for the creation of OSHMS and how they can run. One of the core aspects of this guide is the participation of workers and their representatives. Furthermore, the continuous improvement of the system is required in the ILO guide. Following these guidelines, we believe that OSHMS can contribute to an improvement of the companies health and safety organisation.

EFBWW is committed to a fruitful discussion on and implementation of Health and Safety Management Systems if some basic requirements are kept. If those conditions are kept EFBWW believes that all parties will profit from those systems and the management clearly shows that it is taking the subject of OSH serious.

#### **IV: Specific requirements regarding OSHMS**

As already mentioned, EFBWW is seeing the ILO-guide as point of reference. It provides a detailed description of all aspects of an OSHMS.

1. EFBWW is demanding that the participation of workers starts with the first step. Before designing the system consultation between workers' representations and the management are requested.
2. On the beginning a joint policy of both parties should be formulated, including the general aims the description of the different roles of all actors involved
3. In no case the structures implemented in connection with the OSHMS shall replace existing legal requirements regarding the OSH-organisation on company level.
4. All information of the system and information for the system must be available for the workers' representatives and nothing is exclusively for the management.
5. A communication policy towards the workforce need to be formulated. The general aim should be the most possible transparency of all information of the OSHMS.
6. A comprehensive risk assessment remains the core instrument for companies safety and health management. The participation of the workers' representatives during all phases of this process and the participation of all single workers in the assessment of the work place/work area is core.
7. The system shall not only focus on accident prevention (this sometimes is a tendency) but cover all aspects of safety and health, including psycho-social hazards, related to the work and the work-organisation.
8. Clear operations regarding the evaluation of measures need to be described and, again, the participation of the workers' representatives and their access to all information shall be ensured.
9. A proceeding for the continuous improvement of the system has to be implemented too.
10. Workers' representatives on matters of occupational health and safety must not incur any professional disadvantages as a result of their activity, in particular as regards basic and further vocational training and career development. They shall enjoy full protection against dismissal for the duration of their term of office.
11. The implementation of a OSHMS on company level shall not exclude the active involvement of external advise and help. It should be the right of the workers' representatives but also of each single employee to consult external experts with specific questions that can not sufficiently answered within the companies structures.
12. Within an OSHMS also the right of employees and their representatives to take the initiative on all aspects of their safety and health should be established, inclusively a proceeding on how to deal with the problem respectively with proposals for its solution.

EFBWW is strongly convinced that if a company is following these aspects a OSHMS will create some foundation for more trust in joint activities in the area of safety and health. The active involvement of all people is core and taking the contribution of each people serious is core too. A proper implementation of an OSHMS will not only help to install clear proceedings but also foster the daily attention and activation of the employees and therefore, it will improve the culture regarding. However, such kind of system is never allowed to replace legal requirements regarding the health and safety management on company level neither it is allowed to replace the legal forms for consultations and negotiations between employers and workers' representatives.