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1. Social dialogue: an “essential dimension” of diversity management in continental Europe?

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Kirton and Greene (2010) argue that an emphasis on a voluntary, unilateral managerial approach is an “essential dimension” of the (Anglo-Saxon) diversity management (DM) discourse. This is echoed by Özbilgin and Tatli (2011: 1235), who argue that:

From the early days of the arrival of diversity management in the UK, private sector organizations, employer organizations and professional bodies hailed the idea of voluntarism which can be defined as the proactive take-up of organizational equality and diversity activities driven by business case and bottom line arguments, coupled with a reduction of regulatory pressures on workplaces to carry out legally driven interventions.

DM has therefore been criticised as representing a “soft option” for employers, emphasising a top-down, management-led approach and giving managers the power to define problematic areas (Liff 1997; Kirton and Greene 2010). Greene and Kirton (2009: 192) argue that “DM is a paradigm that, like its parent concept HRM also imported from the USA, theoretically fits best within non-union organizations.” This is explained by the emphasis on an individual approach to valuing differences and “the unitary message embedded in DM that ‘everyone benefits’ if the business does” (ibid.: 193). They found that the prescriptive DM literature in the UK and US emphasises downwards communication so that employee involvement is usually presented in the form of suggestion schemes or attitude surveys, and that the organisations held up as exemplars of diversity in the UK were predominantly non-union.

It is questionable, however, whether these arguments apply elsewhere. Klarsfeld (2009), for example, argues that in continental Europe DM has evolved in conjunction with anti-discrimination legislation rather than as a reaction to it as in the US and the UK. Holvino and Kamp (2009) suggest there may be a Scandinavian model of DM where DM is the product of social dialogue – i.e. cooperation or negotiation between social partners (trade unions and employers or employer organisations). According to Greene and Kirton (2009: 186) the low level of unionisation in the USA “is

one of the defining features of the context of DM, which in turn has led to a strong emphasis on the management role.” The context of DM in continental Europe, where unions have statutory collective bargaining rights on issues of equality, however, is a very different one to the US.

The different identities and motivations of the actors driving DM in different countries may also impact on the extent of a social dialogue approach. Greene et al. (2005) note that the UK unions saw DM as a purely managerialist intervention, whereas in Sweden, Omanović (2006) found that DM was introduced and advocated primarily by the Social Democrat government. In Denmark, Holvino and Kamp (2009: 396) argue that “DM was used as a platform to discuss plural identities and to bring forth discourses on multiculturalism”.

This chapter compares the unilateral managerial versus social dialogue dimension of DM in Sweden, France and Germany. These countries have been chosen because they represent three different ideal types of European employment relations regime. The chapter examines what position the promoters of DM have taken regarding the role of social dialogue, and what form social dialogue has taken – ranging from co-determination at one end of the spectrum (where unions take the leading role in designing and implementing DM policies); through genuinely negotiated agreements on issues directly or indirectly related to promoting diversity; to joint initiatives and projects; to the façade of collective bargaining in which unions are invited to sign or reject agreements without any real negotiation. The chapter then looks at how social dialogue might have shaped DM, and vice versa, in each country.

WHY IS A SOCIAL DIALOGUE APPROACH IMPORTANT?

Dickens points out that joint regulation of equality agendas presents a considerable challenge to existing trade unionism throughout Europe as “trade unions historically have helped shape the contours of inequality” (1999: 15). Several authors (e.g. Kirton and Greene 2010; Gumbrell-McCormick and Hyman 2013) have discussed how traditional forms of trade unionism (i.e. based on the non-immigrant, heterosexual, able-bodied male breadwinner working full time in the manufacturing sector) have been called into question by the demographic diversification of the labour force. Nevertheless, Dickens argues the case for a “three-pronged approach” in which the business case, equality legislation and joint social regulation form the three mutually reinforcing prongs of a tripod. She argues that “business case” arguments for voluntary employer

equality and diversity actions “will inevitably be contingent, variable, selective and partial” (1999: 9). Joint social regulation, however, can make up for the limitations of voluntary employer action by extending beyond employer-determined equality agendas. Unions can, for example, help to “ensure that flexibility initiatives are designed to take account of the needs of workers and not simply to meet the operational needs of employers” (ibid.: 14). Unions can also increase the cost for employers of not taking equality action, and “can help define what is in the employer’s business interest” by making equality a political and organising issue rather than simply an economic one (ibid.). They can also limit employers’ ability to abandon equality measures when labour market conditions change, and provide workers with a voice mechanism so that collective bargaining potentially enables marginalised groups to play an active role in defining, developing and sustaining equality initiatives, which might open the way for more transformative approaches (ibid.). Joint social regulation also addresses the limitations of legal regulation by providing a mechanism for unions to police and enforce the law, “translating formal legal rights into substantive outcomes” (ibid.: 15).

RESEARCH DESIGN

The data in this chapter has been extracted from PhD research into trade union responses to DM in Sweden, France and Germany (Stringfellow 2015). The data was derived from documentary data analysis of political and media texts; trade union, employer organisation, consultancy and government websites and publications; human resource management manuals and consultancy publications; diversity events, training materials, diversity charters, social partner agreements and legislative texts.

Interviews were also carried out with trade union officers in 2008–09 to ascertain their perception of the extent, quality and nature of social dialogue on DM. This was then compared with the accounts of a social dialogue approach provided by the promoters of DM in the documentary data. Interviewees were union representatives at national and sector level in all three countries, with additional interviews carried out at company level in Germany to compensate for the small number of sector unions (Table 1.1).

Table 1.1 Interviewee sample: trade union officers in Sweden, Germany and France

Confederation	Federation/sector	Region	Company	Respondents
<i>Sweden</i>				
LO (blue collar)				1
	Kommunal (LO public sector)			1
	Byggnads (LO construction)			2
	HRF (LO hotels and restaurants)			1
	IF Metall (LO industrial and metal workers)			1
	Handelsanställda (LO retail)			2
	SACO (graduates)			2
	TCO (white collar)			1
	Unionen (TCO service sector)			1
	Finansförbundet (TCO banking and finance)			1
<i>Germany</i>				
DGB				1
	IGM (metals)			1
	Ver.Di (services)			1
	IGBCE (chemicals and mining)			1
			Dresdner Bank (Ver.Di)	1
			Lufthansa (Ver.Di)	1
			BASF (IGBCE)	1
			Volkswagen (IGM)	1
<i>France</i>				
CFDT				1
	CFDT Chemicals			1
	CFDT Banking			3
	CFDT Metals			1
	CFDT Insurance			1
CGT				1
	CGT Metals		SEB	1
	CGT Banking		HSBC	1
	CGT Chemicals			2
	CGT Textiles			1
		CGT Lyon		1

Table 1.1 (continued)

Confederation	Federation/sector	Region	Company	Respondents
FO				1
	FO Chemicals			1
	FO Metals			1
Total				38

Notes: LO – Swedish Trade Union Confederation; SACO – Swedish Confederation of Professional Associations; TCO – Swedish Confederation of Professional Employees; DGB – German Trade Union Confederation; CFDT – French Democratic Confederation of Labour; CGT – General Confederation of Labour; FO – General Confederation of Labour Workers' Force.

SOCIAL DIALOGUE IN SWEDEN

Historically, the Swedish model of industrial relations has been one of strong, highly organised social partners who have pursued relatively autonomous self-regulation with minimal state intervention (Woolfson et al. 2010). Sweden still has one of the highest union density rates in the world (*c.* 70 per cent), collective bargaining coverage in Sweden is *c.* 90 per cent and workplace representation coverage is around 80 per cent (Kjellberg 2009a). Under the Swedish Keynesian welfare state, the Swedish social partners adopted the Rehn–Meidner model of cooperative and compromise-seeking positive-sum industrial relations (Gumbrell-McCormick and Hyman 2013).

However, the Swedish model came under pressure during the recession of the early 1990s when the central employer organisation – the Confederation of Swedish Enterprise, or Swedish Enterprise (SAF, now SN) – withdrew from almost all tripartite bodies, demanding increased pay differentials and greater company-level autonomy for work organisation. The model has come under threat again in recent years, particularly, for example, from the European Court of Justice's judgment in 2007 on the *Laval* case (Woolfson et al. 2010), which, according to Davesne (2009), is a symptom of the context of waning consensual relations and growing distrust. Another important threat came from the centre-right coalition government's reforms to union unemployment fund fees, which were intended to force unions to make lower wage claims and reduce union membership and bargaining power (Kjellberg 2009b). The government's reforms meant that workers in skilled, well-paid, secure jobs paid lower unemployment insurance fees than workers with low-paid and precarious jobs. The hotel and restaurant and construction sectors (which also have the highest

unemployment rates) have been the most affected. This has an ethnic dimension since foreign-born (non-Nordic) workers are over-represented in the sectors with the biggest increases in fees (*ibid.*). Private sector union density amongst foreign-born workers declined by almost twice as much as amongst native-born workers between 2006 and 2008 (total union membership fell by an unprecedented 6 per cent in 2007) (*ibid.*).¹

Nevertheless, the Swedish model is still one of strong centralised and strong decentralised bargaining combined. It is not inconceivable, however, that (had the Social Democrat government not discovered DM first) Swedish employers could have used DM as a strategy to achieve their goal of increased individual performance-related pay (as is common in the Anglo-Saxon approach to DM; see Greene and Kirton 2009).

SWEDISH PROMOTERS OF DM

DM was taken up in Sweden in the mid-1990s, earlier than in most other European countries and at a time when the Swedish version of multiculturalism and the Swedish model of integration were under political scrutiny and generally considered to be in crisis. The context was one of severe economic recession, considerably higher unemployment amongst people with an immigrant background and increasing popularity of nationalist political parties (the New Democracy Party was elected to parliament for the first time in 1991). Several official government documents (e.g. SOU 1996, 1997, 2005) criticised Swedish multiculturalism and previous integration policies for creating a hierarchical division of the population into “us and them”, and treating immigrants as “inferior” groups in need of help to overcome their cultural deficiencies and become like Swedes. For the Social Democrat government DM appeared to provide an answer to the crisis of Swedish multiculturalism by offering a non-assimilationist type of integration with a positive rather than negative emphasis on differences (Stringfellow 2012). The Social Democrat government, rather than employers, therefore played the leading role in championing DM in Sweden. This made a social dialogue approach all the more likely. Indeed, the promotion of DM in Sweden has been based on a legislative approach which is heavily reliant on unions for implementation, monitoring and enforcement.

FORMS OF SOCIAL DIALOGUE ON DM IN SWEDEN

Ethnic discrimination was first made unlawful in Sweden in 1994 because the social partners had previously preferred to deal with discrimination

themselves through negotiating collective agreements which should ensure equal treatment for all (EIRO 1998). The need to address the ineffectiveness of the 1994 law against ethnic discrimination, however, seems to explain why the Swedish Social Democrat government's approach to DM was a regulatory one. The 1999 Law on Measures Against Ethnic Discrimination in Working Life introduced "active measures for promoting ethnic diversity" in the workplace: all employers have a duty to undertake active measures to bring about equal rights and opportunities in the workplace regardless of ethnic background and ensure that persons of different ethnic backgrounds have the opportunity to apply for available positions. In the public sector all government agencies are required by the 1999 law to develop a diversity plan. The definitions of "active measures" and "diversity plans" in the 1999 law were kept vague as the law prescribed that employers elaborate these measures in cooperation with employee representatives. Unions were also given the right to apply for a financial penalty order to be issued if employers did not comply with the regulations.

As well as the regulatory approach to promoting diversity through social dialogue, the social partners were involved in several tri- and bipartite joint diversity initiatives from the mid-1990s to promote the business case that "diversity pays". Whilst being involved in the drafting of the 1999 law on active measures to promote ethnic diversity, the Social Democrat government also instructed the social partners to work together to promote workplace diversity, resulting in the Swedish social partners' 1998 joint guide, entitled "Diversity in Working Life", and the establishment in 1998 of a joint "Council for Diversity in Working Life".

INFLUENCE OF SOCIAL DIALOGUE ON DM AND VICE VERSA: SWEDEN

After an initial enthusiastic and uncritical acceptance of the DM concept, the Swedish social partners then became quite active, particularly at national level, in trying to influence the direction of DM in Sweden. The discourse used in their 1998 joint guide emphasises that representatives of "ethnic diversity" bring specific cultural competences and knowledge linked to their cultural background, which should result in improved economic performance:

[I]t is a waste of human resources if we do not manage to make the most of the knowledge and experience which people with other cultural or ethnic backgrounds bring with them to Sweden.

The section, “Diversity pays”, states that:

By building in ethnic diversity the total level of competence in an organisation is raised and possibilities for good service and good business increase. (. . .) Companies and organisations which work with diversity have a good starting point for advancing in countries that workers have contact with and knowledge about.

This interpretation of DM was heavily criticised by Swedish academics close to the LO for offering no alternative to the essentialism and representations of fundamental differences between ethnic groups in the “failed” discourse of Swedish multiculturalism. De los Reyes (2001), for example, argues that the Swedish discourse of diversity presents ethnic minorities as a collective sharing the same problems and characteristics, which are explained in cultural terms, whilst the institutional structures and mechanisms that create segregation are ignored.

In 2003 the LO confederation persuaded the Diversity Council to re-name itself the Council for Integration in Working Life, and their joint “Diversity in working life” guide was re-written and re-titled “Integration in working life” (Rådet för Integration i Arbetslivet 2003). The word diversity (*mångfald*) was expunged from the document, and the section of the guide entitled “Diversity pays” was re-titled “Arguments for integration”. Two new sections were added: one arguing that “Active measures can be carried out without ethnic monitoring”, the other arguing against “positive special treatment” based on ethnic belonging.

According to the SACO and LO confederation interviewees, it was the association of *mångfald* with ethnic statistics and “positive special treatment” which led them to oppose the government’s proposals for compulsory company “diversity plans” in the late 1990s. SN also appears to have supported the unions’ rejection of the diversity discourse in favour of a discourse of “integration” (the SN website’s search tool produced 513 results for the word “integration”, whereas “*mångfald*” produced only 16 results referring to workforce diversity). SN has also expressed clear opposition to any form of positive discrimination (SN 2006). At national level then, there appears to have been consensus amongst social partners on the rejection of the diversity discourse. This policy had apparently not filtered down extensively to the sector level, however, where several of the union federations were using the *mångfald* discourse enthusiastically as an antidote to what they considered the particularly Swedish problem of viewing “other cultures” as inferior.

Whilst (or perhaps because) social dialogue played a role in defining – and rejecting – the concept of DM at national level, the concept does not appear to have had a great deal of impact on the extent and substance of

social dialogue in Sweden. The social partners' Council for Integration, for example, has been virtually inactive since 2003; and although the DM concept was used to try to promote social dialogue on diversity (through the law on active measures), these possibilities were not exploited. A survey carried out by the LO in 2006 concluded that most actions against discrimination by union representatives at local and regional level were reactive, whereas "the part of the law which foresees pre-emptive approaches seems to have less impact". The union confederations therefore worked together with the Discrimination Ombudsman and some Swedish employers to produce in 2007 the "Handbook for active measures in working life – for equal rights and opportunities",² which intends to overcome negative attitudes towards tackling discrimination by providing a guide to auditing working conditions and processes and suggesting possible active measures. The union interviewees admitted though that the law on active measures had not had very much impact, in large part because their members at local level had not been very active in demanding them and still needed a lot of training in how to deal with discrimination.³

There have been some examples of the concept of DM impacting on collective bargaining agendas. The representative from Unionen (the Swedish union of professional workers in the private sector) was the only interviewee to speak of collective bargaining specifically on discrimination:

[T]he members say what they want the union to work with in the next round of collective agreements, and usually the members want higher wages and other things, but usually higher wages (. . .) but there was a guy who went up from the LGBT network and said we should have anti-discrimination agreements within the next round of agreements, which was very radical.

The idea had been considered before, but with little commitment until the *mångfald* discourse had become popular amongst her union leaders:

[S]uddenly they changed their mind and said yes (. . .) which means that all the different delegates are going to have anti-discrimination as part of their negotiations with employers, which is very, very uncommon.

The Kommunal (municipal workers' union) interviewee had found the diversity concept useful in getting her union to engage more with discrimination issues. Kommunal had researched differences in wages, working conditions and contracts by immigrant versus non-immigrant background, and used this as a basis for negotiating better wages and conditions for workers in the lowest-paid and most precarious jobs. The IF Metall union was planning to train local representatives in how to get diversity action plans into companies.

Nevertheless, social dialogue activity on ethnic diversity or discrimination at sector level in terms of either joint initiatives or collective bargaining appears to have been very limited; and for some sector level unions (such as the Swedish Construction Workers' Union and the union for white collar workers in the financial and banking sector) ethnic diversity and discrimination were barely on the radar.

SOCIAL DIALOGUE IN FRANCE

Approximately 8 per cent of French workers are unionised (about 15 per cent in the public sector and 5 per cent in the private sector). However, support for unions in France is measured by their mobilisation power, this being the principal reason for unions maintaining their legitimate role in the French system of industrial relations (Schain 2008). According to Milner and Mathers (2013: 123) the influence of French unions rests on their relationship with the state "as a legitimating institution for state policies". In return for helping to maintain social and economic order, the state has given unions institutional support to compensate for their weaknesses at workplace level, by extending collective agreements (coverage is approximately 90 per cent) and ensuring extensive workplace rights for union representation.

Whilst the presence of anarchists and revolutionary socialists has heavily influenced the labour movement, French employers have "tended to be either paternalistic or reactionary" (EIRO 2010a). French industrial relations at national level have therefore generally been tense and adversarial, which also explains the extent of state interventionism in social dialogue. Mandatory social dialogue covers more or less every aspect of working life, with the state stipulating the level and frequency of negotiations, and since 2007 the state is legally obliged to consult social partners before any reform of employment matters. At the same time, however, the state has also encouraged the decentralisation of collective bargaining through concession bargaining, which, according to Goyer and Hancké (2004), has encouraged "managerial unilateralism" due to the weakness of unions at company level. The state has also encouraged large companies' enthusiasm for US-style human resource management (Gumbrell-McCormick and Hyman 2013). Direct forms of participation which are employer controlled and which bypass trade unions (e.g. quality circles) have been particularly popular and encouraged by state intervention (Jenkins 2000; Parsons 2005; Milner and Mathers 2013).

Moreover, enforcement of the laws on negotiation is very weak; implementation is rarely monitored and sanctions are never implemented

(Jacquier 2008; Milner and Gregory 2014). Only about 15 per cent of workplaces that are obliged to bargain annually actually do so, although this 15 per cent covers about 60 per cent of the workforce (Milner and Mathers 2013). Whilst companies are obliged to negotiate, there is no obligation to reach an agreement and the employer is free to impose a unilateral decision where there is no agreement. Branch-level agreements are usually routinised; their content is rarely updated (Labbé and Nezosi 2007) and often merely replicates legal stipulations (Gumbrell-McCormick and Hyman 2013).

The extensive legislation on gender equality, disabled workers and older workers stipulates implementation via decentralised collective bargaining for companies with at least 50 employees. For example, the 2006 equal pay law made annual collective bargaining compulsory in order to abolish the gender pay gap by 2010; annual negotiations at company level are also compulsory for the integration of disabled workers, and there are heavy fines for companies that do not meet the minimum quota for employing disabled workers (6 per cent of their workforce). However, only around 51 per cent of employers in 2011 said they complied with the legal requirements of the 2006 gender equality law and most agreements are limited to monitoring pay, with few concrete initiatives to address inequality (Milner and Gregory 2014).

Given the level of existing equality legislation and French employers' apparent lack of incentive to implement it, a top-down, unilateral and voluntary approach to DM could well have been attractive to French employers. However, a social dialogue approach to diversity could be the result of government pressure (as with gender equality and the integration of disabled and older workers), or be viewed by employer organisations as a pre-emptive to stronger state legislation – if the threat of such existed. Or it could simply be a façade, a way of gaining social legitimacy in a consensual policy area where employers would have implemented the agreed measures anyway. Another possibility is that a social dialogue approach could be viewed culturally and normatively as the necessary way to legitimately proceed with such subject matter.

FRENCH PROMOTERS OF DM

According to Bender et al. (2010: 83) the notion of diversity appeared in France in connection with “an increasing awareness of the difficulties and shortcomings linked to the French model of equality and integration of immigrants and their descendants” in recent years. It is in this context that the employers of France’s 40 largest companies signed a “Diversity

Charter” in 2004 (since signed by over 3000 companies and organisations), which primarily targets the promotion of “cultural, ethnic and social diversity”. The riots that took place in all of France’s major cities in late 2005 elevated what was already perceived as a significant social problem to the prominence of a crisis of French republicanism. As a result DM became dominated by a socio-political discourse which promoted the notion of “diversity” as the solution to the failures of French republicanism in combating ethnic and racial discrimination. The major concern for social peace and cohesion appears to explain why the *discourse* of diversity used by all French actors (the state, employer organisations, employers, diversity professionals) emphasises the importance of a social dialogue approach over a unilateral, managerial top-down approach.

FORMS OF SOCIAL DIALOGUE ON DM IN FRANCE

The commitment to make diversity a subject of social dialogue with workers’ representatives is part of the employers’ Diversity Charter, and organisations held up as exemplars of diversity are those which have negotiated an agreement with unions (see the website for the French Diversity Charter). The Charter’s website also provides guides for both companies and union and works council delegates on how to negotiate on diversity.⁴

The government also pushed for social dialogue on diversity, threatening employers with legislation to impose greater ethnic and cultural diversity in recruitment if they did not achieve this themselves within two years. This led to the negotiation of the national inter-professional agreement on diversity (ANI 2006). It could therefore be argued that French employers saw a voluntary social dialogue approach as a soft option to the threat of regulation. However, other than imposing compulsory negotiations, it is unclear what form legislation to force the promotion of “cultural” diversity could have taken in the French context. Moreover, the ANDCP (now the National Association of HR Managers, ANDRH) was calling for compulsory company-level bargaining on diversity anyway (Klarsfeld 2006), as was the author of the employers’ Diversity Charter, Yazid Sabeg. The “soft option” hypothesis is therefore not altogether convincing. It seems more plausible that union involvement was a normative requirement for organisations dealing with the much mediated “crisis of French republicanism”.

The ANI explicitly focuses on discrimination related to origin and ethnicity, and obliges companies with more than 50 employees to hold an annual “enlarged diversity committee” meeting involving all employee representatives. The company must provide the information necessary to

make an assessment of the situation. The agreement also provides new rights to information for unions in two areas – recruitment processes and evaluation procedures – and stipulates that diversity should be included in the annual obligatory sector level bargaining. The Medef (the national employers' association) refused compulsory negotiations on diversity at company level, although this is not surprising given Jacquier's (2008) assertion that the Medef always refuses compulsory negotiations at company level unless they provide scope for derogation from national level agreements.

In June 2008 the government launched the Diversity Label. In order for the label to be available to small and medium-sized enterprises (SMEs) it does not require a negotiated agreement on diversity, but it does require companies to involve employee representatives in their diversity plan. The website of the Diversity Label states that it “provides the company with an opportunity to tie or re-tie the links with its social partners by integrating them in the approach”.⁵ Whereas the Gender Equality Label (introduced in 2006) – which requires companies to negotiate an agreement with unions – has not proved very popular (53 organisations obtained the label by June 2013), the Diversity Label, which does not require negotiations, was awarded to more than 380 organisations by August 2012. The unions, however, are represented in the body which decides whether to award the label; and, according to the CGT confederation interviewee, it is not awarded to larger companies unless they have negotiated an agreement.

The view that exemplary DM organisations are those which have negotiated an agreement with unions is also emphasised in the practitioner-oriented HR literature (e.g. Sabeg 2006; Barth 2007; Peretti 2007; Mutabazi and Pierre 2010). Barth (2007) argues that union involvement is necessary in order to prevent “wrong interpretations” of what DM is. Social dialogue therefore appears to provide a certifying stamp of the “right”, socially legitimate interpretation of DM.

The conference entitled “How to redynamise social dialogue on diversity”, held by the Association of French Diversity Managers (AFMD) in January 2014, along with the AFMD publication *Le dialogue social et la gestion de la diversité* (Cornet 2014), further demonstrate not only the normative but also the perceived practical importance of a social dialogue approach. In particular, and probably out of practical necessity, the AFMD wants to tackle the very controversial issue of religious accommodation in the workplace, which, according to the AFMD, divides management as much as unions (ibid.). The AFMD is keen to find a consensus on this issue through social dialogue so as to provide organisations with practical guidance, such as the publication *Entreprises et diversité religieuse, un management par le dialogue* (Courau 2013).

INFLUENCE OF SOCIAL DIALOGUE ON DM AND VICE VERSA: FRANCE

According to the union interviewees the negotiations for the ANI were very different to the typical negotiations they were used to at inter-professional level. First of all there was a “new” Medef, with a new (female) president at the time, Laurence Parisot, who attached far more importance to issues of equality and diversity than her predecessors. The employers’ delegation was younger, with more women and more service sector representatives than the “old school” delegation the unions were used to. It was also composed of several “diversity champion” HR directors and members of the board of the HALDE.⁶ On the union side too, the delegations were not the “old school” of middle-aged men, and they were working together with associations and NGOs representing minorities. The negotiations were highly consensual, the only conflicts arising over the SME associations’ refusal that the agreement apply to companies with fewer than 50 workers, or to accept a regional dimension (the unions wanted the regional level to be included as a way of covering SMEs as well as large companies).

The union interviewees stressed that the subject matter was something very different from what they were used to dealing with. The social partners acknowledged they did not have sufficient expertise to begin negotiations immediately and so decided first of all to invite experts from academia, civil society and NGOs to a phase of hearings. These negotiations were therefore seen as involving a real process of dialogue, of working towards a shared understanding and producing a joint text, which was very novel in the French context.

Like the Swedish unions, the French unions were also initially concerned that DM was associated with positive discrimination and quotas for ethnic minorities. In contrast to Sweden, however, the French social partners were confident that they could eradicate this threat by translating the notion of diversity into something compatible with French republicanism. The social partners decided to leave the issue of ethnic statistics out of the negotiations, as a major political debate on this subject was going on concurrently. The content of the ANI bears a closer resemblance to a UK equal opportunities rather than DM approach in that it leans towards a more proactive, positive action approach concerning minority ethnic groups: the concept of diversity should go beyond existing legal provisions to “implement concrete actions” by “mobilising innovative measures at sector, company and regional level” in order to promote equal opportunities. An “equal opportunities correspondent” (rather than a Diversity Manager) should be charged with the implementation of the policy. Strangely, as an example of a diversified recruitment procedure the

agreement mentions the use of anonymous CVs – which is an equal treatment rather than equal opportunities measure. However, none of the confederation interviewees supported this measure, and explained that they were forced to mention it as President Sarkozy had decided to experiment with the anonymous CV before they had concluded their negotiations. The social partners also produced a guide in 2011 for the “Prevention of Discrimination and the Promotion of Diversity in Companies”, which provides practical examples of milder forms of positive-action measures.

In terms of the implementation and follow-up to the ANI the situation is predictably more mixed. The agreement foresaw an evaluation report by 31 December 2007. To date (January 2014) this report has not yet been produced. The jointly produced practical guide mentioned above was not published until five years after the agreement. The 2006 ANI also foresaw a follow-up committee meeting in October 2008. However, the Medef (up to January 2014) had not fixed a date for this meeting, despite several requests from the CFDT, the French Confederation of Christian Workers (CFTC) and the CGT.

At sector level there have been several diversity agreements (an internet search found 12 sector agreements on diversity up to May 2014). Sector level diversity agreements usually contain a commitment to recruit more diversely in terms of ethnicity. At company level (where unions are organisationally weaker), on the other hand, Cornet (2014) found that gender equality and disability (where legal obligations already exist) were most popular, whereas few company level diversity agreements have tackled ethnic discrimination. According to the 2011 evaluation of the implementation of the Diversity Charter (charte-diversite.com 2011), 60 per cent of signatory companies with more than 50 employees had signed a company agreement with unions on one or more “diversity themes” (remember that negotiations on gender, disability and age were already compulsory); 16 per cent had signed an agreement on “diversity in general”; and 26 per cent had elaborated an approach or a plan of action for diversity with employee representatives. However only 32 per cent had implemented and followed up on a plan of action for diversity in collaboration with employee representatives.

At the time of the interviews only three sectors (temporary work agencies, chemical and finance/insurance) had negotiated sector level agreements. The interviewees from the chemical sector (CFDT, CGT, FO) described social dialogue in their sector as the worst in France. Only the CFDT had signed the chemical sector agreement. The CGT had not signed because neither the subcontracted workers who comprise the vast majority of ethnic minority workers in the sector nor the workplaces with fewer than 50 workers (comprising the majority of workplaces in the sector)

were covered by the agreement. The CFDT chemicals interviewee agreed with the others that the agreement added very little to the national level agreement and existing legal obligations.⁷ The chemical sector agreement was signed in July 2007, but at the time of the interviews (January 2009) the only progress which had been made was to produce some statistics on gender inequalities in the sector.

In general, sectors which already employ ethnic minority workers in large proportions seemed more likely to engage in cooperative social dialogue on diversity (for example the metal sector, where there were several company level agreements the quality of which the union interviewees were relatively positive about, and the hotel and restaurant and supermarket sectors). The interviewees from the banking sector, on the other hand, felt that the banks were recruiting more diversely out of necessity, but were not interested in social dialogue. There were some informal joint initiatives instigated by the unions, such as organising employment forums in deprived areas, but the only agreement on diversity they knew of in the sector was at HSBC. For the CGT banking interviewee, “it really seemed to us that they were just asking us to sign off for things that they were already doing”. The diversity agreement in the finance/insurance sector, in contrast, was spoken of enthusiastically by the CFDT federation interviewee, who felt his union was well listened to by the employers and that the strengths of the agreement lay in the provisions for follow-up and monitoring.

It seems then that the notion of diversity brought about some (positively perceived) changes in the quality of social dialogue at national level and the scope for social dialogue at sector and company level. The quality of social dialogue on diversity at sector and company level, however, generally reflects the quality of industrial relations in the sector and does not seem to have contributed significantly to tying or re-tying the links between social partners.

SOCIAL DIALOGUE IN GERMANY

German social partnership has been a “partnership of *Produktivismus*” (Tullius and Wolf 2012) in which unions recognise parallel interests in issues of production, rationalisation and growth, and in return workers are guaranteed a fair distribution of the results. This entails a mutual interest in strongly representative negotiating partners and cooperative forms of conflict resolution. As such, parameters of pay and working time are usually negotiated at sector level by the unions, whilst the German works council can negotiate company level agreements on a multitude of company level matters and has extensive information and consultation

rights as well as co-determination and veto rights which “differentiate it from almost all similar institutions in other countries” (Artus 2010: 326).

However, since reunification the German model (with the exception of the chemicals sector) has been described as eroding (Hassel 1999, 2002; Streeck and Hassel 2003). Trade union membership fell from 33 per cent at the beginning of the 1990s to under 19 per cent in 2011 (Haipeter 2012), although collective agreements still cover *c.* 60 per cent of the workforce. Only about 10 per cent of private sector workplaces now have a works council (*Betriebsrat*); this 10 per cent, however, still covers almost all large companies and therefore nearly half of the workforce (EIRO 2010b). The German system of employee representation has become segmented between the partnership of *Produktivismus* in the manufacturing sector, and aggressive anti-union and anti-*Betriebsrat* management strategies in the services sector (Artus 2013). Since the “Great Recession” social partnership has regained legitimacy, although it is argued that this renaissance of social partnership at supra-enterprise level is probably only temporary and not sustainable (Kädtler 2012; Haipeter 2012; Tullius and Wolf 2012).

Regarding equality issues, works councils in Germany have extensive institutionalised rights. The Works Constitution Act stipulates that the works council must enforce equality between men and women; enhance work–life balance; deal with the concerns of young workers; foster the employment of older people and the integration of disabled workers; promote the employment of migrant workers and understanding between foreign and German workers, as well as combating racism and xenophobia in the organisation. In contrast, in companies with no works council the employer is obliged (since the transposition of the EU anti-discrimination directives) to implement preventive or reactive instruments to eliminate discrimination and to encourage compliance with the law. In organisations with more than 20 employees, the employer must ensure that 5 per cent of jobs are held by disabled people (or pay a fine). Disabled workers’ representatives have extensive statutory rights, including the right to be consulted on training matters and the selection of apprentices.

Until 2006 then, German law bestowed responsibility for equality matters almost entirely on works councils. However, the declining coverage of works councils means that responsibility for equality matters has increasingly been left to the voluntary discretion of employers. In 2001, for example, a draft bill on gender equality supported by the unions was successfully opposed by the Confederation of German Employers’ Associations (BDA), which instead signed a voluntary bilateral agreement with the Social Democrat government on guidelines for gender equality (Scheele 2001). Despite Germany’s poor record on gender equality in international comparison, it seems that this issue was not a particularly

controversial one in public opinion (Treas and Widmer 2000). In contrast, incidents of right-wing extremism and xenophobic violence in the 1990s led to an approach known as “partnership behaviour”, a social dialogue approach based on negotiated agreements for dealing with xenophobia and discrimination in the workplace. At national level then, it appears that a social dialogue approach is only encouraged when dealing with perceived social crises. DM could have been promoted either as an update to partnership behaviour – contributing new ideas and methods to the existing social dialogue approach – or as a managerial alternative to the already institutionalised social dialogue approach. At sector and company level one could also expect a social dialogue based approach to DM to be dependent on where works councils and co-determination are still strong.

GERMAN PROMOTERS OF DM

DM arrived relatively late in Germany. Unlike in France and Sweden, the emphasis on cultural differences inherent in DM was not controversial. Neither has the German model of integration been significantly questioned or perceived to be in crisis. The model has had broad public support and has remained institutionally very stable in public discourse, even given demographic developments that seriously challenge it. Although the public discourse has more recently acknowledged that there is a failure of integration in Germany, the German model of integration is generally considered to be at fault only in so far as it has not been assimilationist enough and DM arguably does not provide a very suitable response to the perception of insufficient assimilation. Therefore, when integration did become a major political issue, DM was not promoted (as it was in France and Sweden) as the solution to a social problem. Instead DM in Germany has emanated from American multinational corporations and been diffused through mimetic rather than normative isomorphism. The German Christian Democrats and employer associations eventually took some interest in promoting DM, primarily by imitating the French Diversity Charter. Their interest in DM needs, however, to be analysed in the light of two campaigns in which they were simultaneously investing heavily: the New Social Market Economy Initiative (INSM) and a campaign against the EU anti-discrimination directives.

The German employer associations’ INSM campaign was founded in 2000 and “aims to engage with, and transform, prevailing societal norms of social justice. The first component is that a social market is a free one, not one burdened by regulation and welfare-state interventionism” (Kindermann 2003: 18). Hans Tietmeyer, head of the INSM, explained

that “the new social market economy is identical with the Anglo-Saxon, the American principle” (Tietmeyer 2001: 22). The INSM campaign has invested hugely in PR in the mass media, including talk shows, soap operas and MTV (Speth 2004).

The German employer associations’ campaign against the implementation of the EU anti-discrimination directives – which they proclaimed hailed the end of private autonomy and contractual freedom and would lead to an avalanche of litigation (Merx and Vassilopoulou 2007; Raasch and Rastetter 2009) – was orchestrated by the INSM and succeeded in delaying transposition of the directives until 2006, three years after the deadlines. The Federal Anti-Discrimination Agency (ADS), a body required by the EU equality directives, was finally established in 2006, but was given only very limited competences in comparison to other EU countries (Bambal 2009). The first director of the ADS, Martina Koeppen, declared on the ADS website that “a lasting alliance with employers was the central and comprehensive concern” of the agency; and whilst employers, politicians and members of the church were invited to the first congress of the ADS, requests for invitations from NGOs and trade unions were ignored (Bambal 2009). The BDA and the German government’s approach to DM can therefore be seen as a reflection of the unilateral employer approach to anti-discrimination and the deregulatory ideology of the INSM.

The BDA’s webpage devoted to “Diversity in the economy” explains that the Charter was initiated as a “fundamental commitment to the economic usefulness of diversity and commitment to tolerance, fairness and appreciation of people in companies and in public institutions.” There is a strong implication that if a diversity approach does not have the effect of increasing the success of the company, it is not worth pursuing:

The goal of diversity is not diversity at any price or merely for diversity’s sake, but is aligned with concrete goals such as the improvement of innovative capacity, the strengthening of employer brands or better sales approaches.

This is echoed in the (only) stated goal of the “Diversity as Opportunity” campaign launched by the Federal Ministry for Migration, Refugees and Integration: “The aim is to sharpen awareness in companies, administration and other organisations that cultural diversity is an important economic resource.” The website of the International Society for Diversity Management (consultants) stresses that DM represents “a movement away from equal opportunity (. . .) and the conscious striving toward a scientific as well as ethical and results-oriented approach”. Interestingly, this website’s description of DM does not mention “discrimination”

anywhere, but instead presents “the challenges of diversity management” as entirely about managing “the serious conflicts and communicative and operational tensions, which take their high toll on an organization’s bottom line.”⁸

FORMS OF SOCIAL DIALOGUE ON DM IN GERMANY

Unlike the French Diversity Charter, the German Diversity Charter makes no mention of social dialogue; nor has it been followed (as the French Charter was) by any national level social dialogue initiatives. In fact, there has been a very notable absence of union involvement at national level in the diversity initiatives of the German government and employers. A search of the website for the German Diversity Charter, for example, did not find any reference to a trade union participant in any of the events organised under the auspices of the Charter. A survey in March 2013 of the signatories of the Diversity Charter asked about virtually every aspect of their DM policy apart from the involvement of employees or their representatives. Mention of social dialogue or involvement of employee representatives is also very rare in the practitioner-oriented how-to guides and consultancy websites.

Union interviewees who considered that co-determination in their company or sector was strong were very much involved, even taking a leading role, in defining and operationalising DM. The IGBCE union, BASF and VW interviewees were very positive about social dialogue in general and on diversity issues in particular. The BASF and VW interviewees emphasised the strength of their works councils and co-determination, and the “high road” strategies of the companies to which they attributed their success in weathering the economic crisis. BASF had negotiated an array of progressive policies under the heading of diversity, such as extensive subsidised child care provision; programmes to promote women to top management levels; a disabled workers’ representative and committee; a company for disabled workers who could not be integrated into the rest of the company; a project to give young people of immigrant origin with no school leaving qualifications a year of training to attain the level required for an apprenticeship; a “demography and generations at work” project for older workers; an occupational health centre; and lifelong learning programmes. All of these measures were the result of company agreements with “corresponding monitoring to see that the goals are achieved”. The VW interviewee also described social dialogue and co-determination as exceptional within its sector. Due to VW’s history as a state-owned

company it had “extended co-determination” going well beyond the legal requirements. Again, DM policies in VW were always a matter of social dialogue. In the chemicals sector the IGBCE interviewee had played a leading role in driving DM, initiating a “Diversity Management” sector level agreement in 2008 (“that came from me, the idea, the conception. I did it together with the employers but it was me who drove it forward”). The sector agreement is actually a joint declaration intended to promote binding agreements at company level.

Where works councils were less powerful, interviewees felt that employers preferred a unilateral approach to DM, particularly during the current economic crisis, either because companies did not want to involve their works councils in their diversity initiatives or because very few companies were doing anything with DM anyway. Lack of social dialogue on diversity issues could also be due, however, to lack of interest amongst some works councils. The IGM interviewee felt this was a particularly important problem within the metal sector (with some exceptions such as VW):

I think that our works councils are not very occupied with that. And when it does come they sometimes even block it. (...) there's no awareness about it. (...) And the explanations are very often performance explanations, for example, “they're not well trained, they can't speak German”; with such explanations they try to justify things.

INFLUENCE OF DM ON SOCIAL DIALOGUE AND VICE VERSA: GERMANY

The previous section indicates that DM does not seem to have had a promoting effect on social dialogue in Germany. Indeed, the DGB and Ver.Di interviewees were of the opinion that DM was being used to avoid social dialogue and co-determination:

[The employers] say “why do we need to sign an agreement? We've signed the Diversity Charter and that's enough.” (DGB)

In the statements of these people it's often that institutionalised possibilities of interest representation of certain groups should be changed through a voluntary diversity management. (Ver.Di)

There was also experience of DM being used to exclude trade unions from the discussion altogether:

At first I thought that [diversity] could be an idea where social partners could do something together. (...) But it didn't come to that. (...) they organised an

event with support from the Ministry, I called and wrote to the Ministry to say I was interested and I would like to be there and they never even sent an answer although I'm the person responsible for this issue in one of the biggest trade unions in Germany. (Ver.Di)

In Germany social dialogue had only influenced DM in the sectors and companies with strong unions and co-determination. However, even where this was the case, DM had not necessarily added much to what works councils were doing already. The VW interviewee, for example, felt that DM was merely a change of label for what they had been doing all along (in fact, none of the VW agreements even referred to “diversity”). For the BASF interviewee DM added the need for inter-cultural understanding within a transnational company to the traditional trade union demands for equal opportunities, integration, non-discrimination, respect and tolerance. The BASF works council was trying to use DM to achieve “a fair balance between the social obligations of the company and the employer interests”. This meant that economic advantages should be seen not as the purpose of DM but merely as a side effect of doing what was fair. For the IGBCE interviewee DM had provided an opportunity to expand on existing sector level anti-discrimination and equal opportunities agreements to include substantively new measures of positive action. The positive language of DM had made it easier to sell his anti-discrimination initiatives to both employers and his own members:

anti-discrimination was perceived as too negative by our representatives in the works councils because they told us (...) if an anti-discrimination agreement were negotiated then that means they are automatically admitting that people were discriminated against in their company and that wasn't so.

DISCUSSION

The identity of the actors promoting DM, and their motivations for doing so, has decidedly influenced the extent of social dialogue on DM in each country. In France and Sweden, where DM was promoted by governments (left in Sweden, right in France) as a solution to a perceived crisis in the national model of integration, a social dialogue approach was emphasised. In Germany, on the other hand, the perception of such a crisis has not existed to the same extent, and the DM message of valuing differences was not particularly compatible with the political discourse calling for more assimilation. DM in Germany has therefore been driven at national level primarily by actors promoting a deregulation agenda, and has

emphasised a unilateral managerial approach focused on subjecting social justice arguments to “bottom-line” business case justifications.

Social dialogue on DM has taken different forms across countries, sectors and companies. In Sweden the government has legislated to make unions responsible for pressuring employers into action on DM. The legislative approach has been complemented by joint declarations and projects rather than negotiated commitments. In France the promoters of DM and the government have promoted negotiations at national and sector level with the aim of obliging companies to involve unions in their diversity policies. Alongside a relatively significant amount of social dialogue at sector and company level, including some genuine and innovative cooperation, a substantial percentage of diversity agreements merely provide a façade of social dialogue, due either to poor relations between the negotiating partners or union weakness at workplace level. In Germany, social dialogue on diversity at national level has been conspicuous by its absence. At sector and company level social dialogue on diversity depends on the existence of strong works councils, and generally appears to be a case of all (co-determination) or nothing.

How has social dialogue shaped DM and vice versa? In Sweden social dialogue led to the rejection of the notion of DM. DM in turn has had little effect on social dialogue apart from increasing possibilities for unions (which they have not taken up) to pressure employers to implement active measures promoting diversity. There does not appear to have been a great deal of joint activity at either national or sector level, and 15 years after the law on active measures at company level came into force its (in) effectiveness is still an issue. In France social dialogue was an important part of the process of legitimising the notion of DM by translating it into something compatible with the context of French republicanism. DM in turn increased the scope for social dialogue at company and sector level and enhanced the quality of social dialogue at national level. The notion of DM also contributed to making positive action aimed at ethnic minorities more feasible for the social partners. However, little commitment has been made to monitoring and evaluating the implementation of the national agreement; and the quality of social dialogue on diversity at sector and company level has generally reflected rather than improved the quality of industrial relations in the sector or company. In Germany the stability of the German model of integration enabled the promoters of DM to focus on the business case and to deploy DM as part of a broader strategy for deregulation. Where the co-determination system and social dialogue are (still) strong, German unions – where they are so inclined – have been able to co-define DM and use it to pursue their own equality and anti-discrimination agendas, or simply appropriate the label of DM

for their existing strategies. Where unions and social dialogue are weaker, it appears that DM can be used as a strategy to take equality and anti-discrimination protection out of the sphere of social dialogue.

This research into Sweden, France and Germany therefore indicates that social dialogue has only been able to shape DM either where unions are still very strong or where DM has been promoted as the solution to a perceived crisis in models of integration, rather than as a solution to business needs. The findings should have policy implications for promoters of DM, national and European policy-makers and unions: firstly, because those who favour a three-pronged approach in order to avoid an overemphasis on contingent and partial business case justifications and “fair weather” policies (Dickens 1999, see above) are likely to find this harder to achieve where traditional models of integration are not the subject of broad public criticism for being too assimilationist. Actors who favour a three-pronged approach may therefore need to be more wary of the potential dangers of the DM discourse for undermining social dialogue and/or equality regulation.

Secondly, the research suggests that policy-makers need to beware of relying too heavily on the social regulation prong of the tripod without the necessary supporting policies. To avoid the façade of social dialogue, and to achieve real results in providing a voice mechanism for marginalised groups and opening the way for more transformative approaches, national and European policy-makers will need to facilitate the capacity building of unions to promote diversity where it is weak at workplace level (through, for example, regional bi- and tripartite projects). Stronger unions also need supportive policies for overcoming the challenges of building the necessary expertise at local level. First, there is the task of overcoming resistance among union representatives at local level through education. Just as important, however, are the concurrent policies which have the knock-on effect of undermining unions’ capacity to represent the most disadvantaged, as can be seen for example with the reforms to the Swedish unemployment insurance system discussed above. Coherent overarching policies are thus required to enable the business case, equality legislation and joint social regulation to work together as the three mutually reinforcing prongs of the tripod.

NOTES

1. In 2013 the centre-right government tabled a legislative proposal to reverse the differentiation of unemployment insurance fees adopted in 2007 (Dølvik 2014).
2. An earlier edition entitled “Handbook of active measures for promoting ethnic diversity in working life” had been produced in 1999.
3. In 2014 a commission set up by the (centre-right) government recommended more

specific rules on how employers can work more systematically with active measures in cooperation with employee representatives (SOU 2014: 41), including the obligation for employers to provide unions with information they need to engage in cooperation, and for companies with more than 25 employees to annually evaluate the active measures undertaken.

4. See <http://www.boutique-certification.afnor.org/certification/label-diversite>.
5. <http://www.boutique-certification.afnor.org/certification/label-diversite>.
6. The “High authority for the fight against discrimination and for equality” (the equality body required in all Member States by the EU equality directive).
7. The CFDT’s campaign for “1000 Agreements for Equality” may explain why the CFDT federations were more willing to sign diversity agreements, even when they were not very satisfactory.
8. <http://www.idm-diversity.org/eng/index.html>.

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