Working more in order to preserve jobs? Works councils in the Swiss mechanical and electrical engineering industry and the "Swiss franc shock" in 2015

Abstract

The Collective Agreement in the Swiss metalworking industry contains a derogation clause widely applied after the appreciation of the Swiss currency in 2015. Management and works council can conclude agreements on a temporary extension of standard working time. This may be a bargaining chip for employees, if works councils are aware about and make use of their negotiating power.

Introduction

"For us, every job was important, and it was less important whether we were working a few hours more..." (interview former vice president works council, Company C).[1]

On January 15, 2015, the Swiss National Bank announced the discontinuation of the cap of 1.20 CHF per Euro which the central bank had defended since September 2011 in order to strengthen the competitiveness of Swiss exports. This announcement caused major turbulences in stock and currency markets around the globe. The Swiss franc drastically gained value against all other major currencies. Both business and trade union representatives saw the prospects for the export industries endangered, as domestic costs, such as salaries, immediately rose in relation to the currencies of the target markets. The mechanical and electrical engineering (MEM) industry was expected to be hit particularly harshly, as, in contrast to other major exporters, such as the pharmaceutical and the watchmaking industries, it operates in highly competitive markets. Statistical data covering the two years following the "Swiss franc shock" suggest that the decrease in order intake, revenues, and employment in the MEM industry was indeed higher than average compared to the manufacturing industry in

[1] All interview quotes have been translated from either Swiss German dialect or German.

general (Jaeger and Trütsch, 2017; Swissmem, 2017). A recent study shows that employment, however, declined in most branches of Swiss manufacturing industry in 2015 and 2016, mainly due to the unfavourable development of exchange rates. Companies reduced employment rather through natural fluctuation than through dismissals (Kaufmann and Renkin, 2017).

Even though less than one third of the total workforce in the MEM industry are covered by the branch collective agreement the employers' association *Swissmem* had concluded in 2013 with five trade unions (hereafter "MEM CA"), it is nevertheless one of the most important collective agreements for the Swiss private sector.[2] Since 1993, it contains a clause (currently Article 57, hereafter "Art. 57") which under certain circumstances allows companies to derogate temporarily from some working conditions defined in the CA, notably to extend standard working time from 40 hours per week to up to 45 hours. Works councils have to agree to such a step. Art. 57 was applied in many companies after the "Swiss franc shock". This attracted media attention (Müller, 2015; Jannsen, 2015) – which is remarkable, as it is

[2] According to *Swissmem*, in 2013, 96'000 workers were covered by the agreement which is not generally binding (information obtained by email from *Unia*, July 2017). The overall number of staff employed in the industry in 2013 was 330'115 (Swissmem, 2016: 8). The union with the most members among workers covered by the CA is *Angestellte Schweiz* which is traditionally strong among white collar staff and often takes rather "moderate" positions. Second comes *Unia*, Switzerland's largest union which is part of the left-wing peak-level Swiss Trade Union Confederation (*SGB / USS*) and is considered to be the most radical among the signatories. Number three is *Syna* which is part of the peak-level organisation *Travail.Suisse* and situated in the Christian tradition. The other two (*Kaufmännischer Verband* and *Schweizerische Kader-Organisation*) are white collar unions of minor importance in the sector.

very rare that media in Switzerland are reporting events in which works councils are involved in. There has been no systematic research undertaken on the application of this derogation clause so far. Our article sheds light on the application of the clause in four companies which differ from each other in terms of ownership structure, size, products, economic situation, and trade union influence. It attempts at answering the question to which extent Art. 57 is a tool in the hands of employers which tends to undermine the CA, as suspected by some trade unionists (Unia, 2013b: 16), and to which extent it is a bargaining chip to works councils with which they may obtain concessions from management, such as temporary job guarantees. From a trade unions' perspective, at first sight, there is nothing to gain from a derogation provision, since they may patrially lose control over the application of the CA. But do connections between works councils and unions influence the negotiating process? We also ask for the economic success of the measure in each case: Is it true that Art. 57 helps companies to adapt to new challenges with the consent of their employees, as was suggested by economist George Sheldon (Jannsen, 2015)? And last but not least: Does the conclusion of an agreement for a temporary extension of standard working time affect the overall patterns of industrial relations in the respective company? The four case studies were undertaken in 2017, two years after the events under question. In the MEM industry, application of the derogation clause had been identified as one of the main issues works councils had been dealing with in the past five years. Exploratory interviews had been made with nine works council presidents in companies covered by the MEM CA.[3] In six out of these nine cases, Art. 57 had been

[3] One of the works councils represented a site in the French speaking, six in the German speaking part of Switzerland, and two works councils covered plants in two, respectively three linguistic regions simultaneously. Four of the interviewed presidents were members of *Angestellte Schweiz*, three were members of *Unia*, one was a member of *Syna*, and one was not unionised. Contacts were made either through the respective union, or through pre-

applied in 2015. In addition to a detailed analysis of the respective Art. 57 agreements, the main focus of our case studies was on the company-specific reasons for the derogation, the negotiation process between works councils and management, the extent to which works councils used the clause as a bargaining chip, and the conclusions drawn by the main actors from both sides (works council, management) after the temporary rise of standard working hours had been implemented.

In the next section we discuss the overall context of flexibilisation of industrial relations since the 1990s, with a special reference to the German literature. The third section describes the specific development of the derogation clause in the context of negotiations in the Swiss MEM industry. In section four, the results of the case studies are presented in detail.

Derogation clauses and the flexibilisation of industrial relations

The flexibilisation trend in CAs in Switzerland can be placed in a wider, international context. In Germany, a case which is comparable to Switzerland when it comes to the predominant level of bargaining (sector) and dual representation (unions, works councils) at establishment level, flexibilisation and derogation clauses entered CAs in the 1990s, the very decade when also the Swiss derogation clause under question in this article has been introduced. A first "hardship clause" was introduced in the metalworking industry for East Germany in 1993 (Haipeter, 2011a; Müller-Jentsch, 2017). In the meantime, employers and unions have agreed to various forms of temporary derogation from normative provisions regulated in CAs, such as salaries, or working time, in key sectors of the German manufacturing industry. This trend has been called the "controlled decentralisation" of collective bargaining (Haipeter, 2011a: 34). Works councils are major actors whenever management initiates derogation from CA provisions, regardless whether it is actually the signatories of the CA (employers association

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existing contacts within the respective company. The exploratory interviews were made between September 2016 and February 2017.

and trade union) which by law have to agree to such derogation (Baumann and Maschke, 2016). Early literature has identified decentralisation trends as being part of an erosion process of the whole system of industrial relations, tending to "undermine the division of labour between co-determination and collective bargaining" (Hassel, 1999: 483). The fact that issues traditionally and / or by law subject to collective bargaining have become subject to firm-level negotiations between management and works councils leads to new configurations between the core industrial relations institutions – unions on the one, works councils on the other side (Rehder, 2003; Streeck / Rehder, 2003). Sisson (2001), in turn, sees a potential for more democratic decision making, as both a wider range of issues and more actors become involved in negotiations. Carlin and Soskice (2009) argue that the greater significance of firm-level negotiations have enabled industrial relations actors in Germany to undertake successful economic restructuring following a pattern which is typical for a co-ordinated market economy. Works councils representing the skilled core workforce in major manufacturing companies tended to defend the interests of their own clientele at the expense of overall labour solidarity and, at the same time, works council chairs gained influence within the major industrial unions. Evidence from more recent empirical research in Germany shows that works councils can gain a stronger position vis-à-vis the employer in the course of the negotiation of company-specific derogation agreements which usually include job guarantees for the employees (Haipeter, 2011b). Haipeter also sees derogation clauses as a genuine institutional innovation within the German system, and the respective company-level agreements as part of the system of collective bargaining, as long as unions are involved in negotiations (Haipeter, 2009). Furthermore, the process of negotiation at eye level between works councils acting as "co-managers" (Rüdt, 2007) has some virtue in itself, regardless of the effective outcome in favour of the employees (Haipeter et al., 2011: 243). Even trade unions can benefit from company-level agreements, if they smoothly interact with works councils, and by involving their members at the shop floor level into decision making on such

agreements, it helps them to recruit new members (Haipeter, 2016). Recent data from Germany show that company-level agreements, including agreements on extra hours, have become more frequent between 2015 and 2017 (Baumann et al. 2018). In France, a 2004 labour law reform made derogation clauses in sectoral CAs possible, enabling firm-level actors to negotiate agreements which deviate from CA provisions. However, almost all sectoral CAs explicitly prohibited derogation from working time and salary provisions, until the 2016 labour law reform opened up all sectoral CAs for such derogation (Rehfeldt, 2017). In other Western European countries, namely in Austria having a dual representation system similar to the German and Swiss ones, opening clauses are reported to play a minor role, compared to the role they have played in Germany (Keune, 2010). More recently, however, the facilitation of derogation clauses has been a major policy measure imposed by international and / or European institutions on several countries which were under surveillance during the recent economic crisis (Schulten and Müller, 2015: 347). Summarizing, there is an ongoing trend towards decentralisation of collective bargaining which leads to new configurations between unions and works councils, tending to undermine labour solidarity, however without undermining the core industrial relations institutions in co-ordinated economies as such.

The history of the "crisis clause" in the Swiss metalworking collective agreement

Flexibilisation at different levels was also a feature of the development of industrial relations in Switzerland in the 1990, after a long period of stability since the end of World War II (Oesch, 2011): Automatic adjustment of salaries to inflation was eliminated from major industry-wide CAs, thus shifting yearly wage negotiations from branch to company level. In some industries, working time was no longer fixed in weekly, but in annual working hours. It is in this overall context of flexibilisation that a derogation clause (nowadays Art. 57) was included in the MEM CA in 1993, in a time when the Swiss economy had been hit by a recession. It is noteworthy that in this industry, wage negotiations had always taken place at

the company level between management and works councils. This means that there was no potential to further decentralise this aspect of working conditions, and flexibilisation could only take place at the expense of other regulations, notably those concerning working time. But even though the introduction of this clause into an important CA was part of an overall trend, it must be noted that such provisions remain generally rare: Only a relatively small number of CAs allow derogation from normative provisions at company or establishment level (Ziltener and Gabathuler, 2018).

The respective clause in the MEM CA allowed companies to derogate temporarily from certain provisions laid down in the CA, with the approval of the works council, a body elected by the part of the workforce which is covered by the CA. Consent by the social partners – the signatories of the CA - was thus not needed, in contrast to the general rule in Germany. The Swiss Metalworkers and Watchmakers Union *SMUV*, a precursor of *Unia*, which was the dominant union in the sector at that time, opposed this new "crisis clause", however employers were strongly pushing for it with an important company, *Von Roll*, openly threatening to leave the employers' association if the clause was not introduced, and the other unions did not oppose it. As the clause was first labelled "provisional", a majority of SMUV delegates approved the new CA nonetheless. In the following three years, around 10 % of the companies under the CA actually made use of the article (Mach, 2006; Widmer, 2012). In some cases, unions were consulted by the respective works councils, in others they were not. In 1998, the clause was declared definitive but altered with minor concessions to *SMUV* (interview former *SMUV* and *Unia* secretary, November 2017). In 2002, SMUV wanted to abolish the clause but did not succeed, and the CA was prolonged unchanged until 2006 (Broussolle, 2009).

In 2006, the "crisis clause" was turned into an "exception clause", according to Widmer (2012: 283-4). It allowed derogation not only in economic difficulties of the company itself, but also in other cases, notably in order to "improve competitiveness and preserve jobs in a

company". If a company wanted to raise working hours based on the "competitiveness" case, the unions had to be informed, and their consent was needed to implement the measure (Sozialpartner, 2006). In the course of the renegotiation of the MEM CA in 2013, *Unia* – in the meantime only the second in membership behind the more employer-friendly white-collar union *Angestellte Schweiz* (hereafter *AS*) – demanded the abolition of Art. 57 (Fahrni, 2014). This goal was not obtained, however the clause has been modified partly in favour of employees (Unia, 2013b): Any derogation based on an agreement with the works council only (no union approval necessary) is now limited to a maximum of 15 months. If the company wants a prolongation of the measure up to a maximum of 30 months, unions have to be involved. In turn, all cases are now treated equal; derogation to "improve competitiveness" no longer needs union approval. The maximum level of the increased standard working time for this case was lifted from 42,5 hours to 45 hours which equals a salary reduction per hour of 12,5% - actually a much higher sacrifice than would be the suppression of the 13th monthly salary which equals approximately a 7,7% reduction of the yearly salary. Already in 2011, in the context of a "supplementary comment" to the CA agreed upon by its signatories on demand of *Unia*, the terms "economic difficulties" and "competitiveness" had been defined more precisely (Düring, 2011; Fahrni, 2014: 56-9) in order to prevent potential misuse by the employers. And since 2013, the term "competitiveness" is defined even more precisely: "Exchange rates which are relevant for the MEM industry" are explicitly mentioned as one of the possible causes for a "significant deterioration of the competitiveness" (Sozialpartner, 2013). This wording shows that already before the "Swiss franc shock" the exchange rate was seen as a crucial parameter by employers and unions.

Unions elaborated manuals for their members in works councils on how to proceed, and what principles to follow. Both *AS* and *Unia* agree that job guarantees are an important prerequisite for signing such agreements (interview *AS*, September 2017; Unia, 2013a and 2015; Hug, 2015). The same goes for *Syna* (Syna, 2015), but for this union job guarantees are not a

conditio sine qua non for such an agreement. All the unions recommend to works councils to consult them before signing. They insist on detailed information to be given by management to the works councils before negotiation starts, on a monitoring mechanism during the term of the agreement, on clauses which end the measure if business performance drastically changes, and on sacrifice to be made by management staff who are not covered by the CA (Düring, 2011; Unia, 2013a and 2015; Syna, 2015). The unions' preoccupation with the way how Art. 57 is being applied shows that the clause is a classic case of "controlled decentralisation" – and not one of "fragemented decentralisation" (Haipeter and Lehndorff, 2014).

Another interesting aspect of Art. 57 is the fact that it contributes to make the CA more attractive to companies, as it allows for more flexibility in terms of adapting to unexpected circumstances as ordinary labour law does: Companies which are not applying the CA have to respect the periods of notice laid down in individual employment contracts (usually three months) and are thus less flexible when it comes to temporarily change employment conditions to the disadvantage of their employees.

After the "Swiss franc shock": Four case studies

There are no reliable data on the overall application of Art. 57 following January 15, 2015. *Swissmem* estimated the number of agreements concluded under the present contractual conditions (since 2013) to 80 (interview *Swissmem*, September 2016), whereas *Unia* estimated a lower number (30) but conceded that they had no overview (information by email, July 2017), and *AS* estimated an even higher number (90 to 110; interview *AS*, September 2017). Despite these uncertainties, it is apparent that only a minority of the overall 540 companies covered by the MEM CA in 2016 (interview *Swissmem*, September 2016) has made use of the derogation clause. This is in contrast to the impression one may get when reading media articles on the topic (Jannsen, 2015; Hug, 2015).

As mentioned in the introduction, we found six cases of application of the derogation clause (companies A to F, see Table 1), all with headquarters and the majority of workforce in the

German speaking part of Switzerland. Furthermore, we identified three cases in which the clause had not been applied. In one of these cases, the works council had opposed application on principle, in the others, actors assumed it was impossible to preserve jobs even if working time was temporarily extended, thus the measure would be useless from the employees' perspective. Companies A to D were chosen for further analysis. Interviews were undertaken with two to four works council members (in some cases also with former works council members), one or two management representatives (CEO, plant manager and / or HR manager) and, if applicable, local trade union secretaries, between April and November 2017. In the companies E and F, our analysis was limited to the content of the Art. 57 agreements.

Table 1: Six agreements based on Art. 57 procedure

	Sector	**Work-force (approx.)**	**Date of agreement**	**Max duration**	**Applied to all?**	**Standard hours**	**Job guarantees for workers concerned?**	**Other remarkable points negotiated**
A	Textile machines	100	25 Jun (first)	6 ms (first)	Only if needed	42 - 44	Yes	Application depends on currency basket
B	Tubes, building systems	750	27 Jan	15 ms	Yes	42	No, but void if mass redundancy	-
C	Abrasives	750	25 Feb	10 ms	Yes	42	Yes	Compensation if 41 hrs not reached, holiday cuts for management
D	Building technology	1'700	23 Mar	15 ms	Not in factory	43 - 45	Yes, and 3 months beyond	Application depends on exchange rate, holiday and bonus cuts for management
E	Food processing equipment	2'500	4 Feb	7 ms	Yes	42,5 - 45	No	
F	Electrification and robotics	6'800	3 Jun	Not defined	No (frame-work agree-ment)	Not defined	Yes	Application to be decided at business unit level with local works council

Note: The agreement in company F is a framework agreement which only defines the conditions under which local plants may apply Art. 57, based on subsequent agreements to be concluded with local employee representatives.

The rough overview in Table 1 shows that four out of six agreements include job guarantees which for both major unions is an important condition for concluding an Art. 57 agreement. It is remarkable that the two agreements which do not fulfill this condition (B, E) have been concluded in companies with either no union influence (B) or with a works council dominated by AS (E) – the latter had been concluded without prior consultation with union officials. It is also striking that the agreements with no job guarantees are the ones which have been signed the first, both within less than one month after January 15, whereas negotiations in the other cases lasted significantly longer. In addition, both agreements with no job guarantees apply to the whole workforce covered by the MEM CA, without any differentiation or conditionality. How did this differences occur? To answer that question an in-depth analysis of the agreements in companies A to D, and the negotiation processes which led to their conclusion is necessary.

Company A: "He knows exactly that we will on principle say no to preprinted stuff we are supposed to sign"

A, located in a small town in Eastern Switzerland, is a highly specialised manufacturer of textile machines. The company has recently been bought by a privately owned industrial investor from China. It heavily depends on the business cycles as well as on financial and political stability in its major export markets which are both in the Eurozone and in other parts of the world. The market for its machines is not highly competitive, though, as the only major competitor is another company in Switzerland, being confronted with the same challenges concerning the cost level. The workforce has been drastically reduced in the past twenty years, especially when manufacturing of components was outsourced. The remaining 100 employees are busy with product development, marketing, and final assembly of the machines. Blue collar workers make up one third of the workforce. The company is a traditional stronghold of the "socialist" union (*SMUV*, nowadays *Unia*) and has a unionisation rate which is unusually high for the MEM industry in the German speaking part of

Switzerland (around 25% according to the works council president, around 40% according to a former local *Unia* secretary). All 6 members of the works council in 2015 were members of *Unia*; other unions only have very few members in the company. In the meantime, the works council has been reduced to 4 members; they remain to be unionised. The president of the works council has been in office for around 20 years, and also due to his professional position in the logistics department and as occupational safety officer virtually all employees know him in person. He holds posts in his union at regional level and is a member of the regional council for the Social Democratic Party. The works council is largely dominated by him. The relationship between management and works council is friendly, rather informal, and based on mutual trust. Each side recognises that the other side has a good understanding of the positions of both sides.

After January 2015, three agreements have been concluded which allowed for derogation in all major departments of the company, however separately. In the end, the maximum number of months in which part of the staff worked unpaid extra hours was not exceeded. It is striking that the first of these agreements has been signed rather late (in June only), apparently because both sides (management and works council) had disagreed on many points at the beginning: "We attempted to pick positive points for the employee side in order to integrate them, and the employer side wanted to have their points in the agreement, and we had to find a compromise somewhere" (interview member works council A). Thanks to his close relationship with *Unia* officials as well as his long experience in employee interest representation, the works council president proactively submitted his own proposals for the text, also because "he [the CEO] knows exactly that we will on principle say no to preprinted stuff we are supposed to sign" (interview president works council A). The main concern on the employee side was to get job guarantees. In addition, if up to one year after the end of the agreement employees were made redundant, the employer would have to compensate them for the extra hours they had worked. The entry into force of the agreement depended on

operating profit numbers and the development of the CHF exchange rate in relation to a currency basket defined based on the company's major export markets. This currency basket was subsequently adapted in the second agreement. In the memory of the actors involved, it was the works council who had proposed to make derogation dependent of a currency basket, as the company did not just depend on exports to the Eurozone. But it is also apparent that the "Swiss franc shock" was just one of the triggers for the measure: "We did not rush, we did not say that the next day we were going to have a mass redundancy or anything like that, we took our time in order to understand what was going to happen. We are specialised in terms of markets, and our competitor is also in Switzerland, thus has the same problem as we have, how do we deal with this, what kind of similar products are there from abroad which may increase competition, we took our time and then [...] we were looking at the currency basket, and the other point was [...] the earnings side" (interview CEO A). During the time of the implementation of the agreement, order intake decreased, so there was not enough work for final assembly workers who then had to go on short-time work for some time instead of continuing to work extra hours. The works council president said he had been afraid that the double sacrifice these workers had to bring - unpaid extra hours first, then a loss of income due to short-time work – would lead to discontent and make some of them leave the company, but this did not happen. At the same time, white collar staff continued to work unpaid extra hours, not so much because of the economic benefit this would bring to the company but rather for the sake of solidarity with their blue collar colleagues who were suffering from temporary income losses. The CEO openly admitted that it was actually difficult to control whether an engineer or a marketing specialist would be deliver more when working two more hours per week.

It remains unclear and is difficult to prove whether the measure made the company more competitive. But the actors involved do not regret having implemented it and are satisfied with the balanced outcome of the controversial negotiation process. The works council did not

have to face major criticism for giving their consent. No jobs have been cut in the company since then, but it is doubtful if the derogation agreement was necessary in order to preserve jobs.

Company B: "Not one single worker came to me and told me, what have you done, why do we have to work two hours longer..."

B is a family-owned manufacturer of steel and plastic tubes and building systems with headquarters and production site in a rural area in Eastern Switzerland. In addition, they have a small manufacturing site in East Germany employing 100 people, compared to the 750 working at the headquarters. Members of the owner family hold key positions in the management of the company, and they also live next to the headquarters. The family is well reputed as socially responsible entrepreneurs, and they share the Catholic belief of the majority of the local population. A major part of the revenue is made in the Eurozone; the company supplies steel tubes to the European automotive industry. Around half of the employees live in the municipality where the company is located, and, even though salaries are rather modest, fluctuation is reported to be low. In 2015, there were two works councils in the headquarters, one for blue collar workers (7 members) and one for white collar workers (5 members), representing populations of nearly equal size. In 2017, before the case study was undertaken, the two had been merged into one body. The only trade union which has a few members in the company is *Syna*; this fits to the Catholic identity of the region and the company (see note 2). Only one member of the then blue collar works council has been a member of *Syna*, though, and both presidents were non-unionised. The relationship between management / owner family and the works councils are good and trustful, as is the general working climate in this company which so far has never known major disruptions or mass dismissals and where management upholds an explicit "open doors" policy. The works councils are in general more concerned with individual complaints of employees than with

collective interest representation, and despite of the good general working climate, they are not used to negotiate with management / owners at eye level.

In January 2015, management feared that B's market position in the Eurozone was going to erode very quickly if no cost-saving measures were taken: "That morning, I could watch us loose six or seven millions within one hour" (interview executive board member / co-owner B). Management consulted with the employers association and with other employers in the region and within a few days proposed an agreement based on Art. 57 to the two works councils. Except for one minor point which two years later none of the actors involved remembered, the proposal for two unpaid extra hours per week for 15 months (the maximum period allowed by the CA) was accepted by the employee representatives. The agreement contained no job guarantees but stated that in case of a large number of dismissals the derogation would end before the agreed period was over: „From the point of view of the group management something like this [job guarantees] cannot be signed if you do not know how things would develop" (interview former president white collar works council B). As in A, neither management nor works councils report any complaint from the side of the concerned employees: "Not one single worker came to me and told me, what have you done, why do we have to work two hours longer, nothing, they had come to me earlier because of much less important bullshit [...] - it was very positive, I have to say, [...] I had rather thought that we would for sure be approached many times because of that" (interview former president blue collar works council B). In contrast to A, order intake remained good during the period, and all staff members, regardless how much their respective department depended on exports to the Eurozone, had to work unpaid extra hours for the whole period. Shift workers, instead of working two hours more per week which would not have made sense in the frame of rigid work plans, had to work additional shifts on Saturdays once a month. The extra hours worked by white collar staff mainly helped to decrease labour cost, as some of the accrued overtime and holiday could be reduced without financial compensation. On the other

hand, management reported that some employees apparently avoided such reduction by abusively recording extra hours: “What is really particular, in terms of behaviour, how this works in administration: [...] You continue to have exactly the same ten people who carry on having the same two hours of overtime.” (Interview executive board member / co-owner B) Furthermore, the actors involved stressed that all employees were subject to the measure for reasons of solidarity across the workforce. Management also reported that the way how accrued overtime and holiday were dealt with has been improved since then - as a side effect of the derogation measure.

The measure was reportedly beneficial for the company, and jobs in fact were secured, despite the fact that job guarantees were missing in the agreement. Employees showed solidarity with the company, and with their own representatives, even though there were no negotiations at eye level but, at the contrary, both employees and works councils seem trapped in the pattern of paternalistic employment relations.

Company C: “We did not want to get screwed one more time...”

C is a major manufacturer of abrasives. The company’s headquarters and manufacturing facilities are located in a small town in Eastern Switzerland. In 2008, the company was taken over by a large, privately owned transnational corporation based in Germany but some headquarter functions remained in Switzerland. In the decades before 2015, the workforce has remained more or less stable, and mass dismissals had been unknown so far. It has been reported, however, that for some years already, the site had serious economic problems and actually had to be subsidised by the group. More than 80% of the production is exported, mainly to Eurozone countries. In 2015, the works council consisted of 7 members, representing different departments (manufacturing, assembly, office functions). The president is a white collar employee and member of *AS*, whereas the vice president (who has been retired in the meantime) has a blue collar background but works as an occupational safety officer; he is a member of *Unia*. The two are of a similar age and look back to a longstanding

co-operation; they are by far the most experienced, and also the dominant, members of the works council. One more member is affiliated to *Unia*, and another one to *Syna*. It is worth to mention that *AS* has fewer members among the workforce than *Unia* (around 20 compared to 40), so there is no direct connection between the office of the president and union strength.[4] Overall unionisation in C is comparably low. The president has a good personal relationship to the then local secretary of *AS*, whereas the vice president held a post in the local *Unia* section but labels himself as critical vis-à-vis the political style of his union which seems too radical for his taste. The relationship between management and works council is based on mutual respect, but also rather distanced. The president reported that an older generation of managers of predominantly Swiss origin had gradually been replaced by a new generation being appointed by the group headquarters in Germany. Relations with a previous head of HR (actually a Swiss national) were reported to have been particularly bad.

It was at the time when this HR manager was in office that Art. 57 had been applied for the first time. At the end of 2011, management, works council and two unions whose consent was needed under the old version of the CA (*AS* and *Syna*, but not *Unia*) signed an agreement for an increase to 42 standard hours per week. The agreement was limited to 11 months and contained a clause that it would end prematurely in case of more than 4 dismissals for economic reasons, or if the CHF / EUR exchange rate was going to fall below a certain threshold. This provision shows that the exchange rate had been a concern already before the "Swiss franc shock" – the agreement was actually concluded in the time when the Swiss National Bank had stuck to the cap of 1,20 CHF per Euro. Furthermore it was agreed that

[4] AS, even though mainly a federation of in-house associations of white collar employees (*Angestelltenverbände*, or *Hausverbände*), recently started to organise also individual employees, and even blue collar workers. In C (as in A and B), there is no *Hausverband*, and this can be seen as the main reason for the small number of members of AS in the company.

management staff which is not covered by the CA and therefore not directly concerned by the agreement would have to give their share by renouncing a part of their holidays. The works council members involved expressed clear dissatisfaction with the way this agreement was implemented, as in fact the order intake was not high enough to justify extra hours. The company mainly used the agreement for saving costs by reducing accrued overtime. Works council and unions therefore rejected the management's request for a prolongation of the measure in 2012.

Nevertheless, already before the "Swiss franc shock", works council and management started, again, to discuss different measures for improving the profitability of the site, and the works council was in principle positive about a new application of Art. 57 if this contributed to preserve jobs. After January 15, 2015, negotiations started, and the works council was eager to include two provisions in addition to the previous agreement: Employees would have to get compensated for their extra hours if at the end an average of 41 hours per week (half of the agreed extra hours) was not reached. This was in order to avoid the "misuse" of Art. 57 as a mere cost-saving measure: "We did not want to get screwed one more time" (interview president works council C). In addition, job guarantees were included, plus the provision – similar to the one in A - that employees who up to two years after the end of the agreement lost their jobs, they would get compensated their extra hours as well. The actors involved report that it was not difficult to convince management to accept these points, except that the requirement of an average workload of 41 hours was only included for employees in the manufacturing and logistics departments but not for office employees whose workload was not that easy to measure. Management, with a new head of HR in office who was on better terms with the works council, accepted the new requirement, as "we assumed, okay, we will achieve [the 41 hours average], and if not we do not need the 42 hours either" (interview head of HR C). As there was a structural problem with its cost-income ratio rather than a temporary exchange rate problem, both sides acknowledged that applying Art. 57 alone would not help

C to regain its profitability. Even though none of the actors openly admitted, the works council had their own interest in applying Art. 57 with job guarantees included in order to avoid any mass redundancy during the term of the agreement. The agreement covered the whole workforce, including management staff who again had to give their share, and it was limited to 10 months, probably because it was unclear how the business situation in C was going to develop. The works council president said that he was confronted with some discontent among the workforce but that he was able to explain the necessity of the measure with the difficult economic situation. A few weeks before the term of the agreement ended, the closure of the whole assembly department and its relocation to Poland was announced, whereas the production of the abrasives was to be continued at the headquarters. This restructuration was going to cost around one third of all jobs at the site and led to long and difficult negotiations between works council and management, with some trade union involvement, about potential alternatives to relocation and, for the first time in C, a social compensation plan. The application of Art. 57 ended prematurely, even though the company did not give notice to any of the concerned employees before it would have ended anyway. Due to the restrictive provisions the works council had demanded, it is unclear whether the company actually benefited from the measure, except for the potential to reduce accrued overtime and holidays for white collar staff. In some departments, employees had to be compensated for the fact that the requirement of an average of 41 hours per week was not met, and all those who were to lose their jobs due to the relocation of the assembly department had to be compensated as well, thanks to the "two years after" provision. The employees, on the other hand, benefited from job guarantees for a few months, however already in the medium run, the application of Art. 57 did not help to preserve the jobs of a considerable part of the workforce. The works council in this case had a clear sense for their veto power, as they had already made use of it when management had asked for the prolongation of the earlier agreement, and showed that they had learnt from previous

experience with what they had perceived as a "misuse" by management. But the short-term success in the negotiation of the agreement was soon overshadowed by the overall failure to secure the jobs.

Company D: „The only point where I say we should not do this again is the 45 hours, this was wrong..."

D is a provider of building technologies such as fire alarm and comfort control systems. It has been a division of a listed German transnational corporation – one of the world's largest in the engineering sector - for more than two decades, with its global divisional headquarters, R and D department and one of its factories located in the same site in a medium-sized town in Central Switzerland. Around 95 % of the production is exported, and around 70 % of the exports go to the Eurozone. There is a works council of 10 members (including one vacancy) representing around 80 % of the more than 1'800 employees (information obtained by email from head of HR D, May 2017); the others hold management positions and are not covered by the CA. The president of the works council is an IT specialist working in Rand D; he has been in office since 2011. Whereas the factory workers are a clear minority of the total workforce, they constitute the majority of the works council. The president and one more member are affiliated to *AS* which, in contrast to the three other companies presented here has its own *Hausverband* in D; two factory representatives belong to *Unia*. All in all, *Unia* has only around 20 members in D, and *Syna* has a small number of members as well. The CEO who is responsible both for the site and for the whole division is of German origin whereas some longstanding senior managers such as the local head of HR and the head of the factory are Swiss nationals. The relationship between management and works council is reported to be good and trustful, however marked by the fact that D is far from being a small or medium size enterprise (such as A) or a family business with "open doors" (such as B) but part of a transnational corporation with comparatively bureaucratic structures. In addition, all actors interviewed stated that the two *Unia* members often express dissenting opinions within the

works council which is relatively often busy with issues emerging within the factory, such as introduction of new technologies, organisation of shift work, or safety equipment. The well-designed structure of the company is complemented by a well-designed structure of the works council whose members all have their specialisations and duties within different sub-committees. And unlike in A and in C, the president attempts to avoid a dominant position. Restructuring projects including mass dismissals have occurred several times in recent years, mainly due to the relocation of manufacturing of a part of the product range to countries with lower wage costs. There is a permanent social compensation plan signed by management and works council from which all employees made redundant for economic reasons may benefit. When the "Swiss franc shock" occurred, a new CEO had just taken over responsibility. Management and works council started negotiations on the application of Art. 57 and other potential measures immediately afterwards but it was not before end of March – around two months later – until an agreement was signed. From the beginning, the CEO asked for an application only in R&D and in administration, whereas the factory should be exempted since apparently job guarantees for the workers in production could not be granted. The head of factory said that he had been in favour of an increase also in his department, as he considered wage costs to be too high, but that he did not get the approval of senior management for that demand. A draft was soon on the table, but "we had to say that we cannot sign [the draft] as it was because we always said that the employees need to get something in return for this additional work, and this was not satisfactory at the beginning" (interview president works council D). The works council demanded job guarantees, and for a sacrifice to be brought by the relatively large management staff in parallel to the unpaid extra hours to be worked by the "ordinary" employees covered by the CA. Whereas the works council was ready to agree to an increase up to 41 or 42 standard hours per week, the CEO asked for the maximum of 45 hours. The actors involved mentioned that it was a challenge to prove that there was actually sufficient workload. In R&D management was able to design new projects which justified an

increase of working time by 12,5%, whereas in administration the necessity of the measure was more difficult to prove. In addition, it seems that the exemption of the factory was also controversial as this could be understood as a signal that some of these jobs were to be eliminated already in short term. In the end, an agreement was signed for 45 hours for the first 6 months, and 43 hours for the 9 months, with job guarantees for those who were concerned by the measure for the whole term of the agreement and 3 months beyond "if the economic situation does not significantly deteriorate". Management staff had to renounce to a part of their holidays and senior management also to a part of their bonus. An additional provision said that depending on the development of the CHF / EUR exchange rate the agreement could be terminated before the maximum of 15 months were reached. The works council had to face complaints from a part of the workforce for giving their consent to unpaid extra hours, and it seems that the amount of extra hours (5 and 3, respectively, in contrast to 2 in most other companies) was subject to special criticism. Shortly after the start of the measure, the works council president who was employed in one of the concerned departments (R&D) gave an interview in a local online magazine and publicly justified the consent he had given. He stressed that the works council had been tough in negotiations. A few months after the agreement was signed, a major restructuring in the factory was announced, leading to the loss of a significant part of the jobs of those workers who had not been covered by the agreement. The agreement was terminated two months before the end, even though the exchange rate did not reach the threshold mentioned in the agreement.

In our case study interview the president stated that the hardship of a working time increase of 5 hours per week had been underestimated, and that "the only point where I say we should not do this again is the 45 hours, this was wrong" (interview president works council D). Also the local head of HR said that looking back, he considered the 45 hours as too radical a measure, as these 5 additional hours were certainly not as productive as the standard working time of 40 hours, the benefit for the company thus doubtful. But he mentioned another aspect why it

was worth to apply Art. 57 in general: The group's management in Germany was impressed by the fact that in Switzerland it was possible to increase standard working time with the consent of a works council within a short notice: "This helped us enormously to take away pressure from the side of the group, as they saw that management had taken action together with the works council which brings effects relatively quickly, and this culture that they do not understand in Germany was an important element for us to tell them that in Switzerland we are enough flexible." (Interview head of HR D) On the other hand, the a priori non-application of the derogation measure in the factory of D was also an indirect indicator for the connection between job security and unpaid extra hours: Regardless of derogation opportunities, manufacturing jobs in particular remained to be insecure in D.

Comparing the cases

Whereas all four companies in our sample heavily depend on exports, thus on the CHF exchange rates, the respective business models and its challenges differ from each other as much as the the respective agreements (see Table 1) and the way how they were actually implemented. Table 2 gives an overview on the specific economic backgrounds as well as on the consequences the application of Art. 57 had in each of the four cases researched.**Table 2:**

Economic background and economic consequences of agreements A-D

	Owner	**Export share**	**Challenges**	**Mode of Implementation**	**Outcome**
A	Chinese TNC	> 80% (various currencies)	Business cycles, difficult markets	Incomplete, parallel with short-time work	Extra hours partly not needed, as order intake was poor. Jobs secured.
B	Family-owned	75% (steel) 50% (building) (mainly €)	External competitors, labour costs	As agreed	Extra hours needed in production, reduction of accrued overtime in other departments. Jobs secured.
C	German TNC	> 80% (mainly €)	Competing sites inside TNC, labour costs	Premature end after announcement of mass dismissals	Reduction of accrued overtime excluded. Jobs not secured in the long run
D	German TNC	95% (70% €)	Competing sites inside TNC, labour costs	End two months earlier than foreseen in agreement	More output in R&D, symbolic effect towards HQ. Only jobs covered by Agreement secured.

TNC: Transnational Corporation

A direct connection between the triggering event of January 2015 and business performance could only be observed in company B which feared for the competitiveness of a part of their

product range on their highly competitive target markets. A, on the other hand, was in the relatively comfortable position to have its only competitor in Switzerland, whereas its main problem is business cycles in its target markets. C and D, being part of transnational corporations with facilities in many other countries, are confronted with the general challenge of producing in a high cost country: Structural deficits (in the case of C) and relocation due to cost-benchmarking within the group (in the case of D) had been endemic already before 2015. The case studies also shed light to the practices of works councils, especially their interaction with management. Table 3 gives an overview on both the company-specific industrial relations, the way the agreements were embedded within them, and the changes in company-level industrial relations as an outcome.**Table 3: Industrial Relations (IR) aspects of agreements A-D**

	Quality of IR before	**Process of negotiation**	**Works council priorities**	**IR outcome**	**Criticism from workforce?**
A	Trustful, informal, strong union influence (Unia)	Works council makes draft, balanced outcome	Currency basket, job guarantees	Confirmation of status quo	No
B	Trustful, paternalistic, no union influence	Management makes draft, no real negotiation	Solidarity with the company	Confirmation of status quo as jobs were secured	No
C	Respectful, distanced, some union influence (AS, Unia)	Works council imposes conditions, management accepts	Avoiding misuse of Agreement for reduction of accrued overtime, based on past experience	Works council position strengthened but jobs not secured	Minor
D	Respectful, distanced, some union influence (AS, Unia)	Controversial negotiations, balanced outcome	Job guarantees beyond end of agreement, management to prove necessity & usefulness of measures	Confirmation of status quo, both sides agree on mistakes committed	Yes

From a works council perspective, some elements of the process can be seen as success:
In three cases we found works councils – or at least their presidents – having good negotiation skills. In A, C and D, works councils were aware that the employees they represented could get something in return for the unpaid extra hours: Job security, but also the prospect for ex post compensation if certain conditions were not met. In C and D, two comparably large

companies in which more than just the executive board members (as in A and B) are exempted from the CA, works councils succeeded in making management staff contribute some sacrifice as well (e.g. cutting holidays by one week). In the agreements in A and D, provisions were included that made a connection to the actual trigger (or pretext): The development of exchange rates. In A, it was made explicit that the Euro rate as such did not constitute a problem but that the cost side of the company's difficulties rather depended on the development of a currency basket. In C, due to unsatisfactory experience made at an earlier occasion, the works council insisted to take Art. 57 literally: Employees should work more (for free) in order to preserve their jobs – whereas the cost-cutting effect of the reduction of accrued overtime, reported as a success by all actors in B, was regarded as abusive, and they managed to include an extra provision to prevent such practice. The agreement in B is a clear exception in terms of content, but also looking at the process leading to it which can hardly be called a negotiation between players at eye level but is rooted in the paternalistic employment relations within a family business, and a works council whose members trust the good intention of the owners rather than seek advice from trade unions as was the case in A.

Did the companies fare well with the measures implemented? Remarkably enough, B is the only case in which the company, and, through implicitly given job guarantees, also the employees demonstrably benefited from the measure. In A, the agreement did not prevent the introduction of short-time work which meant temporary income reduction for a part of the workforce. In C, the tough and at first sight successful approach of a works council having learnt its lessons from past frustration did not prevent the company from cutting one third of the jobs whereas the measure itself hardly brought any benefit to the company, as a large proportion of the extra hours had to be compensated afterwards. In D, the works council president took a tough approach as well – the long and difficult negotiation process proves that – but ended up being criticised publicly by a part of the concerned workforce. In the end he, and management alike, had to admit that the increase of working hours had been too high.

The benefit for the company was at least partly symbolic (German top management was impressed by the smoothness of Swiss employment relations), but in manufacturing, where jobs were endangered most, derogation was not considered from the beginning: These workers did not even have the opportunity to preserve their jobs by working unpaid extra hours.

Conclusion

The "Swiss franc shock" which occurred in January 2015 was an occasion for some companies in the Swiss MEM industry to apply the temporary derogation provisions of Art. 57 of the CA, referring in particular to the opportunity to extend standard working time in order to "improve competitiveness and preserve jobs". But even if the trigger for the derogation was the sudden and dramatic change of the macroeconomic context for the Swiss export industry, the four companies examined here were not at all in the same business situation, and the specific solutions they found after negotiating with their works councils also differ from each other.

The question whether Art. 57 is a tool merely in the hands of employers which undermines the CA, or whether it may even help to strengthen the employee side vis-à-vis management in employment relations at company level, deserves a differentiated answer. Works councils indeed got a chip for concession bargaining – in three of the four cases researched, unpaid extra hours were traded for job guarantees. But first of all, the bargaining chip has to be played – works councils need to be aware of their veto power. Having connections with trade unions helps: Our case studies show that a works councils' links to trade unions and the use of their bargaining power are associated with each other, even if only in one case, there is a traceable union influence on the content of the agreement. In all companies, the negotiation process reflected, and tended to strengthen, pre-existing firm-specific interaction patterns between management and works councils. Our research thus confirms findings from German research (Haipeter, 2011b; Haipeter et al., 2011) that derogation agreements may, under

certain circumstances, strengthen the position of a works council vis-à-vis management. But the economic success of the measure was not guaranteed in any case – not from the respective company's perspective, and even less from the employees' perspective: Other measures that were painful for the employees such as short-time work or even massive restructuring could not be avoided. On the other hand, in none of the cases researched the measure itself had disastrous consequences; its most successful application, ironically, has been in the company in which the works council rather acted as an advisory body to management than as a representative of the employees' collective interest. The measure has the potential to strengthen works councils' position vis-à-vis management, if they show firmness in their negotiating positions and flexibility when it comes to prove solidarity with the company in difficult times. Our results confirm the necessity of good training for works councils with respect to their negotiating skills and their understanding for the specific economic situation of the respective companies. On the other hand, it is more than unclear whether the measure is a crucial contribution to preserving jobs. From an employees' point of view, apart from job guarantees, termination clauses depending on the further development of business figures and relevant exchange rates are *conditiones sine qua non*. From an industrial relations perspective, the measure has a potential for strengthening social partnership at sectoral level, taking into account that it is exactly its flexibility which makes the CA attractive for employers. There also seem to be decreasing returns to scale: An extension of working hours beyond certain limits is not accepted by a large part of the workforce and therefore might be dysfunctional also from an employers' point of view. "Besides [...] purely physical limitations, the extension of the working day encounters moral ones. The labourer needs time for satisfying his intellectual and social wants, the extent and number of which are conditioned by the general state of social advancement." (Marx, 1987: 246)

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