

GOVERNANCE

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Private standards in the North – effective norms for the South?

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Partly due to NGO-campaigning and partly due to slip-streaming effects of CSR-policies, corporate Codes of Conduct have become quite common in Europe and even in Germany as well. In these undertakings, enterprises mostly also promise to adhere to certain social standards in transnational production, i.e. in their overseas establishments and/or the supply chain. Instruments used are corporate undertakings such as “Codes of Conducts” (directed towards consumer markets, investors, rating agencies and NGOs in the North) or “framework agreements” (agreements concluded between transnational enterprises and international trade unions and sometimes also European Works Councils).

To find out more about the regulatory capacity of corporate undertakings, a range of interviews with actors in the field of CSR-policies were conducted in the context of the European research project ESTER (<http://ester.u-bordeaux4.fr>). On the conference, I will highlight some of the results of the ESTER-project on social standards and show possible consequences for the regulation of transnational production in the South. Can corporate undertakings that are formulated (and sometimes negotiated) in the North strengthen the regulatory capacity of state norms in the South? Or do they rather substitute state norms?

1. Authority: Corporate undertakings can only provide additional values for the South if they own regulatory capacity. Firstly, it will have to be shown how the undertakings and contracts (“framework agreements”) can be conceptualised in the context of hard law and soft law. In the context of the national hard law in the Northern countries (consumer markets), they contribute to making

international labour standards legally binding in national “reflective” hard law insofar hard law (like most rules on unfair competition) refers to transnational soft law.

Secondly, the regulatory quality of private standards in relation to the national hard law of Southern countries is to be questioned. Are these undertakings really meant to regulate working conditions in establishments/the supply chain in Third-World countries? Doubts arise if we take into account that the Codes or agreements commonly refer to “national regulation” or “local practice”. The meaning and intentions attached to these and other clauses will have to be explored. How are the standards situated in a world of norms, rules and principles? Do they actively participate in the emergence of transnational labour and other social standards? How far do analogies to “law” take us?

Thirdly, does the national hard law of the South have to “fear” the competition of private standards set in the North? What is the consequence for development policies?

2. Legitimacy: Possible virtues of corporate undertakings for the South could lie in the enforcement mechanisms the undertakings may provide. However, when it comes to implementation and monitoring of private standards and corporate undertakings, transnational enterprises mostly rely on company-owned mechanisms. Only in few cases, actors in the South are involved. The standard of “freedom of association” as referred to in most of the undertakings, could, however, be a vehicle for the provision of greater procedural justice and legitimacy. What are the practice, the intentions and hopes attached to this standard? What is and what could be the role of NGOs?