

Results of the Recast of the EWC Directive

EWC Deutsche Bank AG
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Wolfgang Hermann, ver.di Federal Administration
Financial Services Division



History

- Directive September 1996 originating in 1994, i.e. review after 5 years = 1999 !
- 2 July 2008: Commission proposal for the European Parliament to provide a new Directive for European works councils
- 29 August 2008: “joint advice” of social partners
- December 2008: Passing of the new Directive in the EP



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Validity of the new Directive

- Following expiry of two years after its introduction, the new EWC Directive is to apply to new or revised agreements
- The existing Directive will apply to agreements which are newly concluded or adapted during the transition phase of two years
- For agreements which were concluded up until September 1996 the new Directive is generally not applicable (with the exception of agreements covered by the adaptation clause)
- Whether the new Directive is directly applicable to EWC agreements currently in force after expiry of the transition phase is the subject of wide-ranging discussions at the present time.



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Previous Directive: Consultation

- Article 2, Definition of Terms
f) “Consultation”: establishment of dialogue and exchange of views between employees’ representatives and central management ”



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Information

'Information' means the transmission of data by the employer to the employees' representatives in order to enable them to (1) **acquaint themselves** with the subject matter and **examine it**; information shall be given (2) at **such time**, (3) in **such fashion** and (4) with **such content as are appropriate to enable employees' representatives, in particular, to conduct an appropriate study** and (5), where necessary, prepare for **consultation** with the competent organ of the Community-scale undertaking or the Community-scale groups of undertakings.

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Consultation

Consultation is the establishment of (1) **dialogue** and **exchange of views** between employees' representatives and central management or any more appropriate level of management (2) at **such time**, (3) in **such fashion** and (4) with **such content**, which (5) **enables** employees' representatives **to express an opinion** on the basis of the information provided and (6) **within a reasonable time** to the competent body of the Community-scale undertaking or Community-scale group of undertakings.

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Participation at European/national level

- Art. 12 is designed to remedy regulatory omissions (reaction to court decisions)
- Express **obligatory compliance** with agreements
- **Provision of appropriate measures** to deal with non-regulated cases: "shall ensure that the processes of informing and consulting the European Works Council and the national bodies start in parallel ..."
- Grounds for consideration 37: "...at the same time..."

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Definition of transnational scope

There is **no new definition** but new **grounds for consideration**, which are worded as follows:

The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States involved are considered to be transnational. **These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.**

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Qualification

NEW: Legal Right

Members of the special negotiating body and of the EWC must be given the possibility, to the extent that such is necessary for the performance of their representative duties in an international environment, to take part in training without any loss of wages or salary.



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Information Obligations

- Management shall be responsible for the transmission to all parties of **information** necessary for the **commencement of negotiations**, especially information relating to the structure of the undertaking or the group of undertakings and the work force. This obligation affects in particular data on the number of employees.
- The constitution of the special negotiating body and the commencement of negotiations must in future be notified to central management, local undertaking management **and the competent European employee and employer associations.**



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Role of the Unions

- The positive role played by the unions in the past in the formation of the EWC is expressly acknowledged, in that they can be more easily called upon to participate as experts by the special negotiating body and the EWC.
- They continue to have no original right of participation.
- Information to the associations on the formation of an EWC.



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Steering Committee and Collective Mandate

- EWC will in future generally be able to set up more select committees (**steering committees**) in order to ensure coordination of their activities.
- Members of the EWC can in future – notwithstanding the competence of other bodies or organisations – collectively represent the interests of employees, i.e. they are expressly given a **collective mandate.**



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Sanctions

- In harmony with general principles of Community legislation, administrative or legal processes and **sanctions** are to be applied for any infringement of obligations deriving from this Directive; such action to be **effective, appropriate and of a deterrent nature**, in proportion to the seriousness of the infringement.
- The collective mandate could improve the legal status of the EWC.

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Information Work of the EWC

- The EWC informs employees regarding its work within the framework of the Directive independently of national provisions
- = **independent right of information**
- Costs to be borne by employer

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Art. 13 (Adaptation Clause)

- Where the **structure** of the Community-scale undertaking or Community-scale group of undertakings **changes** significantly, and either in the absence of provisions established by the agreements in force (or in the event of conflicts between the agreements in force), negotiations are to be initiated pursuant to Article 5.
- Participants: Central management or employees' representatives from 2 Member States who represent more than 100 employees
- At least three members of the existing European Works Council shall be members of the special negotiating body.
- Subsequent effect: During the negotiations, the existing European Works Council(s) shall continue in office. Agreements continue to be valid.

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Art. 14 (continued validity of Art. 13 and Art. 6 agreements)

- If the adaptation clause pursuant to Art. 13 is not successful, agreements pursuant to Art. 13 (old) shall continue to apply (subsequent effect), unless they have been adapted in respect of structural changes (before the Directive has been implemented = 2011).
- Agreements concluded pursuant to Article 6 of Directive 94/45/EG which are signed or revised between the introduction of this Directive and the time specified in Article 16 (two years later) shall continue to be valid.
- The conclusion of new agreements or revised agreements which do not achieve at least the level of the new Directive during the transition phase (adopted in writing) is not recommended unless substantial improvements appear to be achievable.

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Art. 14 (Continued validity of Art. 13 and Art. 6 agreements)

- The question of the application of the new Directive to old Art. 6 agreements is not regulated in Art. 14.
- From this, Evelyne Pichot from the EU Commission concludes that from 2011 the rights of the new Directive can be directly applied to all agreements concluded between September 1996 and the beginning of the transition phase in 2009.

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Critical Remarks

- Definitions of information and consultation were improved but participation rights not extended.
- No shortening of the negotiation period for the formation of the EWC (from 3 years to 1 year).
- No higher frequency of meetings (at least 2 per year).
- The position of the unions has been improved, but they are given no original right of participation in special negotiating bodies and EWC meetings.
- Tendency provision has not been deleted
- No sufficient legal security for new or follow-up negotiations of EWC agreements and direct application of the new Directive to Art. 6 agreements.
- No lowered threshold for the formation of EWCs.

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Overall Assessment

- New Directive valid only after the expiry of two years following its introduction.
- For these special negotiating bodies (easier new formation and improved working possibilities) and EWCs, the new Directive will mean a multitude of progressive steps forward (such as information, consultation, committee, etc.) and facilitate their work (raising of standard)
- The new grounds for consideration on transnational matters will result in the EWCs participating in future in significantly more matters than previously, as in our opinion effects on employees in one Member State already trigger participation rights if the decision has been made in another Member State.
- Adaptation provision improves situation in the case of restructuring (including as a subsequent effect).

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Overall Assessment

- Definitions of information and consultation : Participation of the EWC before decisions have been made.
- Information and consultation in advance of (grounds for consideration 37), but at least parallel to national bodies.
- The possibility of the introduction of effective and deterrent sanctions in cases of infringements of the Directive by employers has been improved (power of assertion).
- The newly incorporated qualification right will support and improve EWC members in their work on a sustained basis.
- Independent right of information on the part of the EWC as a collective organ in terms of law.

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