

Dr hab. Dagmara Skupień
Faculty of Law and Administration, University of Lodz, Poland

European Works Councils – Problems of Effectiveness

A European Works Council (EWC) is an institution with a long tradition. Pioneer European Works Councils were set up in France already in the 1980s. In 1994, the original EWC Directive was adopted by the European Community.¹ This legal act was the first binding instrument imposed on multinationals concerning the mechanisms for transnational information and consultation. The sheer fact of adoption of the EWC Directive was perceived as a big European success as it followed long preparatory works and discussions lasting almost fifteen years.

The institution of the EWC was conceived through cooperation, consensus and ‘without a heavy hand’. The original EWC Directive was based on four ideas: subsidiarity, as it gave member states the freedom to adapt its core rules to national arrangements; flexibility: it gave companies the freedom to find a solution which suited their situation best; consensus: it gave the social partners the power to agree what they wanted to agree; and effectiveness: it gave workers the guarantee that the rights they obtained could be exercised.²

Soon after the implementation of the EWC Directive, it became visible that the scope of the proclaimed rights to information and consultation in Community-scale undertakings and groups of undertakings was not clear. The lack of precision of the Directive’s provisions was retained in the national implementing acts and, as a consequence, affected also the quality of negotiated EWC agreements. Moreover, so-called voluntary agreements, i.e. agreements concluded in the transitional period of 1994-1996 (between the adoption of the EWC Directive and the deadline for national implementation) avoided major commitments on the employer’s part and fell much under the minimum requirements of the EWC Directive. The EWC reality showed that the voluntary approach to its functioning was not always reconcilable with the idea of effectiveness.

The ‘recast’ EWC Directive (2009/38/EC)³ was adopted under the flag of effectiveness. Its recital 7 states inter alia that ‘it is necessary to modernize Community legislation on

¹ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, Official Journal L 254, 30/09/1994, pp. 64-72.

² Speech by Mr P. Flynn, ETUI/ETUC – Conference: European Works Councils and the Europeanisation of Industrial Relations, Brussels, 2 October 1996, http://europa.eu/rapid/press-release_SPEECH-96-232_en.htm, accessed on 11 September 2017.

³ Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), OJ L 122, 16.5.2009, pp. 28-44.

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transnational information and consultation of employees with a view to ensuring the effectiveness of employees' transnational information and consultation rights [...].

The recast EWC Directive contains numerous provisions the goal of which was to improve the operation of EWCs. We should mention the added definition of 'information' and the enhanced definition of 'consultation', a more precise delimitation of powers between the EWC and the national representative bodies, the introduction of the notion of 'transnational matters', the right to training granted to the EWC members, a more precise right to necessary information in order to start negotiations consolidating the case-law of the Court of Justice, the increased role of European trade unions in the setting-up of EWC through negotiations or the obligation to start negotiations on a new EWC agreement in case of significant structural changes in a company.

Despite the enhanced content of the recast EWC Directive, the research results showed that it neither improved significantly the quality of information and consultation procedures conducted with EWCs nor helped to increase the number of EWCs.

At present, 1073 EWCs are functioning according to the European Trade Union Institute database.⁴ The overall number is huge but it may also be treated in terms of failure because the compliance rate amounts only to a one-third of all the groups of undertakings fulfilling the criteria to establish an EWC. Moreover, existent EWCs are in many cases only an information forum and do not play any role in restructuring processes.

This paper examines problems of the EWC's effectiveness. For the purposes of the analysis, the effective EWC is understood as an institution which has an impact on the decision-making process in a given multinational. Factors influencing the effectiveness may be detected at different levels, namely at the level of the EWC Directive and national implementation instruments, and at the level of EWC agreements. Last but not least, lack of effectiveness may arise in practice of relations between the EWC and the central management.

The author focuses especially on the role of the EWC Directive in creating optimum conditions guaranteeing the proper execution of workers' rights to transnational information and consultation. Various legal aspects which could help to improve the functioning of the EWC and to make it effective or more effective are taken into consideration.

The presentation starts with the analysis of reasons for absence of the EWC in many multinationals and possible ways to remedy this. Further on, the importance of the stage of

⁴ The European Works Council Database, <http://www.ewcdb.eu/stats-and-graphs>, accessed on 11 September 2017.

setting up the EWC in guaranteeing its effectiveness is underlined. A considerable part of the analysis is devoted to the scope of the EWC's competencies with the emphasis on the definitions of 'information', 'consultation' and 'transnational matters' as well as to the present and possible future function of EWCs in negotiating and implementing International or European Framework Agreements. Relations of the EWC with national employees' representative bodies, namely the link between information and consultation procedures on different levels and the duty of the EWC members to report back to the workforce, are discussed. Finally, the author takes into consideration the importance of sanctions in assuring the effective fulfilment of the EWC's tasks but also in the protection of the employer's interests.