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Evaluation of the activity of European Works Councils

Abstract

European Works Councils are a form of indirect employee participation which realize the right to information and consultation among employees in transnational companies. They are an extremely important institution of social dialogue at the European level. Functioning of the common market is associated with concentration of plants, mergers on the international scale, creation of branches in different countries, whereas decisions taken by central management of these transnational companies affect workers in all their European subsidiaries. The EWC Directive requires the companies to build a bridge between their decision-making centre and European workers' representatives.

The main aim of this paper is to assess the impact of EWCs on both national systems of industrial relations and transnational companies' activity. The first part of the article includes an analysis of the character of EWCs as an element of the European system of industrial relations and as a source of European identity building. Moreover, the paper attempts to present the consequences of EU enlargement for these institutions and social dialogue. The second part evaluates the statutory rights of EWCs and the influence of these institutions on decision-making process in transnational companies. The main emphasis is put on EWCs impact on strategic business decisions leading to these companies' restructuring.

1. Introduction

European Works Councils (EWCs)¹ are an object of a broad debate on the character of these institutions as a part of the European system of industrial relations and a source of European employee identity building. There are two contrary views in this debate. According to the pessimistic one, EWCs are neither “European” nor “councils”. In suggesting that they are not “European”, the opinion is underlined that EWCs are too heavily “coloured” by the national systems of their company’s country of origin. This is because employee representatives from these countries, due to their previously established relations with management and their numerical dominance play a decisive role in negotiations concerning the creation of EWCs. Taking into consideration the second charge that EWCs are not works councils in fact, statutory weakness of these institutions is underlined. Supporters of this argumentation claim that formal consultation rights of EWCs come down to generally defined “dialogue and exchange of views”. Before taking important decisions management have not real consultations with EWCs and do not ask EWCs’ advice (Marginson, Sisson 2004, pp. 229–230). According to the optimistic view, EWCs might “open the door to transnational identity and cooperation” and could develop gradually from weak and mostly symbolic information institutions towards European collective identity. EWCs promote union transitional networking and thereby in a long time they may contribute to the Europeanization of industrial relations (*European Works Councils Experience in New EU Member States 2006*, p. 4).

Two important events have had significant influence on the activity of EWCs in recent years. In April 2004 European Commission joined into discussion with social partners regarding the review of the Directive in order to improve the effectiveness of European Works Councils. The main problems and faults have been identified in internal structure of these institutions, mutual relations (concerning practice of communication with social partners, integration of national systems of industrial relations, common strategy of the enterprise)

¹ European Works Councils were established following the implementation of the EU Directive on 22nd September 1996. The purpose of the EWC Directive is to improve the right to information and consultation of employees in Community-scale undertakings by the establishment of an EWC. A “Community-scale undertaking” means any undertaking with at least 1000 employees within the member states and at least 150 employees in each of at least two member states.

and legal basis (rather weak rights of EWCs given by the Directive). Subsequent event which have substantially affected the activity of EWCs was the EU enlargement in May 2004. As a result, geographical scope of the Directive's applying has been extended to 28 countries. Since then EWCs have to cope with growing socio-economic and cultural diversity and "build in" completely different social, political and institutional systems of new countries.

2. The impact of EWCs on national systems of industrial relations

The effect of EWCs on national industrial relations systems is highly varied and depend mainly on the existing in a given country institutional framework and, especially, on whether employees' representation bodies similar to works councils have already existed. Taking EU-15 countries into account, situation looks as follows. In Austria, the Netherlands and Germany the impact of EWCs' Directive on industrial relations has so far been marginal. The EWCs are perceived as a natural extension of highly developed systems of worker representation into which these institutions have been tightly fitted. In the case of the last country, highly developed system of co-determination might even distort EWCs' statutory independence by giving stronger positions to German representatives in transnational enterprises with headquarters in Germany.

EWCs fit rather well into French system of industrial relations. It should not be surprising because the first "pioneer" EWCs have been established in transnational enterprises with headquarters in France. The formation of these institutions was inspired by the 1982' French legislation Act concerning national group-level works council structures. The tradition of French joint enterprise committees caused that most EWCs in transnational companies with headquarters in this country are also joint management-employee bodies. The picture looks similarly in Belgium where the EWCs election system is linked to the existing system of employee representation. The only result of implementation EWCs' Directive there was the establishment of group works councils – i.e. representation bodies bringing together representatives from all national subsidiaries. Members of these groups meet before plenary meeting of EWC to elaborate common point of view. EWCs do not also conflict with system of employee participation in Luxembourg despite the fact that the Directive was implemented there only in 2000.

In Denmark transposition legislation supports the establishment of EWCs with a structure similar to existing cooperation committees. However, a significant number of Councils set up on voluntary agreements have chosen

solutions which are quite different from the traditional Danish model. Members of EWCs, which are employee-only bodies, are elected directly in public vote causing that trade union involvement is highly restricted. In Finland the Directive has been implemented by adding new “transnational cooperation groups” (i.e. EWCs) to existing forms of employee participation. Also in Sweden EWCs harmonize with the national system of industrial relations. Members of the special negotiation body and EWCs’ employee representatives are elected by local trade unions. In practice, union representatives are only a form of employee participation in enterprises there.

EWCs have naturally „built in” the forms of employee participation in Spain, reflecting legal position of works councils in this country². Their activities have contributed to some changes in the culture of national system of industrial relations. Trade unions have noticed the importance of union cooperation at the European level and have taken steps in order to improve their competence and skills in this area. EWCs have also become a stimulus for establishing groups of employee committees which facilitate communication between workers from different plants. The impact of EWCs on industrial relations in Portugal is practically equal to zero. According to data from the end of 2005, the institution existed only in one transnational enterprise with headquarters in this country. The fact that national works councils are established only in large companies and have limited rights to information and consultation hinders the establishment of such institutions at the European level. EWCs in Italy are linked to the existing system of representation via the procedures of appointing employee representatives on statutory EWCs and Special Negotiation Body. There is hardly noted effect of the Directive on the Italian industrial relations system, mainly because of the widespread practice of information and consultation of employees in this country.

In Greece, EWCs were an important innovation of national system of industrial relations. Although works councils are statutory in Greece, their extent and importance are marginal. Moreover, there is a low diffusion of participatory bodies and a lack of information and consultation procedures. Therefore, EWCs could help to create a “participatory climate”, at least in transnational companies, and change the attitude of social partners to these institutions. EWCs had the most substantial impact on industrial relations in the UK and Ireland because there were no similar works council-type structures in these countries. The implementation of the Directive has caused a change of the traditional “single-channel” system of industrial relation into a “dual-channel”

² Works councils in Spain have, as the EWCs, only rights to information and consultation.

representation supplemented by works councils (*European Works Councils – Facts and Figures*, p. 32; Pedersini 1998, pp. 9–15).

The situation looks quite different in the new EU countries which not only had to build the basis of market economy³ but also had to meet the requirements associated with the accession. There were no earlier real systems of industrial relations, especially employee representative participation in these countries. Trade unions which organized the vast majority of workers were under control of communist parties. Transformation of the economy has brought about two essential changes in the system of industrial relations turning the position of social partners. Firstly, trade unions lost their leading role as well as substantial number of their members. The main reasons of the decline in union density were: long-term process of privatization, open anti-union politics, lack of flexibility and difficulties in adjusting to the new circumstances. Secondly, employers have started to exploit their power in enterprises and they rejected all initiatives aiming at developing employee participation. These initiatives were perceived by employers as restriction of their rights and even as a return to the previous political system.

The EU enlargement caused that EWCs have become an essential feature of industrial relation systems in new EU countries. Among all 811 functioning transnational enterprises with EWCs, nearly 70% had their plants in new member states at the end of 2006⁴. Moreover, there are 31 transnational companies under the EWC Directive with headquarters in the new member states. Research have shown⁵ that early involvement of representatives from new member states in EWC structure depends on the following factors: the significance and impact of investments of transnational companies in these countries, the strength of union international cooperation, central management attitudes, and the existence of different forms of employee participation in new plants. EWCs have a slight impact on central management decisions regarding the situations of plants in new EU countries. However effect of EWCs on national systems of industrial relations is significant, though it is stronger in the case of more active EWCs and positive attitudes of local management towards these institutions.

European Works Councils contribute to the development of social dialogue, they improve labour relations and build up already existing

³ Besides Cyprus and Malta where rules of market economy were commonly applied.

⁴ Data refer to 10 countries which became EU members in May 2004.

⁵ Research in the form of interviews with employee representatives from four new member states (Poland, the Czech Republic, Hungary and Slovakia) taking part in meetings of 10 EWCs, were carried out on behalf of the European Foundation for the Improvement of Living and Working Conditions between January and July 2006.

institutional forms of employee participation in new member states. It is particularly important in the case of the initial phase of the crystallization of industrial relations, the creation of new institutions in the form of works councils, relatively weak position of trade unions and lack of cooperation between social partners in these countries (*European Works Councils Experience...*, pp. 29–31). However, not only the EWCs' Directive affects industrial relations in new member states, but also vice versa – the EU enlargement influences EWCs practice. They have become more diverse and pluralistic as far as both language pluralism and cultural, social and trade union policy are concerned. In some cases (with significant employment in new member states) the EU enlargement had also impact on the balances of power and the internal structure of EWCs in the direction of emasculating the influence of those EWC members who come from the countries where transnational companies' headquarters are located.

3. The impact of the EWCs on transnational companies' activity

As an institution, EWCs appeared as a result of restructuring and it can be argued that how they deal with this issue is the acid test of whether they achieve their main aim – “to improve the right to information and consultation of employees in undertakings or establishments within the Community” (Councils Directive 94/45/EC of 22 September 1994, Article 1.1.). The evidence suggests that there is an enormous variation in EWCs' achievements in this area. In formal terms, the analysis of the agreements establishing EWCs imply that the great majority of these institutions (about 80%) should receive regular information and consult on general topics (e.i. employment, production, company structure) that may be relevant to transnational company restructuring. About 60% of EWCs should be informed and consulted on specific restructuring-related topics (e.g. mergers or closures, transfer of production and cutbacks).

Most EWCs therefore seem to be quite well equipped to be regularly informed and consulted on restructuring-related issues. However, assessing the meaning of these guaranteed rights, other important features of the agreements should be taken into account. It turns out to be a relatively rare regulation for the agreements that information and consultation should occur at such time as to allow for meaningful consultation, or for EWCs position to be taken into account. Moreover, few of EWCs' agreements depart from the very general definition of “consultation” included in the Directive (i.e. “the exchange of views and establishment of dialogue between the employee representatives and

the employer”) (Councils Directive 94/45/EC of 22 September 1994, Article 2.1.). Only 10% of the agreements contain more precise provisions concerning consultation, i.e. a right for the Council to respond formally to management proposals and to receive a considered response from management before it acts. It is also essential that agreements very often restrict EWCs’ activity only to transnational issues, prohibiting at the same time from dealing with matters on a national level (Carley, Hall 2006, pp. 63–64).

The agreements establishing EWCs are obviously important (as the legislative framework), however they are not a precise guide on how the institutions should operate. As T. Müller and H. W. Plater (Carley, Hall 2006, p.64) argue, lack of exactly specified extent of rights and duties (in the Directive and in the agreements), does not mean that the Councils as a form of employee participation and forum for social dialogue are necessarily weak. There are numerous examples of EWCs which exceed their formal rights. Their effectiveness is thus achieved rather by practical operation. According to the research, majority of EWCs deal with transnational corporate restructuring at both regular and extraordinary meetings. In general, the role of EWCs seems to be essentially “communicative” and “consultative” in the sense of the Directive. The evidence suggests that only a slight part of the Councils have succeeded in exerting some significant form of influence on the process of company restructuring.

Trade union organizations criticize this situation claiming that many EWCs have only limited influence on central management decisions, particularly with reference to restructuring⁶. Also employee representatives express their dissatisfaction concerning the quality of information provided by management, and mainly the way of conducting consultation (Waddington 2003). Results of the survey conducted between 2002 and 2004 by the European Foundation for the Improvement of Living and Working Conditions are a bit better (*European Works Councils in Practice*). They prove that the quality of information provided by the management has been described by employee representatives as sufficient, good and even very good in the majority of cases studied. An increased flow of information was noticed particularly in the UK where statutory forms of information and consultation had not existed before. This fundamental change has been underlined by British trade unions especially in the case of GlaxoSmithKline, Royal and Sun Alliance Group. However, in respect of consultation the assessment was rather negative. From the employee

⁶ The European Commission Document from April 2004 summing up the activity of EWCs notes that there are examples of EWCs where „information and consultation were absent or ineffective during restructuring process that has brought about concern and anger among employees” (Carley, Hall 2006, p. 64).

representatives' point of view, real consultation with central management has occurred rarely. The Councils' propositions and reservations were considered, however only during the final stage of implementation of the decision made unilaterally by the management.

According to EWCs members, after overcoming the language barriers, the Councils can create an excellent opportunity for communication between representatives of workers from different countries. It is also important EWCs facilitate making a common employees' front during plenary meetings with management. For example, the members of the Assa Abloy EWC stated that the main advantage of their activity in the EWC was the establishment of contacts between the representatives from different plants and better understanding their working conditions. However, the EWCs members claim that training in economics and labour law is essential for them to fulfill their job effectively. Another important advantage is that local management are aware that employee representatives are well informed and will not longer accept insufficient information. For example, in Italian transnational company Merloni, the EWCs' members reported that the industrial relation manager responded to the requests raised by the employee representatives even during the informal meetings (*European Works Councils in Practice*, pp. 81–83).

Employers in most cases are content with current state and they are not interested in developing EWCs' role beyond information and consultation in the Directive's sense. Lack of influence on management decisions is treated by them not as a defect but as virtue (Carley, Hall 2006, p. 64). According to the survey conducted by the European Foundation for the Improvement of Living and Working Conditions, in the view of the most management representatives, the advantages of EWCs activity clearly outweigh the disadvantages. Contrary to previous concerns, EWCs do not slow down the decision making process. The management representative from Volkswagen underlined that the EWC even speeds up the decision due to informal talks taking place in the background. The only negative consequences pointed by management representatives were the costs and the time required to prepare documents for plenary meetings and to attend them.

Positive assessment of management from companies with EWCs established on the base of voluntary agreements should not be surprising⁷. More interesting are examples of companies where the management was initially reluctant to set up EWCs. In many cases their opinion completely changed after

⁷ Employer establishing an EWC on the basis of voluntary agreement was not obliged to create special negotiating body, which guaranteed him a great deal of freedom while defining the rules of EWC's activity.

some years of EWCs operation. One example is Air France where the EWC's activity contributed to the harmonization of social and managerial principles, and had a positive effect on the process of company' internationalization. Thanks to the EWCs, employee representatives are better informed, which helps them better understand management decisions and their implications. The EWCs also play an important role in the strategy of transnational companies with reference to mergers and acquisitions⁸.

Another advantage pointed by management is the improvement of the communication structures in transnational company. For example, the management representative from Bosch stated that the EWC caused the central management to understand problems and circumstances of plants in different countries. This view was shared by members of management from British Airways, Volkswagen, Merloni and Generali. According to GlaxoSmithKline management member, the requirement to inform and consult with employees at European level influenced the management decisions in such a way that they are now considered thoroughly and with better knowledge. The representative of management from Electrolux even predicts that the rights of the EWCs will be extended from consultation to codetermination in some less important issues (*European Works Councils in Practice*, pp.81–86).

There are no known cases where a EWC has significantly influenced a strategic business decisions leading to restructuring of transnational company⁹. In fact, there is no reason to expect that EWCs should do so, as they are not decision-making bodies or substitutes for a board of directors or a management board. According to the Directive, EWCs have only rights to information and consultation. But there are cases of EWCs which have had some influence on the transnational restructuring process. In the Netherlands EWCs have been involved in restructuring of electronic company LPGD and cables' company Draka. Central management of French corporation Renault informed the EWC about extensive restructuring plans and even called a special information meeting of the EWC. The EWC in Danish company Group4Falck was involved in discussions on the merger with Securicor. The EWC' Committee in Unilever intervened in two cases of transnational restructuring. Moreover, EWCs helped to ensure the employees social aspects during restructuring in the following companies: Aventis, Bayer, Electrolux, Group4Flack, Henkel, and Whirlpool (Hall, Marginson 2004, p. 10; Carley, Hall 2006, p. 64; Pedersini 1998, p. 8).

⁸ According to the data from the end of 2005, more than 200 transnational companies with EWCs (i.e. 28% of all such companies) were engaged in international acquisitions and mergers (*European Works Councils – Facts...*, p. 43).

⁹ This is the main reason why central management generally supports the establishing of EWCs.

Generally, EWCs involvement in restructuring process was informal and difficult to measure. However, there are cases where central management and a EWC concluded a type of written agreement regarding restructuring. According to data included in *European Works Councils Bulletin*, 19 such agreements in 13 transnational companies have been written. These agreements take different forms:

1. rules and guidelines to apply generally when restructuring occurs (Axa, Danone, Deutsche Bank, Dexia, Diageo, Total);
2. negotiated responses to a specific Europe-scale restructuring exercise (Danone, Ford, GM, Unilever);
3. general references to how to deal with restructuring which are included in wider accords on corporate social responsibility – CSR (EADS, PSA Peugeot Citroën, Renault, Suez).

The agreements on restructuring account for about 25% of all accords (*joint texts*) signed by EWCs and central management of transnational company. Signatories to the agreements were EWCs or World Works Councils together with international and national trade unions. These joint texts on the European level resemble national collective agreements because they usually lay down a set of guarantees for the employees affected by the restructuring. EWCs can be seen here as a forum for negotiations of mutually beneficial solutions to problems resulting from restructuring, especially problems concerning job losses and consequences of the changes of employment conditions. These joint texts are the clearest expression of EWCs influence on transnational companies' activity and the involvement in companies restructuring (Carley, Hall 2006, p. 24–26.).

The question is why most EWCs were not closely involved in handling the restructuring process, while at the same time a few EWCs had a clear input which in some cases can be treated as a form of negotiating some restructuring aspects. The results of research (Hall, Marginson 2004; Marginson, Hall, Hoffman, Müller 2004) distinguished some factors which determine EWCs' influence on companies' activity. The first straightforward one is that an EWC needs to be informed about a given issue before making a decision in such time to have the possibility to meet the details, present the EWC' position and have a chance to influence management's action. EWCs' involvement at an initial stage of the decision-making process when some issues are still open, depends mainly on the provisions of the agreement establishing EWC, management attitudes and the constraints imposed by confidentiality requirements. A key factor of EWCs' involvement in restructuring is the opportunity to organize extraordinary meetings and, especially, an ongoing communication between management and employee representatives through active and regular meetings of EWCs'

Committees. Subsequent factor defining EWCs' ability to become involved meaningfully in restructuring is "the platform of industrial relations" which is created by different forms of employee participation existing in particular plants of a transnational company. High degree of organization of the employee side outside the framework of EWC itself, good relationship of EWCs with such representation and fast flow of information between them, all increase the possibility of EWCs influence on management decisions. Moreover, important factors are the financial resources and technical assistance available to EWC as well as cohesion of the employee side which may be impeded by local interests of employee representatives.

The natures of companies' business operations, the structure of management and the attitude of central management also have influence on EWC' involvement in decision-making process. The impact of EWC was found to be greatest in single-business companies whose plants are spread across different countries and where production and other activities are integrated across all this area. Many of EWCs which have had the most visible input into restructuring are in companies in sectors such as automotive, food and finance which are characterized by internationally integrated operation. EWCs have no impact on management decision-making process in multi-business companies whose plants tend to be concentrated in one country. These institutions function more effectively in transnational companies with European-level management structure which corresponds to the organizational structure of EWC (Carley, Hall 2006, pp. 65–67; Marginson, Hall Hoffman, Müller, pp. 211–214).

Since restructuring may be in some sense the most important issue with which the EWCs deal – in terms of impact on the jobs and working conditions - the way EWCs cope with it may increase their power (status in transnational company) or highlight weaknesses. There is also some evidence that dealing with restructuring can help to build EWC' cohesion and effectiveness. According to the results of the European Foundation research, permanent restructuring in Deutsche Bank have led to a higher frequency of the EWC' meetings, which increased the status of the EWC and intensified contacts both among the EWC' employee representatives and between the EWC and the management. Active involvement in transnational corporate restructuring together with the influence on the employment and social aspects of the implemented decisions, seem to be a rare practice in EWCs. The increase in the number of active and influential EWCs in the future significantly depends on the legislative changes associated with the review of the Directive¹⁰ and on the

¹⁰ The issue of the Directive's review was taken into consideration during the conference on EWCs' influence organized in Aarhus (Denmark) in 2002 by European Confederation of Trade Unions and main Danish trade unions (Hall 2002). The European Commission began the first stage

dissemination of “best practices” which take into account all factors conditioning such impact.

4. Conclusions

The conducted analysis leads to the following conclusions:

1. EWCs were a kind of early stage before introducing works councils at the plant-level in countries where such statutory forms of employee participation had not existed before. Among “15-EU countries” the largest influence of EWCs on national industrial systems was observed in the UK and Ireland. The implementation of the Directive caused a change of traditional “single-channel” system of industrial relations to a “dual-channel” representation supplemented by works councils at the European level.
2. EWCs’ activity creates “participation climate” causing the change of social partners’ attitude to works councils and has a significant meaning for crystallization of industrial relations in most new EU countries and for unification of these relations in all Europe.
3. According to the agreements, most EWCs seem to be quite well equipped to be informed and consulted, however in practice; in majority of cases the role of EWCs is not significant. EWCs do not influence substantially the decisions of central management in transnational companies. The researches show that EWCs function as information- or information-consultative institutions.
4. Nevertheless, many EWCs are deeply involved in their companies’ activity, especially in the area of restructuring, if they are able to appropriately exploit their statutory rights. It is important that information and consultation should take place at an initial stage of decision-making process to enable EWCs to present their own opinion or to take their opinion into account by central management. Other factors conditioning EWCs’

of open consultations devoted to the Directive’s review in April 2004. The main demands presented by European Institute of Trade Unions are: clear definition of “information” and “consultation”, recognition of trade unions’ role, improvement of the procedures of renegotiation EWCs’ agreements, guarantee of training for EWCs’ members. However, Union of Industrial and Employers’ Confederations of Europe (UNICE) claimed that no legal changes were necessary and the Directive’s review would lead to further constraint of employers’ freedom. The second stage of open consultations devoted to the Directive’s review has been taking place since March 2005 (Jagodziński 2006).

influence are: the opportunity to organize extraordinary meetings, an ongoing communication between management and employee representatives through active and regular meetings of EWCs' Committees, the degree of organization of the employee side outside the framework of EWC itself, structure of management, attitude of central management, the nature of companies' business operation and the level of production integration.

5. The clearest expression of EWCs influence on transnational companies' activity and involvement in companies restructuring are joint texts concluded with central management. These signed at the European level agreements lay down a set of guarantees for the employees affected by the restructuring. There are no known cases where a EWC has significantly influenced a strategic business decisions leading to restructuring of a transnational company. On the other side, there is no reason to expect this because, according the Directive, EWCs do not have right to codetermination.

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