

Different Rules of the Game: German-British EWC Conference in London

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The British system of employee representation differs fundamentally from the practice in many continental-European countries. In the motherland of the industrial revolution works councils are unheard of and there exist no participation rights and often no clear legal rules. A discussion took place on these topics as well as on the different EWC models during a two-day direct and intensive exchange between German and British employee representatives.

Around 40 employee representatives from Germany, the United Kingdom and four other countries came together in October 2011, in Bloomsbury House, a historical heritage site in the heart of London, for an exchange on their respective industrial relations and on the working experience within their European works councils (EWC). The EWC chairmen from RWE, the German power supplier, GlaxoSmithKline, the British pharmaceutical group and Avaya, the US Telecommunication supplier, presented recent examples of their work.



Dr. Werner Altmeyer from the training and consultancy network „euro-works council.net“ gave an introductory presentation on the principles for a better understanding of the different national labor relations’ models. Of particular interest was the description of the German, French and Anglo-Saxon models. The participants were somewhat familiar with both the German as well as the Anglo-Saxon systems but hardly at all with the French game play. This was however precisely the model used as the blueprint for the entire EWC Directive.

Timid beginnings of labour legislation through EU law

A part of the conference was devoted to a comparison between German and British labour legislations. Professor Dr. Sonia McKay from the London Metropolitan University, who has been scientifically analyzing developments for many years on behalf of the TUC, the British Trades Union Congress, presented highlights of the role and rights of company trade-union representatives. These are actually the counterpart to the German works council, but they are not backed-up however by any labour legislation. The so-called „Recognition“ which is the acknowledgment of employee representation by the employer, must be fought out in each individual company - if necessary through labour disputes. Minimum legal regulations have only existed since the year 2000 under pressure from the European Union.

The establishment of information and consultation committees was likewise based on EU legislation and made legally possible in 2005. William Coupar, for many years a director of IPA, the London based consulting company described their role and powers. They are elected by the entire workforce and are, strictly speaking, as for German works councils, independent of trade unions. They are responsible however only for information and consultation in social and economic questions within the company. Due to British tradition they are often considered only as „second class“, which explains why there are not yet very many of these committees in place.



According to Mari-Luz Carretta Sánchez, an employee representative from Coty, the perfume and cosmetics' manufacturer from Granollers (Spain): „I have received extremely dense and detailed information on the subject matter. This has helped me to get a very good understanding also of the work of other European works councils.“

Almost as a contrast to the British situation, Uwe Tigges, chairman of both the RWE European works council and Group works council in Germany, outlined the instruments for employee participation on national and international levels. Of particular importance, in his view, was the fact that the possibilities offered by German legislation, through both company arbitration boards and the voting powers in supervisory boards were rather the exception than the rule. According to the chairman, generally speaking one operates in the context of industrial peace agreements. Tigges stressed how much the local level constitutes the foundation for the activities of German works councils. Now within the EWC, the most diverse employee participation cultures come together. Based on their own experience he was able to clear up misunderstandings on behalf of many of the participants. His final plea was clearly directed towards getting to know each other better from inside and to discussing possible resistances in direct communication with one another.

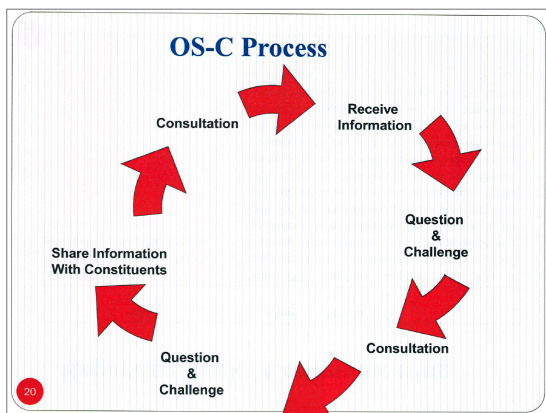
Unconventional transposition of the EWC Directive

A plea which has gained in significance after the transposition of the EWC Directive and which does not only concern the employee representatives. Since 6th June 2011 the Directive has also come into force in the United Kingdom. However European works councils and information and consultation committees are regarded, by a large part of British management, as alien. They therefore privilege „mixed“ forums made up of both employer and employee representatives and whose powers are subordinated, whenever possible, to the final agreement of central management.



Carl Davies (photo), from the British Department for Business, Innovation and Skills (a separate Ministry of Labour does not exist) described at the conference the new legal situation for European works councils. The transposition took place on a completely unconventional basis in Great Britain: although large parts of the new European Union Directive were transposed literally into British legislation, there are quite negative deviations in comparison with other member states. Hereby, old agreements dating from the period up to 1996 can, for all eternity, never be legally challenged. Another aspect of the British legal situation came as a great surprise to German works council members: if a British EWC takes central management to court, the costs of the law suit do not have to be covered by central management.

The example of GlaxoSmithKline, the British pharmaceuticals group demonstrated how the new Directive could bring new inspiration despite the lack of tradition in Great Britain. In an interesting presentation, Tomás Curran, the Irish chairman of the European works council, showed how the adaptation of the old agreement to the new Directive produced qualitative improvements. He deduced that if the new Directive is adapted to the reality of the company, then the separation of the information and consultation phases only applies to a limited extent. The dynamics, to which a company is subjected to, is reflected in a permanent restructuring process. Curran therefore concluded that a timely and content-rich involvement of employee representatives is also an important matter of concern for central management. This should therefore be organized more on an as-required basis and more flexible rather than being forced into a tight chronological straight-jacket.

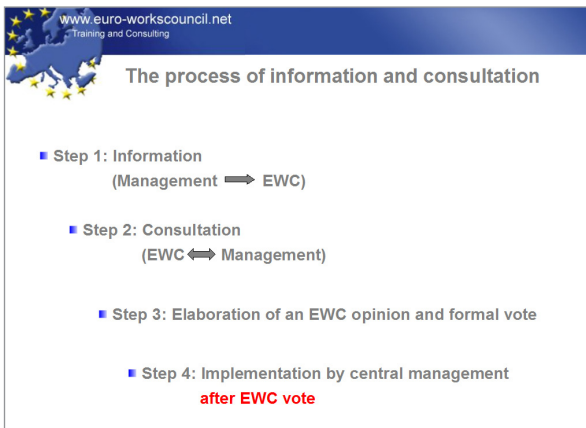


Ludwig Daum from Neustadt-on-Danube and EWC chairman of Covidien, the manufacturer of medical products made the following comment: „Our EWC agreement is subject to British law. For our work it is very important to have an exact understanding of how it functions. I received very competent answers to my questions at the conference“.

Law Courts given a stronger role

The second day of the conference focused on the interpretation of the new Directive. Information and Consultation have now been defined considerably more precisely as well as more comprehensively than in the previous Directive. However, in practice this does not seem to be the case everywhere. Even before the new German EWC legislation came into force, the Frankfurt labour court ruled to strengthen the rights of EWC representatives from Avaya, the US Telecom supplier, which also follows Anglo-Saxon tradition. The British EWC representative from Avaya was regularly harassed by management because of her involvement.

The basic question was: „what is the appropriate time to spend on this activity?“ The explanations of the new EWC chairman, Dr. Zoltan Furi from Hungary (photo) and the Frankfurt lady barrister, Erika Fischer, made it clear how difficult it is for Anglo-Saxon management to comprehend the comprehensive rights of works councils. Since the problems in the United Kingdom could not be solved otherwise, the EWC called upon the labour court in Frankfurt. A negotiation took place there on 12th November 2010. Following the suggestion of the court, Central management and the EWC agreed that all EWC members should have „sufficient“ time-off work and not a fixed allowance. This also affects the definition of performance figures for employees elected to the EWC. This settlement, which applies to all European countries, can no longer be legally challenged.



The Visteon case described by Werner Altmeyer is also of great significance. A few weeks after it came into force on 18th June 2011, the new German EWC legislation was having its first acid test in court. On 8th September 2011, the State Labour Court of Cologne ruled in second instance against an injunction order and refused the European works council of Visteon, the US automobile supplier, its legal participation rights in the context of a planned plant closure in Spain. On the one hand the court concluded that the rights of the EWC had been denied. On the other, the court could not see a way of enforcing the provisions of the new EWC Directive within the German legal system.

In a plenary meeting held on 30th September 2011 in Berlin and in the presence of Spanish representatives, the EWC of Visteon decided to use all possible legal means including as far as the European Court of Justice in Luxembourg, if necessary. Should the lawsuit actually come before the European Court of Justice, it would have an effect on all European Union countries – including those who handle participation rights for works councils in a much more restrictive manner e.g. the United Kingdom. Indirect effects would also result for SE works councils.

Change by convergence?

During the conference it became obvious how deep the rift was which divides the rights of a German works council and a British employee representation both legally and in practice.

Great Britain lies at the bottom of the ranking of employee participation in Western Europe according to the European Trade Union Institute (ETUI) in Brussels. Only in Bulgaria and the three Baltic States is employee participation weaker than in the motherland of Manchester capitalism. British employees are, to a far stronger extent, abandoned to the mercy of their management, than is commonplace or acceptable within the EU. Since many Central and East European countries will gradually converge towards the EU average, it is only a question of time before Great Britain ranks Europe's bottom of the class.

German works councils cannot however turn their backs. One EWC in five is subject to British law and nearly all international companies operating in Germany have a site in the United Kingdom. Direct exchange of experience is therefore to be continued during further conferences. The new Directive and possibly also new court rulings will offer a framework for the players to become more strongly aware of their information and consultation rights.



Ashley Hutchinson, from Reckitt Benckiser, health, cleaning and household product manufacturer, in Derby (UK) commented: „For me the conference was very informative. Compared with the German system of participation, in Great Britain we have only few rights. In our EWC, together with my German colleagues, and naturally also with others, we would like to better exploit all the possibilities that have been so well described here“.

The event was organized by the training and consultancy network “euro-workscouncil.net” in cooperation with the London office of the Friedrich Ebert foundation from Germany.

