

New standards for information, consultation and participation – also in Eastern Europe

Bernhard Stelzl

The Hamburg European works council conference took place for the fourth time in January 2012. Around 40 participants from Germany and a further eight countries discussed how to develop the EWC into a genuine partner of Central Management for social dialogue and negotiation and the current situation of employee representation in Eastern Europe.

Although the new EWC legislation has been in force since June 2011 many EWC members still ask themselves: What does a correct information and consultation actually look like on the basis of the new legal standards? What to do if central management does not respect the new legal situation? What subjects can be brought into a negotiation process with central management? The first day focused on all of these questions.



Dr. Werner Altmeyer, from the EWC Academy, first of all introduced the typical theoretical sequence of events for a consultation procedure (see appendix). Thomas Rösner, the EWC chairman of Visteon, the U.S. automobile supplier, then reported how their EWC had tried unsuccessfully to prevent a plant closure in Spain using legal means.



Prof. Dr. Wolfgang Däubler (photo) reported that many regional industrial tribunals already take injunction orders in Germany when a German works council prosecutes for compensation or redundancy. Visteon is the first case ever in Germany for a European works council. On the one hand the judges from the regional industrial tribunal in Cologne ruled that the employer had violated the law, but on the other they did not however prevent him from implementing. Däubler considers the German EWC transposition to be none EU-compliant since it does not provide

any effective sanctions for the violation of EWC rights.



The two French conference participants from Generali, the Italian insurance group emphasised: *“We now understand the new legal situation for consultation better. This is particularly important in a company such as ours where the employer is not particularly interested in applying it.”*

Heinz-Joachim Barchmann from the SPD Bundestag faction explained that his group had abstained during the vote on the new EWC legislation since the demands of the SPD had not been taken into account. These included harder sanctions, injunction rights clearly defined in the legislation, an access right for EWC members to all company sites within the EU and a clearer definition of the transnational matters for which the EWC should be responsible. The SPD parliamentary group has established a commission on employee participation and wants to amend the EWC legislation accordingly following a change in government.



Two examples of transnational “company agreements” were introduced in the afternoon. Rolf Zimmermann, the chairman of the Allianz SE works council, presented an agreement on work related stress. The insurance group would like not only to meet health and safety standards but even surpass them. The agreement provides the framework and national employee representatives are responsible for its implementation.



This is similar also to Volkswagen where a charter on labour relations has been concluded. According to Dr. Cristina Schultz-Côrtés, their EWC expert, it defines minimum standards for the

work of local employee bodies in the automobile group and covers more than 60 locations in 15 countries. The worldwide charter is to be put into practice everywhere through local works agreements (“site-specific participation agreements”). Dr. Reingard Zimmer from the University of Hamburg presented the scope of transnational collective agreements and the European Commission’s considerations for creating a legal framework for them.



The opinion of Beate Bockelt, a EWC member of Sanofi-Aventis, the French pharmaceutical company:

“I now understand the main flow of a consultation procedure. The information on industrial relations in Central and Eastern Europe was also very useful since our workforce is continually growing in these countries.”

Conclusion of the first day

The conference participants ended the first day with a dinner together in the historical Krameramtsstubben, a collection of timber-framed houses from the 17th century in immediate proximity to the Hamburg landmark “Michel” of the Saint Michaelis church overlooking the port.





Employee representation in Central and Eastern Europe

The second day was entirely dedicated to the five most important countries in Central and Eastern Europe: Poland, Czech Republic, Slovakia, Hungary and Romania. The integration of representatives from the EU-acceding countries still represents quite a challenge for many European works councils. How to find contacts when there are not yet any local employee representatives? What does the current situation of the labour legislation, trade unions and the works councils look like? Four speakers from Warsaw, Bratislava, Budapest and Bucharest reported on the subject.



The speakers from Eastern Europe (from left to right): Jan Czarzasty, Warsaw / Csaba Makó, Budapest / Laurențiu Andronic, Bucharest / Clemens Rode, Bratislava

According to Clemens Rode, a long-standing employee of the Friedrich-Ebert foundation in Bratislava and intimately acquainted with many East European countries, any rules concerning industrial relations are largely irrelevant in practice. The judiciary process works far too slowly and involves year long delays. Most important is not the labour culture of the individual countries but rather the different corporate cultures. Certain German and French groups export exemplary social dialogue practices; whereas sometimes the exact opposite is valid for non-European groups.

During the discussions some conference participants complained that they did not have access to the employees or to business premises. **Rode recommended to thoroughly verify the appointment of EWC representatives from Eastern Europe since sometimes they are selected by management (as undercover) and do not have any democratic legitimacy.**

Dr. Jan Czarzasty from the Warsaw School of Economics described the areas of conflict between the traditionally strong trade unions in Poland and the works councils which are to be established according to EU rules. They were put in place only after long delays and regarded as competition by trade unions. There were already 3,269 works councils in Poland in December 2011. They have the right to information and consultation but the details are left to the employer. Collective agreements are also more and more seldom to be seen due to the strongly declining degree of trade union membership (currently only 15%). Sectoral collective agreements cover only 3.5% of the workforce and 25% are concerned by collective agreements at company level. Almost 30% of all employment contracts in Poland are temporary or short-term precarious.

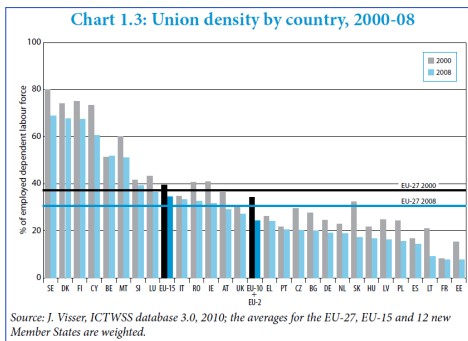
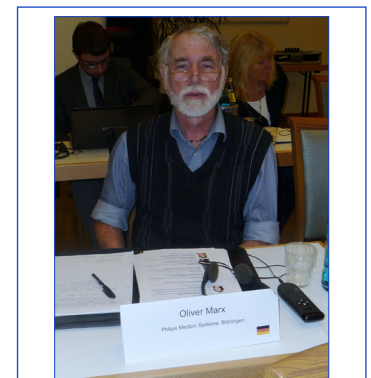


Chart: Level of trade union membership

is however today over. The conservative government is currently trying to restrict trade union collective bargaining rights and the protection against dismissal for employee representatives. Like the Slovakian government it is criticised for violation of the European social charter.

The social climate is also tense in Romania between the government and the social partners. Laurențiu Andronic, director of LAND, a consultancy company in Bucharest which delivers training for Romanian employee representatives, described the current situation. The conservative government is at present trying to weaken the position of trade unions through a new labour code.

Dr. Csaba Makó from the Hungarian Academy of Science explained that multinational companies pay 50% more than Hungarian companies. He criticised that innovation is not as strong as it should be, and the lack of sustainable competitiveness of the Hungarian economy. Works councils were also regarded as competition by the trade unions earlier in Hungary just as in Poland; this phase



Comment from Oliver Marx, a EWC member of Philips, the Dutch electronics company: *"For me it was particularly important to know what rights the works councils and trade unions have in Central and East European countries. I had a lack of knowledge there."*



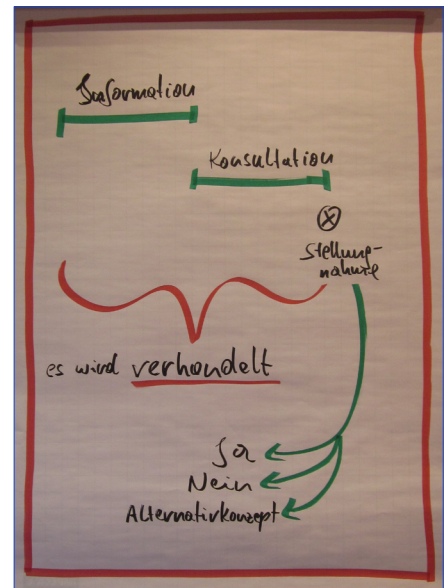
Appendix:

Correct flow for consultation procedure

The “blueprint” for the EWC Directive originates from France

In view of the new legal situation many works council members are confronted with the question of how they can put into practice the new standards of information and consultation. French dominated European works councils have more success in the matter. Why?

When the EWC Directive emerged in 1994, the European Commission based itself on practical examples already in existence. At that time there were transnational forums with employee representatives in 49 companies which were to a large extent French. The Directive is therefore strongly marked by the French model. The word “codetermination” is to be seen nowhere. German employment lawyers, German works councils and German managers are ill at ease with this. In order to understand the correct flow of a consultation procedure, it is therefore worthwhile having a look at French labour legislation.



The rules for Information and Consultation put to the test for many years

A French employer can only implement measures once the information and consultation procedure with the works council has been correctly carried out and concluded. The procedure is finalized once the works council has formulated an opinion. Since the employer wishes to implement measures as quickly as possible, it is in his interest that the works council decides rapidly on an opinion. French works councils are aware of this and often try to delay the consultation procedure. This can create substantial financial pressure and encourage French employers to make concessions. In practice therefore, negotiations take place on both the procedure as well as on the contents of restructuring. Nevertheless there are also many legal disputes in France on the subject.

Over and over again, the implementation of unilateral measures have been stopped by the employment tribunals and workforce reductions can only be made after long delays. An incorrectly completed consultation procedure has a similar legal effect in France to a formal irregularity of the employer for individual dismissals in Germany. The measure is then invalid.

If a French works council is familiar with the legal subtleties, in the end it can obtain similar results to a German works council in the scope of codetermination without ever pronouncing the word “codetermination”. On top of this there is the individual right to strike, which each employee enjoys as a human right. No-strike obligations do not exist.

The European works council is no longer a song-and-dance act

For the first time, the European legislator has defined the information and consultation procedure for the EWC in this French spirit. Now it is a matter of transposing it into practice and further developing the EWC into a negotiating partner of central management. There exist already examples.

Source: EWC News 3/2011