Changes to the EWC legal framework: trade unions’ assessment

More robust legal framework

Subsidiary Requirements
- Vague rules on confidentiality too often used to abuse & block information flow, withhold information & limited rights to appeal to court
- Subsidiary requirements are used as a benchmark in EWC negotiations and act like minimum standards.
- In 15 out of 28 MS EWCs have no legal capacity to act in courts

Confidentiality rules
- Vague definition in the body of the EWC Directive; clear definition only in the Preamble (not binding)

Enforcement
- Sanctions for violations of EWC law not up to the standard of effective, dissuasive & proportionate

Access to Justice
- EWCs with trade union support are more efficient
  - Right for trade union representatives to participate in all EWC and Select Committee meetings & access to all company sites

Role of European Trade Union Federations
- Better coordination between local, national and European levels essential. Resources and rights must be guaranteed

Definition of ‘controlling undertaking’
- Currently contract management, franchise systems and joint ventures excluded.
  - Objective criteria to determine location of ‘representative agent’ & ‘central management’ lacking

Articulation between levels
- In 2016: 42% of EWCs active still exempted from EWC Directive = no level-playing field for all EWCs & workers excluded

Article 13 agreements
- No national rules when negotiations for an EWC fail or exceed 3 years and/or when no reply to request for an SNB within 6 months

Definition of ‘Transnational character of a matter’
- Improved & clarified SNB negotiation rules

Sources:
1) ETUC position paper - For a modern European Works Council (EWC) Directive in the Digital Era. Adopted at the ETUC Executive Committee on 15-16 March 2017 in Malta
4) www.ewcdb.eu
Changes to the EWC legal framework: pressing evidence

EWC Recast Directive only confirmed existing practice and had little/no impact

Subsidiary requirements used as a benchmark in EWC negotiations and act like minimum standards.

More robust legal framework

Recast: no stimulating effect

Minimum standards matter

Sanctions not effective, dissuasive & proportionate

In 15 MS EWCs have no legal capacity to approach courts

Problems with definitions: transnationality & confidentiality

EWCs with trade union support more efficient

Better coordination between local, national and European levels essential; insufficient resources

EWCs largely unable to play their role (timing ignored, meaningless consultation, no role in restructuring)

Problems with confidentiality

Recast Directive had limited impact on agreements & practice

EWCs with very limited impact on restructuring

Few new EWCs each year

Significant variation

EWCs unable to influence decision-making

Few new EWCs each year

Problems with definitions: transnationality & confidentiality

European Commission (2015) 'Study to evaluate the effectiveness of the European Works Councils in the transport sector', a study by ICF

1) ETUC (2016) European Works Councils: Assessment and Requirements. Report to the ETUC.

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