# The Proposed Changes to the EWC Directive

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HRPA HR POLICY ASSOCIATION HR POLICY GLOBAL

# Background

- Since at least 2015, the European trade unions have been pushing for the revisions of the European Works Council Directive.
- In their words it was not “Fit for Purpose”. By this they mean that the 2009 Directive does not give EWCs and trade unions sufficient leverage to block and negotiate over proposed management restructuring decisions.
- Again, in their words, EWCs are not “properly” informed and consulted before decisions are made.
- However, the European Commission which is responsible for bring forward legislation did not see revising the EWC Directive as a priority.

# Radtke and the Parliament

- Denis Radtke is a German MEP, elected to the Parliament in 2019. Prior to that, he was a union official with IG Chemie. He is a member of the German CDU, an affiliate of the European Peoples Party.
- In 2022, Radtke presented a report calling for a revision of the EWC Directive. His report was little more than the European Trade Union Confederations (ETUC) wish list.
- His report was subsequently adopted by the Parliament.
- When she was canvassing support to become President of the Commission, Ursula von der Leyen gave a commitment that she would respect and act on any such Parliamentary legislative initiative.
- A revision of the Directive became inevitable.

# The Process

- A revision of the EWC Directive is an employment law change and falls under Articles 153 and 154 of the EU Treaties.
- This requires a two-stage consultation of the EU social partners, employers and union, before the Commission can table a legislative proposal.
- During the consultation process, the social partners can inform the Commission that they wish to negotiate an agreement between themselves on the issue in question abd the legislative process should be put on hold.
- While the employers offered to negotiate the unions, with the Radtke Report in their back pocket, declined to do so.
- As a result, in January 2024, the Commission published a legislative proposal to revise the Directive.

# Next Steps and Timeline 1

- When the Commission proposed legislation, it must be considered by both the European Parliament and the Council of Ministers. This normally takes time.
- Both bodies generally propose amendments to the Commission text.
- A process known as “trilogue” seeks to find consensus between the three texts, the Commission’s original, and those of the Council and Parliament.

# Next Steps and Timeline 2

- Within weeks of the Commission publishing its proposals in January, Radtke had produced a draft Parliamentary response, hoping to have it approved before the Parliament in April was dissolved for elections in June.
- However, while his report was adopted by the Employment Committee in early April, the vote on it as the Parliament's mandate for trilogue negotiations was postponed. It is unlikely that this will now happen until the new Parliament convenes in September.
- In the Council of Ministers, the proposals are at the early stage of consideration.
- Bottom line: Probably Q1 2025 at the earliest before there is agreement on a revised Directive.

# Transposition

- If and when a revised Directive is agreed, then Member States would have one year in which to transpose it into national law.
- Thereafter, The Commission proposes that there would be a two-year window to bring all agreements into line with the provisions of the new Directive. The updating process would have to be triggered either by management or by employees' representatives. If the process is triggered and no new agreement is reached the Subsidiary Requirements would apply.
- If a renegotiating process is not triggered then things would stay the same as they are, but this seems unlikely as it would be relatively easy for employees' representatives to trigger a renegotiation.

# Article 13 Agreements

- Article 13 agreements refer to transnational information and consultation arrangements that were put in place before September 22, 1996, when the original 1994 Directive became national law. Undertakings with such arrangements are exempt from the Directive.
- There are between 350 and 450 undertakings with such agreements.
- Under the Commission's proposals undertakings with Article 13 arrangements would no longer be exempt from the Directive.
- Employees in such undertakings could trigger a request for an SNB to negotiate an EWC agreement. As that would be required is 100 employees from at least two countries, or their representatives, which could be just 2 people.

# A13 Complications

- A13 arrangements are private and voluntary collective bargaining agreements made between the contracting parties. As such, it is not with the power of the European Union to put an end to them.
- EU law may say that the existence of such agreements do not prevent the triggering of an SNB and the establishment of an EWC.
- Which could mean, depending on the text of the A13 agreement, that an undertaking could end up with two transnational information and consultation arrangements, an A13 agreement and an EWC agreement within the framework of the Directive.

# Trigger an “A13” SNB

- A13 arrangements are outside the scope of the Directive.
- Triggering an SNB brings the undertaking with the scope of the Directive.
- The governing law will be the law of the country in which the undertaking is headquartered.
- Undertaking with a HQ outside the EU will be entitled to appoint a “representative agent” in the jurisdiction of their choice to negotiate with the SNB. This applies irrespective of whatever country’s law govern the A13 arrangement.
- Two agreement – two countries – see previous slide?

# Main Proposals 1

- The first meeting between management and an SNB must be held within six months of a request been lodged or else the Subsidiary Requirements will apply.
- Steps should be taken to improve gender balance on SNBs (and EWCs).
- SNBs can be assisted by experts of their choice and such experts to have the right to attend meetings between management and the SNB. Member States to decide on the budgetary rules governing the costs of such experts.
- SNBs to also have access to legal advice, to be paid for by management. MS budgetary rules to also govern this.
- Member States could differ in their approach to the issue of costs.

# Main Proposals 2

- The definition of transnational is significantly extended such that issues in one country could be considered transnational if they have the potential to impact other countries at some time in the future. This moves in the direction of making all issues transnational.
- The definition of consultation to be amended so that an EWC can offer an opinion, as happens now, and receive a reasoned reply from management to that opinion, a new provision.
- This reasoned opinion should be delivered by management to the EWC before its takes and implements its final decision.
- This opens the door to delaying tactics on the part of the EWC.

# Other Main Proposals 2

- Article 6 agreements to include provisions covering the costs of experts and legal advice, including representation before courts and tribunals.
- Member States to make sure proper judicial procedures are in place to deal with disputes and to facilitate EWC “ease of access” to such procedures.
- Appropriate and dissuasive financial penalties for breach of EWC information and consultation obligations. (But no injunctions).
- New restrictions on the ability of management to categorise information as “confidential”.

# Subsidiary Requirements

- Minimum of 2 meetings a year between EWC and management.
- Experts to have the right to attend meetings between the EWC and management.
- Member States to set budgetary rules on expert and legal costs.

# The Parliament Wants …

- An immediate end to A13 agreement and A6 agreement to be judged to be subject to the provisions of the revised Directive with no negotiations.
- Union officials to be involved in every SNB and EWC by right.
- Injunctions to block management decisions and fines equal to GDPR fines.
- “Transnational” to cover practically every potential decision ina transnational company.
- Make it close to impossible for management to categorise information as “confidential”.

# What Now?

- For the moment, we do not know what the final shape of the revised Directive will look like.
- But probably much closer to the Commission's proposals than the Parliament's.
- Companies should be making their views known to governments either directly or through employers and business associations.
- They should also be looking at what the proposed changes will mean for their EWC and what, if anything, they should be doing now.