

The european works council law european essay

Law



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Introduction In the field of industrial relations European works councils (EWCs) play a significant role in the modern process of Europeanization. It is widely agreed in the literature that European works councils (EWCs) offer the most advanced experiences of workers' representation in the ongoing process of Europeanization of industrial relations. These bodies provide an institutional basis for information and consultation of workers at transnational level, enabling a channel for effective employee participation in corporate decision making. Historical context: The history of European legislation on employee participation dates back to 1970. It is a sad indictment on industrial democracy that comparatively few proposals have since been adopted: They include Directive 75/127 EEC on Collective Redundancies; Directive 77/187 EEC on the Transfers of Undertakings, Directive 89/391 EEC on the Safety and Health of workers at work and the European Works Council Directive. In spite of lengthy debates on employee participation, several other proposals, have not been approved by the Council. One example was the draft " Fifth Directive", which dates back to 1970 and which related to employee participation at the board level in large companies. It borrowed much from the West German system of codetermination, providing for a two tier system on the supervisory board. It was how ever resisted by a number of Member States, employers' organizations and other bodies. In 1980 the Commission proposed a Directive on in forming and consulting the employees of undertakings with complex structures, in particular, transnational undertakings. This draft Directive was known as the " Vredeling proposal". The draft proposal contained two major obligations: a duty to provide employees with periodic information and an obligation to give information in advance of decisions

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which would seriously affect the employees' interests. This draft Directive, although modified in 1983, faced serious opposition by Member States and international businesses. The UK especially, was strongly opposed to it, due to the draft being irreconcilable with the limited information and consultation provisions which exist in that country. The proposal finally failed in 1986, unable to find positive consent in the Council. Nevertheless the Vredeling Directive can be regarded to some extent as the progenitor of the European Works Council Directive; as the son of Vredeling. In 1989 the Community adopted the Charter of Fundamental Social Rights of Workers, which, although not a binding document on the Member States, promoted, inter alia, the information, consultation and participation of workers concept. The Charter was adopted without the participation of the UK. The Charter was contrary to the then Conservative government's attempt to lift restrictions on employers in the labour market in order to boost the economy. Art. 17 of the Social Charter states that worker participation should especially apply to companies having establishments in two or more Member States. In this way, issues dealt with under the Vredeling Directive were taken up again. The draft Directive on "The establishment of a European Works Council in Community undertakings or groups of undertakings for the purpose of informing and consulting employees" was proposed by the Commission in December 1990 and was based on Art. 100 of the European Community Treaty. It was therefore subject to unanimous Council voting. Although amended in 1991 and 1993, the proposal did not reach unanimity, the main reason for this being the consistent opposition by the United Kingdom. Somewhat of a turning point occurred with the signing of the Maastricht Treaty, where the Protocol on Social Policy was signed by all twelve Member

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States. The UK thereby for all accepted that the eleven other States could make further progress on social issues. A second document, the Agreement on Social Policy, set out how, and in which areas, progress could be made. This included the information and consultation of workers. After the ratification of the Maastricht Treaty by the Member States, the Commission decided to re launch the proposal under Art. 2(2) of the Agreement. On this basis the Directive was subject to majority voting of the Member States. The UK's consent was thus no longer required. In accordance with Art. 3(2) of the Agreement the Commission consulted management and labour at Community level in 1993 and 1994, giving them the chance to consider opening negotiations culminating in an agreement on this issue. The social partners were however unable to reach an agreement. The Council finally adopted the European Works Council Directive on 22 September 1994. The Directive was thus not only the first to be adopted under the Social Policy Protocol, it was also the first to be adopted without the acceptance of all Member States. It nevertheless represents the first successful attempt by the Community to legislate on transnational employee participation procedures, thus making it the first positive outcome of a debate which has lasted for over two decades. Background It is proposed to consider briefly the reasons and influences which have been attributed to the Directive's adoption and which have shaped its final outcome. One of the key factors behind the Commission's approach is closely linked with the completion of the Single Market. In order to boost business within the Community, strong emphasis was placed on multinational enterprises. A significant growth of such undertakings took place in the mid 1980s; they included the world's most important employers. The transnationalisation of companies signified

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for employees, that the policy decisions of the undertaking were likely to be made outside their country. The consequences of these decisions could however affect their workplace. Even if the Member State were to provide legislation for group-level information and consultation, such legislation would not be applicable beyond national borders. There existed thus a "participation gap" on information and consultation rights between the increasingly transnational decision making and the national one. In closing this gap, the Commission also hoped to bring about social acceptance of the restructuring linked with the completion of the internal market. In addition, there was the economic factor: European Works Councils were regarded as useful for the purpose of developing the economic activities within an undertaking in a "harmonious fashion" through informing and consulting the representatives of the employees. Early agreements on information and consultation in European multinationals were another factor which influenced the outcome of the Directive. Inspired by French legislation, the first experiments on transnational-level information exchange were conducted during the mid 1980's by French companies. Although the number of those agreements was limited, they laid the foundation for the Commission's proposal. The descriptive element highlighted. Coverage. The Directive applies to all Member States of the European Union which have signed the Agreement on Social Policy. This includes, all the original EU States with the exception of the United Kingdom, as well as the three new members Austria, Finland and Sweden. In addition, the three remaining States of the Economic European Area, Norway, Liechtenstein and Iceland have also agreed to implement the Directive. The Community scale undertakings affected by the Directive are defined as those with at least 1000 employees in each of a mini

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minimum of two Member States. In the case of a Community scale group of undertakings, the minimum required is 1000 employees within the Member States. Furthermore it must have a minimum of two group undertakings in different Member States, each of them having at least 150 employees. In assessing whether an undertaking is covered by the Directive, operations and employees in the UK are, as yet, not counted. Establishing a European works council. The Directive sets out a procedure on how the negotiations to set up a EWC should be conducted once the Directive came into force on 22 September 1996.⁽³⁶⁾ The responsibility for the establishment lies within the central management or within the representative agent of the central management if this is not located within a Member State.⁽³⁷⁾ The procedure starts either with an initiative of the central management or at a written request of at least 100 employees in two undertakings in different Member States.⁽³⁸⁾ To establish a European Works Council a special negotiating body has to be set up. This body must consist of between three and seventeen members. Although the method for the election of members of the special negotiating body is left for the Member States to decide, the Directive sets out some further requirements which must be adhered to.⁽³⁹⁾ According to Art. 5 (3) of the Directive, the central management and the special negotiating body can determine, by a written agreement, either to set up a European Works Council.⁽⁴⁰⁾ or to establish a procedure for the information and consultation of employees.