

The European Works Councils Recast Directive: Too little, too late

As the European Commission is moving towards an evaluation of the implementation of the Recast Directive on European Works Councils, the European Trade Union Institute (ETUI) contributes to the debate: in many ways the changes introduced by the Recast Directive have proven to be too **little** and too **late**.

Recast Directive

In 2009, the EU adopted the EWC Recast Directive aimed to create **more and better** European Works Councils. Now, 5 years after its implementation, an evaluation of its effectiveness can be made.

Stan De Spiegelaere, researcher at the European Trade Union Institute explains: *“We have used the most complete database on European Works Councils available to assess whether or not the Recast delivered on its objectives. In total, over 1000 EWCs were analysed.”*

More European works councils?

Before an EWC can be established, an initiative is needed from the employees' or employers' side. As a consequence, not all companies large enough to have an EWC actually have one.

A large share of all EWCs was established in 1996, just before the first EWC Directive entered into force. Since then, the number of new EWCs has dropped and continued to decline over the years. The Recast could not reverse this tendency, and according to an estimate, less than half of all companies which could have an EWC currently have one.

De Spiegelaere: *“The Recast Directive tried to stimulate the creation of new EWCs by various means. One of them was by providing for a second transition period EWCs established or amended during the implementation period of the Recast EWC Directive could be partially exempted from the new rules. A similar transition period between 1994 and 1996 had led to the establishment of over 400 EWCs. This effect was not repeated: only 31 EWCs have used this exemption between 2009 and 2011. After the mixed experiences with the first transition period, the trade unions actively campaigned against using this exemption, with success”.*

The Recast was ineffective in leading to more EWCs as it did not address a multitude of known obstacles to the establishment of an EWC

During and after the Recast, the amount of newly created EWCs continued to decline. The Recast was ineffective in leading to *more* EWCs as it did not address a multitude of known obstacles to the establishment of an EWC. These have to do with a lack of knowledge and information on the part of the employees, the lack of clarity of what recourse is available if negotiations are blocked, and the substantial resources it takes to set up an EWC, to

European Works Councils

European Works Councils bring together employee and employer representatives in multinationals to be informed and consulted on transnational issues.

Since the launch of the first EWC Directive in 1994, over a **thousand** EWCs have been established, mobilizing thousands of employee representatives and covering an estimated **19 million employees**.

Their functioning is partly determined by the European Directives (and national implementation laws), but mostly by a negotiated agreement between the employer and employee representatives.

name just a few. Therefore, establishing a company directory, monitoring the negotiations of EWCs, and focusing on capacity-building of employee representatives could overcome this deadlock.

Better EWCs

A second objective of the Recast was to improve the functioning of EWCs. For this, the Recast established a series of new definitions, rights, and requirements for the EWC agreement.

De Spiegelaere: *“To study whether the Recast delivered on bringing about better EWCs, we have compared EWC agreements from before and after the Recast. If the Recast had any effect, we should see relatively more agreements after the Recast which refer to those definitions, include a right to training, and involve trade unions, for example.”*

The Recast reflected the lowest common denominator and, as a consequence, had little effect.

The results are mixed. De Spiegelaere: *“On the issue of definitions, the Recast made a difference. On most other fields there was no observable change, however, because most agreements made before the Recast already provided for those new rights. Training, for example, was already omnipresent, because EWC learn from each other. Here, the Recast reflected the lowest common denominator and, as a consequence, had no effect”.*

With regard to trade union involvement, there is still a lot of room for improvement. De Spiegelaere: *“Although the Recast aimed to promote trade union involvement in EWCs, it provided few concrete instruments enabling trade unions to do so. More and more EWCs, however, see the value of involving the trade unions, but the law has not made a difference here.”*

Conclusion

Based on this evaluation of EWC agreements, the Recast can be considered to have delivered too little and too late. It does too little to foster the establishment of new EWCs, too little to really promote trade union involvement, too little to promote real innovation in EWCs, and it comes too late, since some of the new rights it established are already secured in most agreements already concluded.

Future legislation should therefore focus on providing incentives for the creation of new EWCs, instruments to make use of existing rights and to promote best-practices, rather than reflecting the lowest common denominator.

De Spiegelaere: *“For example, concrete measures could include about disseminating information about which companies are eligible to establish an EWC, clarifying the mutual obligations in case of a deadlock, monitoring compliance of EWC agreements, and capacity-building for trade unions and those active in local information and consultation processes. These can really make a difference and upgrade the potential of this unique and increasingly important element of a more social Europe.”*

Details

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