

ETUI Policy Brief

European Economic, Employment and Social Policy

N° 2/2016

The right and duty of European Works Councils to report back to the workforce: broad uptake, little specificity

—
Stan De Spiegelaere and Romuald Jagodzinski

Stan De Spiegelaere is a researcher and Romuald Jagodzinski a senior researcher at the ETUI in Brussels.

Policy recommendations

According to the Recast European Works Council Directive, the workforce is to be informed about the content and outcomes of the information and consultation process. Research finds that most employee representatives already do so. However, this right and obligation to report back can best be supported by negotiating EWC agreements which (i) define clear arrangements on the scope of this right and the means available to exercise it; (ii) ensure access to expertise, training and assistance on reporting back; (iii) avoid confidentiality clauses that limit this right; and (iv) avoid excessive management interference in reporting back.

1. Introduction

European Work Councils (EWCs) are employee information and consultation bodies competent for transnational issues. Although primarily transnational in origin, such measures as a rule have direct national or local effects. Therefore, since the very advent of EWCs, the importance of communication between the different levels of employee representation has been stressed as crucial.

Frequent contact and cooperation between the different levels of workers' representation are essential to EWCs' effectiveness and legitimacy. An EWC can live up to its potential by taking its place in a company-wide information and consultation network (Demaitre, Jagodzinski and Stoop 2015). Two-way communication between the levels enables EWCs to get input and feedback from the workforce and the national employee representation, and thus develop positions which are supported by the rank-and-file. Inversely, it can contribute to social dialogue at the national and local levels through effective coordination of employees' positions and strategies. Also from management's perspective, reporting back is essential. Improved internal communication, which is one of the main benefits which management sees in EWCs, (Lamers 1998, pp. 174–182) can only be ensured if the EWC also effectively exchanges with workers.

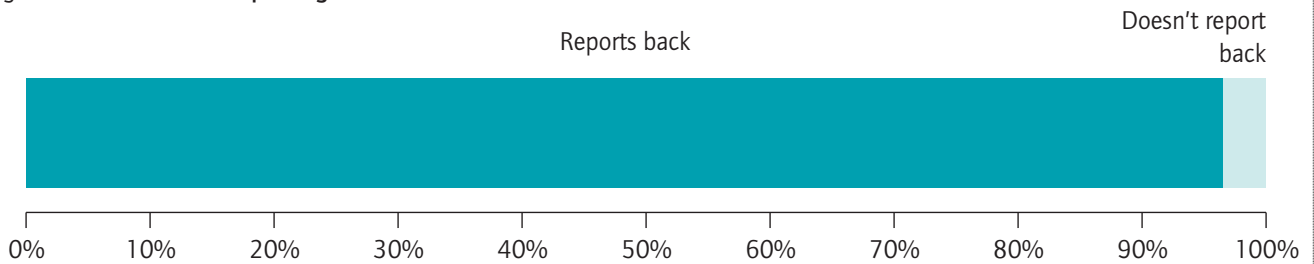
Because of the importance of effective liaison and communication between different levels of employee participation (so-called articulation), the EWC Recast Directive stresses the obligation of employee representatives to report back in Recital 33: EWCs must report back 'in order to perform their representative role fully

and to ensure that the European Works Council is useful'. This duty and right to report back was already included in the fallback provisions (Art. 5) of the first EWC Directive of 1994, but the Recast Directive moved it to the core text as Art 10.2: 'Members of the EWC shall inform the representatives of the employees (...) or the workforce as a whole of the content and outcome of the information and consultation carried out.'

Through the transposition into the national EWC legislative frameworks, this right is applicable to EWCs (Cremers and Lorber 2015; Laulom and Dorssemont 2015). To enhance its effectiveness, however, this right and duty should find its way into negotiated EWC agreements. It is there that the necessary practical organisation of this right should be further specified. Such practical questions include the responsibilities and duties of management and employee representatives, the various forms (e.g., oral or written) to be used to report back, the means (physical, financial, time, etc.), the frequency of reporting back and, possibly, any limits.

etui.

Figure 1 EWC members reporting back



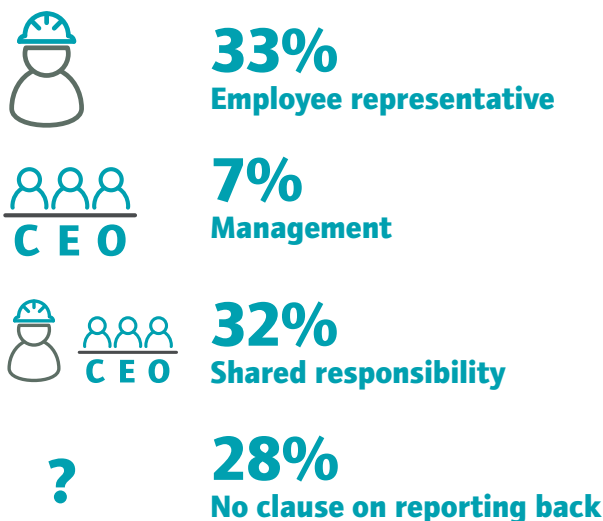
Source: Waddington 2011: 126-127, own compilation.

In this policy brief, we study whether and how the reformulated and emphasised obligation to report back has found its way into EWC agreements by looking at survey data and the analysis of EWC agreements. We also point out factors that limit the practicability of this right. We conclude that since most EWC agreements have some clauses on reporting back, and most employee representatives say they do some reporting back, formal (declaratory) compliance is relatively high. However, the provisions in the agreements are often rather piecemeal and lack detail, suggesting that in practice the right may be far from effective.

2. Uptake of reporting back

According to the 2015 EWC Facts and Figures (De Spiegelaere and Jagodzinski 2015), of all active EWCs (July 2015), 72% had an agreement which makes some reference to the right and obligation to report back. EWCs fully covered by the European legislation (the so-called Article 6 EWCs) are more likely to include such arrangements than are EWCs exempted from the regime of the Directive (the traditionally so-called Article 13 EWCs). Similarly, according to the results of a survey among EWC members, a very large majority of them indicated in 2008 that they did some reporting back to the local workforce (see Table 1).

Figure 2 Who reports back?



3. Who reports back?

In order to go beyond a mere formal declaration, the right and obligation to report back should best be supported by concrete arrangements. First of all, the actor(s) responsible for performing this task need to be named. Of all active EWCs and SE Works Councils in 2015 (De Spiegelaere and Jagodzinski 2015), we see that most confine this responsibility to employee representatives (33%). Rarely (7%) is the responsibility given only to the managements' side. In the remaining cases, management and employee representatives share the responsibility to communicate (32%).

Looking at the actual texts of agreements, we see that some agreements specifically attribute the responsibility (and obligation) to the individual employee representatives, while others specify that reporting back is a collective responsibility of the EWC.

- *Metal Company, 2008*: 'The EWC members report back to the [Metal Company] employee representation bodies in their home countries. Conversely they shall introduce suggestions from employees into the work of the EWC.'
- *Chemical Company, 1996*: 'The National Representatives are entitled and obliged to communicate properly with the local employee representatives.'
- *Metal Company, 1996*: 'The EWC shall be required to inform the workers' elected representatives of the different establishments.'
- *Chemical Company, 2011*: 'Each member of the EWC shall be obliged to report to national level.'

Provisions which specify that the responsibility of reporting back is to be shared between the employee representatives and management can take very different shapes. This shared responsibility can mean that management is ready to provide support to the employee representatives in their reporting task (Metal Company 2004 agreement, below), while in other agreements, the joint responsibility means the employees can only report back under the supervision of the management (Transport Company 2004 agreement, below).

- *Metal Company, 2004*: '[Metal Company] representatives will be given reasonable time to share information received with people that they represent at national and international

levels taking insider rules into account. The employee and management representatives of [Metal Company] should work together to create such conditions to make information and consultation available to all [Metal Company] employees throughout Europe.'

- *Transport Company, 2004*: 'Following (...) approval, Central Management shall be responsible for communication of the minutes, communications or reports of EWC meetings to employees working at the relevant Associates. Employee Representatives may report back to employees, but any written report must have been approved by Central Management before it is circulated to check that it is accurate, does not contain confidential information and does not contain any defamatory statements. Verbal and written reports given by the Employee Representatives must be accurate, must not be defamatory, and must not contain confidential information.'

In some agreements, the management takes the responsibility of reporting back to the employees. In these cases, the reporting back is mostly limited to the distribution of agreed minutes. A typical example can be seen below.

- *Metal Company, 2009*: 'Once the minutes have been approved by the employee representatives and [Metal Company], they will be issued in accordance with local practice to all [Metal Company] group employees by [Metal Company] and relevant languages. It is agreed that only the official agreed minutes will be circulated to employees as a communication of discussions taking place at the EWC meetings.'

4. How to report back?

How have EWC agreements implemented the specification in Article 10 of the Recast EWC Directive that the EWC shall have the 'means required' to apply their rights? Put differently, how are local employee representatives and employees to be informed about the EWC functioning and the outcomes of information and consultation? From the 2005-2008 EWC representatives survey (Waddington 2010), we learn that most EWC representatives use local works councils to convey information to the local employee representatives and the entire workforce (52%). To a lesser degree, trade union channels (28%) and formal (24%) or informal meetings (25%) are used, too. Next, most EWC representatives use oral presentations or a personal report of the meeting to communicate about the EWC's activities. About one in four EWC representatives provides the official minutes of the meetings to the local employee representatives as a way of reporting back.

Looking at the clauses in the agreements, in the vast majority of cases, the means for reporting back are specified only very generally. There are, however, some exceptions. The general practice is to stipulate the overall responsibility to report back, without detailing how this reporting should be executed. When specified, the most frequent practice of reporting back is by distributing the minutes or holding meetings with trade unions, local works councils and other stakeholders. This is largely in

line with the findings of the 2008 survey. Additionally, several agreements mention electronic newsletters and special intranet websites as other means of reporting back.

- *Public Services Company, 2012*: 'In order that everyone in the relevant countries is informed about the content of the EWC meetings, this release will be issued through the normal communication channels, i.e. web sites and notice boards.'
- *Metal Company, 2005*: 'A meeting between the EWC member responsible for a specific location and the chairs of the plants' employee-representation bodies, after the annual EWC meeting, may be agreed with the local management. The aim shall be to pass on information from the EWC meeting.'
- *Metal Company, 2005*: 'The ECF [European Consultation Forum] secretary and the ECF Steering Committee shall meet following the ECF meeting to agree the text of a communiqué to be sent to all [Metal Company] employees following an ECF meeting. (...). This text will then be cascaded to business unit heads by the ECF secretary with the assistance of the Human Resources function for each operation Division. Business unit heads and local management will then be responsible for ensuring appropriate distribution within their area of authority.'
- *Metal Company 2006*: '(...) Forum communiqués and minutes shall be placed on notice boards after annual meetings. Employee Representatives may communicate directly with employees and their representatives in facilities within their country other than those in which they work. This will be agreed in advance with the Management Co-ordinator.'
- *Food Company, 2009*: 'At the request of the national trade union bodies present in the undertakings in various countries, and for reasons connected to their EWC duties, the national members of the EWC may attend trade union meetings to provide relevant information on the meetings held with central management, subject to prior notice to the management of the undertaking involved.'

On some (rare) occasions, the agreements clearly limit the means available to workers' representatives to report back to employees. As can be seen in the example below, the EWC members are provided with electronic communication means, but are explicitly prohibited from using them for collective communication with employees or other employee representatives.

- *Metal Company, 2004*: 'The members of the European Works Council will be provided with the resources needed to accomplish their mission. Specifically they will have access to an office, a telephone corresponding to the site's telephone installation, a computer with e-mail access and a printer. European Works Council members may use their e-mail addresses in the framework of their missions solely for communicating with other personnel representatives or with trade unions. Collective electronic communication is prohibited, but individual communication is permitted.'

5. When to report back?

Next to the question of who bears the responsibility to report back and the specification of the means, the frequency of the reporting back is sometimes explicitly mentioned in EWC agreements. The frequency indicated is generally stipulated as a 'minimum' frequency and mostly refers to physical meetings of the EWC (representatives) with the employees or their representatives.

– *Hotel Company, 1996*: 'It shall be the duty of the EWC chairperson to inform the establishments' workforce of the EWC's work at least once a year in a works meeting.'

– *Services Company, 2010*: 'These [two annual plenary] meetings shall also make it possible to facilitate contact between the staff representative on the EWC and Group companies established in the country, staff and their representatives, and to facilitate provision of information to the employees and their representatives on issues relevant to the remit of the EWC.'

6. Reporting back from EWC: the recipients

The EWC Recast Directive clearly stipulates that the employee representatives 'shall inform the representatives of the employees (...) or, in absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Directive'. Depending on the specific situation or arrangements present in the companies, this is interpreted differently in the EWC agreements. EWC agreements can thus stipulate that the whole workforce should be targeted in reporting back, others focus on national or local employee representatives to convey the information to the local workforce, while still others require a report to the local management. In 2015, the large majority of the EWCs with a clear clause on reporting back focused the reporting on the whole workforce (74%), a minority on the local employee representatives (9%), a very small segment on local management only (1%), and some others on both the local management and the local employee representatives (8%). The remaining EWCs (7%), despite stipulating that EWC members must report back, did not specify any target audience.

7. Limits and extensions: confidentiality and access to premises

As we have seen, the right and obligation to report back to employees is sometimes limited, for example, by the requirement that management must first approve the content of that communication. Another more frequent way of limiting the right and duty to report back lies in the (mis)use of confidentiality requirements. As EWCs discuss sensitive company information, most agreements include a clause specifying what information should be treated as confidential. If they are too restrictive, these clauses can effectively impede upon the representatives' right to report back. Worse still, legal recourse is difficult, since not all

national legal frameworks are in line with the Recast's obligation to provide for them (Laulom and Dorssemont 2015, p. 48).

Other agreements, on the other hand, provide for extended means for reporting back in the form of a guaranteed access to premises. From a trade union perspective (Picard 2010), the EWC recast implicitly includes a right of employee representatives to visit employees at their workplace. This interpretation was shared by the 2010 Expert Report on the implementation of the Recast Directive (European Commission 2010). However, it was rather unevenly implemented in national law and, has so far only been included to a limited extent in EWCs (18%: De Spiegelaere and Jagodzinski 2015: 39).

Conclusion

For EWCs to function effectively, and in the words of the legislator, to be 'useful', they need to maintain direct contact with works councils and employees at the national level. Only in this way can the EWC's activities reflect the concerns, opinions and expectations of the workforce; conversely, only then can the workforce observe and appreciate the function and relevance of the EWC. Moreover, it should be noted that in countries in which local works councils are not common, the EWC representative may be the only source of information on company-wide strategies and projects.

For these reasons, informing the workforce at the national and/or local levels is a crucial duty and responsibility of EWC representatives. It is at the same time an opportunity for EWCs to build and steer information and consultation networks and to fulfil in practice the Recast EWC Directive's goal of ensuring better linkages between the levels. To achieve this, the Recast EWC Directive lays down this obligation in its core text, and, in line with the principle of subsidiarity, obliges negotiators to develop the necessary practical arrangements in EWC agreements.

From the survey among EWC members and our analysis of the agreements, we learn that, at first glance, reporting back seems a relatively frequent facility in EWC agreements. Most EWC representatives stated that they do report back on their EWC activities to the local workforce, and most EWC agreements include some arrangements on this topic. However, there remains a varying degree of specificity on who should inform whom, how, and when.

Looking more closely at those clauses in EWC agreements, we see that most of them are, indeed, rather vague. This vagueness might in practice impede workers from actually reporting back. On rare occasions, EWC agreements specify clearly the conditions and means for reporting back, in some cases limiting and, in some cases, extending this duty into a fully-fledged right.

Developing and promoting good practice in this area and ensuring proper training to EWC members is necessary to fully realise the potential of reporting back. The negotiating parties should identify the mutual benefits and potential of reporting back for all stakeholders and build on existing best practice to enable an ever better articulation between the different levels.

Policy makers have a special role to play here by ensuring a critical review of national implementation measures from the perspective of their practical relevance and effectiveness in securing the right and duty to report back, which, in broader terms, is essential for ensuring proper linkage (articulation) between various levels of information and consultation, as a fundamental objective of the Recast EWC Directive.

References

Cremers J. and Lorber P. (2015) Transposition of provisions of the Recast Directive on the functioning of the European Works Council, in Jagodzinski R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, Brussels, ETUI, 85-106.

Demaître B., Jagodzinski R. and Stoop S. (2015) How to organise your communications network, Brussels, ETUI.

de Spiegelaere S. and Jagodzinski R. (2015) European Works Councils and SE Works Councils in 2015. Facts and figures, Brussels, ETUI.

European Commission (2010) Implementation of Recast Directive 2009/38/EC on European Works Councils – Report of the Group of Experts, Brussels, European Commission.

Lamers J. (1998) The added value of European Works Councils, Haarlem, AAVN.

Laulom S. and Dorssemont F. (2015) Fundamental principles of EWC Directive 2009/38/EC, in Jagodzinski R. (ed.) Variations on a theme? The implementation of the EWC Recast Directive, Brussels, ETUI, 33-67.

Picard S. (2010) European Works Councils: a trade union guide to Directive 2009/38/EC, Report 114, Brussels, ETUI.

Waddington J. (2010) European Works Councils and industrial relations: a transnational industrial relations institution in the making, London, Routledge.

The views expressed in *ETUI Policy Briefs* are those of the respective author(s) and do not necessarily reflect the views of the ETUI.

The *ETUI Policy Brief* series is edited jointly by Jan Drahokoupil, Philippe Pochet, Aída Ponce Del Castillo, Sotiria Theodoropoulou and Kurt Vandaele.

The editor responsible for this issue is Jan Drahokoupil, jdrahokoupil@etui.org

This electronic publication, as well as previous issues of the *ETUI Policy Briefs*, is available at www.etui.org/publications. You may find further information on the ETUI at www.etui.org.

© ETUI aisbl, Brussels, February 2016

All rights reserved. ISSN 2031-8782



The ETUI is financially supported by the European Union.

The European Union is not responsible for any use made of the information contained in this publication.