

Report from CSDR, Romania

**On the research work done and the results of the
consultations carried out at the national meeting**

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QUESTIONNAIRE 1

- IMPLEMENTATION OF THE EU DIRECTIVE IN ROMANIAN LEGISLATION

The national legal regulation implementing provisions of the Directive 2009/38/EC

- *Law no 217/2005 on establishment, organising and functioning of European Work Councils (this Law transposed Council Directive 94/95/CE regarding the consultation of European Work Councils or a procedure of information and consultation of the workers in undertakings and in community-scale groups undertakings)*
- *Modified in 2006 by: Government Ordinance no 48/2006 on the modification of the Law no 217/2005 on the establishment, organising and functioning of the European Work Councils*
- *Law no 186 of 24 October 2011 amending and supplementing law no 217/2005 on establishment, organising and functioning of European Work Councils; issuing authority Parliament of Romania; published in Official Gazette no 763 of 28 October 2011*

Implementation of the art. 6 of the Directive 2009/38/EC into the national law

- *The legal norm is spread in several regulations*
- *The norm has been implemented in **great majority** with exception of the point dealing with the procedure for information and consultation of the EWC and the arrangements for **linking information and consultation of the EWC and national employee representation bodies***
- *The issue of the content of the contract has been quite comprehensively regulated in national law*

Implementation of art. 8 item 1 of the Directive 2009/38/EC into the national law

*Law 217/2005 on establishment of a European Work Council
or the procedure for informing and consulting the employees;
Chapter VI Miscellaneous provisions:*

Art. 44 – **Members of the special negotiating body, of the European Working Council, the experts who assist them or the employees' representatives are not authorized to reveal to third persons any information which has expressly been provided to them in confidence**, even after the expiry of their terms of office, regardless of their whereabouts.

- Directive: 1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them **are not authorized to reveal any information which has expressly been provided to them in confidence.**
- The same shall apply to employees' representatives in the framework of an information and consultation procedure.
- That obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

Implementation of art. 8 item 1 of the Directive - evaluation

- *The legal norm is covered in one regulations*
- *The norm has been implemented in whole following the purpose of the provision*
- *This regulation is often used by the management to deny information:*
 - *Info is not passed to EWC members classified as confidential (clear abuse)*
 - *Or EWC members can not pass further info labelled as confidential*

Implementation of the art. 8 item 2 of the Directive 2009/38/EC into the national law

Law 217/2005: Art. 45 – (1) The central management is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm or prejudicethe functioning of the Community-scale undertaking.

(2) The central management in Romania is obliged to motivate in writing the refusal to provide information mentioned in para.(1).

Art. 46 – The request from the central management to maintain confidentiality or the central management's decision not to provide information mentioned in art. 45 may be appealed by the European Working Council or by the employees' representatives to the competent court, in a period of 30 days.

- Directive: 2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.
- A Member State may make such dispensation subject to prior administrative or judicial authorisation.

Implementation of the art. 8 item 2 of the Directive - evaluation

- *the legal norm is covered by one regulations*
- *this norm has been implemented in whole and even more as the Romanian legislator added that “**the central management in Romania is obliged to motivate in writing the refusal to provide information mentioned in para.(1).” and employers organisations can appeal if the management does not provide information or requests confidentiality***
- *This regulation again is often use as an excuse (by management) not to provide info*

Implementation of the art. 8 item 3 of the Directive 2009/38/EC into the national law

- **Not adopted in national law.**
- **Directive:** Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.

Implementation of the art. 10 item 2 of the Directive 2009/38/EC into the national law

- Law 217/2005/ Section III, The competence and the functioning of the European Working Council:
- Art. 38- (1) The members of the European Working Council shall inform the employees' representatives in Community-scale undertaking or group of undertakings or, in the absence of representatives, the entire workforce of the content and the outcome of the information and consultation procedure carried out in accordance with the provisions of this chapter.
- (2) The abovementioned provisions shall not exonerate the members of the European Working Council or of the selected committee of the confidentiality obligation stipulated by art.44.

Without prejudice to Article 8, **the members of the European Works Council shall inform** the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the 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.

Implementation of the art. 10 item 2 of the Directive – evaluation

- *this standard has been implemented in whole and the Romanian legislator added a stipulation – reminder on keeping confidentiality of information: The abovementioned provisions shall not exonerate the members of the European Working Council or of the selected committee of the confidentiality obligation stipulated by art.44*
- *the provision fulfills its role in the field of information transfer but the information passed further is limited due to stipulation on confidentiality obligation*

Implementation of the art. 10 item 4 of the Directive 2009/38/EC into the national law

- *Law 186/2011; a new article, i.e. Article 42, was introduced after Article 42 to read as follows: “In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.”*
- *Directive:* In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.

Implementation of the art. 10 item 4 of the Directive – evaluation

- *the standard is covered in one regulation*
- *this standard has been implemented in whole into Romanian legislation*

Implementation of the art. 11 item 1 of the Directive 2009/38/EC the national law

- *Law 217/2005; Section II Application of the law:*
- Art. 5 – (1) The law applies to:
 - a) Community-scale undertakings or to Community-scale groups of undertakings with central management situated in Romania;
 - b) Community-scale undertakings or Community-scale groups of undertakings which do not have the central managements in a Member State and establishes its representative agent in Romania;
 - c) Community-scale undertakings or Community-scale groups of undertakings which do not have the central managements in a Member State and do not established any representative agent in a Member State, when the establishments of such undertakings or the undertaking member in a such a group employing the largest number of employees is situated in Romania.
- **Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, regardless of whether or not the central management is situated within its territory.**

Implementation of the art. 11 item 1 of the Directive – evaluation

- *the standard is covered in one legislative act*
- *this standard has been implemented in whole adding further:*

“(2) In the provision of this law, the assignee referred to paragraph (1) letter b) and respectively, the management of the undertaking, branch and others subsidiaries referred to paragraph (1) letter c) are considered as central management.

(3) The attributions and competence of European Working Council as well as the area of informing and consulting procedures covers all branches and others subsidiaries of Community-scale undertakings within Member States territory an undertakings members of Community-scale group of undertakings within Member States territory, with the exception of the case that the agreement referred to article 19 establish a larger area of application.”

Implementation of the art. 11 item 2 of *the Directive 2009/38/EC the national law*

Ro Law: Art. 47 - The following deeds are considered contraventions and **are sanctioned with fine from 2.000 RON to 4.000 RON**

- a) obstructing the establishment or the functioning of the special negotiating body, the European Working Council or blocking the establishment of the procedure for informing and consulting the employees, by a member of the central management or other level in the Community-scale undertaking or group of undertakings, or by the person taking action in his name;
- b) discriminating a member of the special negotiating body, European Working Council or representatives of employees acting in accordance with this law;

Art. 48. – (1) Ascertain of contraventions and enforcement of sanctions shall be made by the control agencies of Ministry of Labour, Social Solidarity and Family or by other agencies who have the right to perform control, according to the law.

Directive: Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

Implementation of the art. 11 item 2 of *the Directive - evaluation*

- *Law 217/2005 on establishment of a European Work Council or the procedure for informing and consulting the employees, Chapter VII Penal Provisions*
- *this standard could have been implemented better , for example the sanctions are too low ...insignificant for the multinational companies*
- *Course cases are almost no existing*

Implementation of the art. 11 item 3 of the Directive 2009/38/EC into the national law

Law 217/2005

Art. 46 – The request from the central management to maintain confidentiality or the central management's decision not to provide information mentioned in art. 45 may be appealed by the European Working Council or by the employees' representatives to the competent court, in a period of 30 days.

- Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article.
- Such procedures may include procedures designed to protect the confidentiality of the information in question.

Implementation of the art. 11 item 3 of the Directive- evaluation

- *the standard is covered in one legislative act*
- *this standard has been implemented in Romanian legislation and it gives a right to EWC or workers' reps to appeal to a court*
- *No legal mechanisms allowing for enforcement of the information from the central board in addition to those resulting from the implementation of the directive*

Implementation of the art. 12 item 2 of the Directive 2009/38/EC into the national law

ART 22

(1) The information and consultation of the European Works Council shall be correlated with the information and consultation of the employees' national representation bodies by taking due account of the competences and scope of each of these bodies, and the principles defined under Article 21.

(2) The methods of correlating the information and consultation of the European Works Council with the information and consultation of the national employee representation bodies shall be established under the agreement referred to in Article 19.

(3) In the absence of the methods referred to in paragraph (2) and where foreseeable decisions may cause significant changes as regards labour organisation or collective employment contracts, the information and consultation procedures shall be carried out concomitantly at the national level, or at the level of the branch or group of establishments, as appropriate, and within the European Works Council.

(4) The delivery of an opinion by the European Works Council shall be without prejudice to the competence of the central management to organise the required consultations, complying, at the same time, with the time limits specified in the national legislation and/or practices.

Directive: The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.

Implementation of the art. 12 item 2 of the Directive – evaluation

- Law 184/2011
 - ARTICLE 21 and ART 22

The agreement shall be without prejudice to the rights of information and consultation of employees, as provided for in the Romanian legislation in force.”

- *this standard has been implemented whole based on the Directive’s provision*

General comments

- While transposing the Directive into national law the lawmaker **did NOT define confidential information**
- **there is no such definition in the Romanian legislation neither**
- Implementation of the Directive into Ro legislation has been in full, but it is too vague and general to set up real grounds for obtaining information

BRIEF REPORT FROM THE NATIONAL CONSULTATIVE MEETING

- Date: 14 November, 2019
- Place: Bucharest, Romania
- Participants: 13: trade union leaders, EWC members, experts, Ministry of Labour reps, Social Economic Committee reps

Main issues discussed

- Content of the Directive as implemented into Romanian legislation
- Usefulness of the legislation 217/2005 in obtaining information for the EWC
- Good and bad practices in EWCs regarding obtaining and using of economic/financial/confidential information
- Improving ways of accessing information: suggestions and recommendations

Implementation of the Directive

- The problem is a Directive itself – too general, the amendments which were made did not bring much of improvement regarding its implementation;
- the Directive is transposed very well into Romanian legislation
- Practical obstacles in its implementation:
 - Attitude of employers' and workers' organisations
 - Employers decide which info is confidential and which is not
 - Definitions are not clear and wage
 - Despite sanctions (which are insignificant in Ro) there are very few cases of bringing the issue to court

Problems in obtaining information

- In many cases the info obtained (of real value) is labelled as confidential so TU reps cannot pass it further to their organisations
- In some EWCs contracts of confidentiality were introduced
- Info is coming late, some is passed only during the EWC meetings
- A shortcoming is the fact that information obtained only has informative and consultative role

Quality of information

- Too often it is publicly know information (to be found on company web site)
- When they are real issues (ex. Re-location, closing, mergers, etc.) the EWC members are informed after decisions are taken so there is even no consultation
- In general information provide is well structured but again too wage and general
- in some cases PPPs presented during EWC meeting are “cleaned” from confidential info before circulation

Possible improvements

- Too general parts of legislation should be improved (EU level – involving ETUC and European sectoral federations to make pressure)
- To have as clear as possible definition of confidential info
- To be prepared before the EWC meeting – more specialised trainings are needed
- Better coordination and attendance of EWC meeting from the part of European sectoral federations
- Better coordination on national level – joint national meetings, common approach could help to obtain more (+ data base)
- Specificity of Romania: no national CA, no branch CA (exception state health sector) – this should be changed first – as it is also affecting EWC

Main issues discussed with EWC members in focus groups (1)

1. type of info which is most frequently requested

- Financial policy
- Strategy development plans salaries (average in company)
- Productivity
- Social funds, etc.

2. What kind of info is received from the board:

- Profit
- Spending
- Annual reports
- Investment projects
- Economic and financial decisions

Main issues discussed with EWC members in focus groups (2)

3. How long it takes to obtain info

- Average 1-3 weeks

4. Refusal of info

- Never direct but many times they send something else or incomplete, very vague, etc.

5. Reasons behind refusals

- Confidentiality
- The info not being yet available

6. What kind of info can be pass further

- Most of the info is general
- Confidential is usually marked as such

Thank you!
