

EWCs in Italy: The state of play and current challenges for effective information sharing and consultation

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The legislative framework and the social partners' joint statement of April 2011

- Directive 2009/38/EC has been transposed in the Italian legislation by legislative decree 113 of 22 June 2012 (one year later than the deadline of June 2011)
- The Italian social partners had signed a joint statement on the transposition of the Directive on 12 April 2011 and they have been consulted before the enactment of the decree
- The joint statement included an agreed text which reproduced and further specified the Directive's text. It confirmed the focus on transnational issues and emphasised the need to provide information timely, in order to allow the careful consideration of the potential impact of company initiatives and prepare the consultation with the company management at the relevant level
- Following the Directive, the joint statement defined consultation as the exchange of information and opinions, so to allow workers' representatives to issue proposals which may be taken into account by the company management before the final decision is taken, without prejudice to their responsibilities and prerogatives
- The joint statement did not include reference to confidential information

Italian provisions on confidential information

- Article 10 of legislative decree 113/2012 includes specific provisions on confidential information
- Paragraph 10.1 reproduces almost verbatim the text of article 8.1 of the Directive, but it introduces a limit of three years for the obligation not to reveal information disclosed as confidential
- Paragraph 10.2 envisages that the central management “may legitimately refuse to transmit the information required only when its nature is such that, according to objective criteria, it would seriously harm the functioning of or the activities performed by the undertakings concerned or it would be prejudicial to them or it could create market disturbances”
- No further specifications are included on prior administrative or judicial authorisation

Sanctions for infringements

- Article 17 of legislative decree 113/2012 establishes that:
 - Violations of article 10.1 on the prohibition of disclosure of confidential information by workers' representatives involve an administrative fine of between EUR 1,033 and EUR 6,198
 - Violations of article 10.2 on the refusal to disclose information which may harm the undertaking's activities or create market disturbances involve an administrative fine of between EUR 1,033 and EUR 6,198
 - Violations of the directive's provisions on information disclosure and consultation within the special negotiating body or the EWC involve an administrative fine of between EUR 5,165 and EUR 30,988
- Article 18 of legislative decree 113/2012 envisages that a conciliation procedure must be established in order to deal with disputes concerning the application of the decree regarding the establishment of the special negotiating body or of the agreement establishing an EWC, including article 10.1 and article 10.2. The conciliation procedure should be completed within 40 days
- The conciliation committee is made of three members: one appointed by workers' representatives, one by the company management and one appointed jointly by workers' representatives and company management
- Should the conciliation procedure fail, an administrative procedure to consider the dispute is started under the responsibility of the territorial offices of the Ministry of Labour and Social Policies

Current practices: delegates and information

- Information covering the following sectors:
 - Banking and Insurance: 14 EWCs
 - Energy, chemicals, fashion and textiles: 50 EWCs
 - TLCs, media, publishing, paper: 23 EWCs
- Presence of non-union delegates: marginal at most in Italy; more frequent for EWC delegates from countries with non-unionised workplaces
- Key types of information requested and provided: strategic plans, investment, employment prospects, HRM practices, reorganisation and restructuring
- Sometimes company provides information on specific countries, sites, lines of business which are not immediately available through general reports

Current practices: information timing and quality

- Information provision: the main challenge the timing, but some quality issues remain
 - Workers' representatives do not receive the most relevant information affecting employment before the public, but at the same time, maybe just before the public announcement, often because of the 'market sensitivity' of information disclosed
 - As a result, there is practically no room for effective consultation
 - Moreover, less sensitive information is often already present at the national level and/or in public sources, like CSR reports, company websites and newsletters
- Circulation of information within the EWC and across countries: mostly dependent on personal links and informal exchanges
- Circulation of information between the EWC and national representation structures: difficult, especially when formal bodies are not established. It mostly depends on the multiple appointments of EWC members (in the union and in the workplace representation structures)

Current practices: information denial

- Information on national developments may be denied and often is, because it falls outside the scope of the EWC's competences
- Information about corporate restructuring, such as the sale of subsidiaries, acquisitions, and mergers, is seldom disclosed, because it can create market disturbances and has to be communicated first to the relevant stock exchange authorities (for listed companies) or because final deliberations are still to be taken by the company board
- In any case, sensitive information is often provided in a generic way, without important details
- (More) detailed information may be provided at national level, depending on national legislation and practices, where consultations may also take place

Current practices: confidential information

- Disclosure of confidential information: it may happen, although not often. This mostly involves the EWC select committee, when such a body exists
- Confidentiality is generally temporary: it covers the (usually short) period before the information is announced to the general public
- The EWC agreements usually include clauses on confidentiality by adopting the provisions on confidential information as established in the Directive or national transposition texts
- Sanctions for disclosing confidential information are established according with the law, including civil and corporate law, and sometimes company regulations

Current practices: forms of information provision

- Information is usually provided in ppt presentations
- Confidential information may be provided only in verbal form
- Confidential information is clearly identified

Good and bad practices

- Good practices: the establishment of an effective coordination within the EWC members and between the EWC and national representatives to circulate information and exchange opinions
- Bad practices: the provision of information during the meeting, without sharing them beforehand; lack of training for EWC members; the use of EWC as a court of second instance for genuinely national issues

Concluding remarks

- Information disclosure remains a key challenge for the effective operation of EWCs
- The main weaknesses concern the timing of information disclosure
- However, the quality may also be an issue:
 - The information provided to workers' representatives does not seem to be as detailed and specific as it could/should be
 - It is often the same which is communicated to the wider public
- Circulation of (national) information between EWC members and with national representatives remains an issue: the lack of formal bodies and procedures leaves these key processes to personal/informal networks
- Specific training on both the analysis and circulation of information may be crucial to enhance the role and effectiveness of EWCs