

## The European Works Councils and information and consultation rights in Europe

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During the last decades, the banking and finance sector has undergone phases of profound change - both in terms of *business* models and in terms of related structural, organizational and management models - even in the wake of operations that have outgrown, for our companies, national borders and have also brought foreign situations to Italy.

The globalization of the economy, the monetary unification, the integration of markets, acquisitions and *cross border* bank mergers that have occurred in Europe, therefore, imposed a supranational *vision* of both models and tools for managing human resources and labour relations .

Within a few years, the Italian banking system was restructured on the basis of an international strategy that has resulted in numerous *transnational integrations* aimed *primarily* at further improving efficiency and competitiveness.

The Italian Banking Association has always paid attention to both national and international developments; in particular for what regards the management of human resources and labour relations, especially now that the financial world is going through a systemic crisis and strong market turmoil.

The business world undergoes constant changes increasingly linked to the economic evolution of markets. In this sense, the law, understood as that set of rules that regulate markets, chases, often with considerable delay, the evolving needs of businesses that are increasingly operating at both national and extra-national level, in a situation of free competition.

In this context, and especially in view of an ever closer European integration, it was necessary to undertake a European harmonization of some institutions regulated by national rules.

Specifically, as for what relevant here, the common regulation of employee participation in the activity of the enterprise - and then of employee rights to information and consultation - had to take into account both the social issues (with regard to employees) and the economic ones ( with reference to undertakings), thus creating a system that introduces some reforms of company law such as in the case of the EU Directive on the European Undertaking, and in part expresses, with binding rules and guidance documents, fundamental social rights.

The European model of participation is, therefore, formed by two sets of rules: one governed by national rules (to be harmonized) and one given by the Community legislation (harmonizing).

It is this need for harmonization of these two systems, together with the resistance of some Member States, that has imposed, as mentioned, the use of legal instruments (directives and regulations), with different influence on national systems.

The instruments used by the European Union in terms of information and consultation to ensure these rights for employee representatives on a transnational scale are manifold, starting from the Directive on European Works Councils of 1994, now amended by Directive 2009/38 of 6 May 2009 and, in Italy, governed by a Joint Notice signed on 12 April 2011 by CGIL, CISL, UIL and Confindustria (general confederation of Italian industry), Abi, Ania and Confcommercio. The Joint Notice, that the Government should implement in the process of adapting national legislation to EU requirements - enhances the understandings reached at the enterprise level and acknowledges the participation of employees in the context of European Works Councils as a fundamental tool for the management of the organizational transformation and production systems, including in relation to the requirements imposed by the changing global competitive landscape.

The European Works Council, as it is known, was established by the EU Directive No.45 of 22 September 1994 with the aim of ensuring the rights to information and consultation of employees in Community-scale undertakings and groups of undertakings.

This Directive has historically marked the will of the European Commission to extend to transnational some rights that already existed at national level in a "patchy" way in some Member States and to ensure the effectiveness of those rights in cases of business aggregations which should exceed the mere national dimension.

Since 1994, when this Directive was enacted, by virtue of the option granted by Art.13 to conclude agreements which derogate from the provisions of the EU law, over 600 "voluntary" agreements have been concluded in Europe in all productive sectors.

For the case of Italy, the Directive covers about 1,800 firms and about fifteen million workers; there are about 80 companies with headquartered in Italy, or having their group management in Italy.

Of these, only thirty have reached an agreement, for the most part signed pursuant to art. 13, which provided that, if agreements on information and consultation already existed or could be reached by 1996, the DIRECTIVE had not a binding effect on companies, which should comply with it only when the above mentioned agreements had expired. In this way, the voluntary approach was preferred, establishing a de facto situation. And the number of agreements reached pursuant to art. 6, i.e. in compliance with the EU regulations, were not so many.

As for the European banking sector, the agreements concluded so far by foreign banks are about 40.

In these first fifteen years of experience, the need has clearly emerged to improve the implementation of the two basic rights, on which is based the activity of the EWCs, namely information and consultation, and especially the latter, which requires a clear definition of its forms and objectives.

From our point of view, in recent years, the EWC has allowed to promote and develop Group-wide dissemination of values and business objectives, overcoming, albeit with some

difficulty, the diversity of national and cultural qualities of a process of cross-border integration.

There are, however, critical aspects, in particular related to the fact that the union would seem oriented to consider the EWC as an improper place for negotiation at translational group level where to solve strictly national issues and / or to acquire at translational group level that bargaining power that it does not have at the national level.

In light of the foregoing, however, the need emerges for the Italian banking industry to adopt innovative and original solutions in terms of European Works Councils designed to support the process of internationalization.

The Directive in question was subsequently transposed into Italian law by Legislative Decree n.74 of April 2, 2002 which essentially is based on the text of the inter-confederal agreement signed on November 6, 1996 by the then Assicredito (now ABI), Confindustria, CGIL, CISL and UIL.

With this Inter-confederal agreement the social partners had, in fact, created an important tool for the transposition of Directive n. 45/1994 conforming to the policy of adaptation to the "instances of companies, employees and their unions," applying for the first time the principles contained in the Social Protocol to the Maastricht Treaty (later incorporated into the Treaty of Amsterdam of 2 October 1997, ratified by Italy with Law 209/98) which gives an effective role to social partners in the predisposition, as well as in the transposition of Community legislation

Today a careful analysis on information and consultation rights of employees in Italy and at European level, in this difficult phase of the EU integration process is particularly important because in recent years at Community level these have been the most articulated and defined rights, thanks to three new directives:

- the Directive n.2001/86/EC, "supplementing the Statute for the European company with regard to the involvement of employees;
- Directive n.2002/14/EC, "establishing a general framework for informing and consulting employees in the European Community";
- Directive n.72/2003/CE, "supplementing the Statute for European Cooperative Society with regard to the involvement of employees."

Those are Directives that, for the way in which they were produced and the provision they include, as well as the objectives for which they have been approved, call the EU member states, old and new, to realize challenging and complex activities for their transposition and implementation.

In Italy, these directives are part of a system of industrial relations in which the significance attributed to collective bargaining and to bilateral dialogue between the social partners requires special cooperation between enterprises and employees' representatives, as seen with the Joint Notices that have transposed the Directives for the European Company and the Directive of 2002 on information and consultation rights.

But the biggest impact of these directives will be certainly seen, as mentioned, in the new EU member states where the recognition of rights to information and consultation must necessarily follow a definition of representation structures designed to implement these rights in the most effective way .

The EU enlargement, in fact, represents an undoubted challenge for European industrial relations due to the considerable differences between the existing systems of industrial relations in the new member countries as well as between them and the systems of the 15 European countries of older membership.

In particular, major differences concern the system of collective bargaining predominant in the 15 European countries of older membership (although with notable exceptions) and its strong sectoral vocation.

Another difference is the fact that collective bargaining in the EU-15 refers to a very high number of employees in countries with low rates of unionization, through the use of systematic procedures for general extension of coverage of collective agreement.

In contrast, in the new member countries, the form of dialogue that seems to prevail is the tripartite one, and social dialogue between social partners at national and sectoral level seems to reach just negligible levels, and to be relegated to the enterprise level and on an average concerning only 25% -30 % of employees.

These significant differences raise the undoubted liability of the European social partners in the new member countries in the process of European social dialogue, including their ability to implement and carry out "new generation" texts including the possibility of using the tools provided by many EU directives to implement their provisions through collective bargaining.

For these reasons, I believe, that against an already extensive and somewhat more detailed EU legislative production on the right to information and consultation, social dialogue at both national and European level has to restore its centrality.

The shift from sectoral agreements implemented or received through the EU directive to more "free" forms of "soft law" adopted in many texts, such as the already mentioned joint notices, have in fact coincided for some years now with a renewed momentum of that process detected as an agent for change and modernization.

If the social dialogue today is an expression that connotes the possibility of adopting different tools depending on the contents freely identified by social partners in discussions in Brussels, I believe that it is precisely due to the flexibility of the medium and the adaptability shown by the social partners.

The recognition of this ability to adapt to the changes that are now taking place has been clearly recognized in the Commission Communication of 2002 entitled "The European social dialogue: a factor of change and modernization", which states that the social partners at all levels are the engine of effective economic and social reforms, because they are engaged on the "ground" to seek the delicate balance between the flexibility necessary for an increased competitiveness of Europe in a complex global environment, and the security that workers need.

I therefore consider, also in the light of the tortuous process of the proposed revision of the EWC Directive, that the way forward is that of social dialogue and intervention of social partners in negotiating the delicate subject of rights to information and consultation, taking into account, however, the fact that the negotiations at European level must include all the production world and not only the industrial sector represented by BUSINESSEUROPE.

The new agreements established in the meantime, as the one establishing the EWC of Unicredito, are certainly improvements over previous agreements and in particular the EWC of Unicredito can be defined as a model for the future establishment of similar committees.

And the link between European sectoral social dialogue and the role played by EWCs is witnessed by the adoption of guidelines in the EWC of Unicredito, the joint statement on continuing professional education that the sectoral social partners adopted in 2003 in Brussels.

In this sense, the EU legislative action of 2009, preceded by the joint notice between BUSINESSEUROPE and ETUC, introduces elements of discontinuity with the model developed independently by the social partners in Europe, with the risk of a slowdown in the thrust that has characterized the expansion of European Works Councils.

I would reiterate that in no case, however, and also according to the Proposed Revision of the Commission, the EWC should be regarded as an improper place of negotiation and / or compensation with respect to collective bargaining, but it should be considered as a place where management and employee representatives can discuss issues, without aiming at replacing the existing levels.

It is not clear, however, how the European Union wants to connect the role of the EWC with the "framework agreements" and whether the two things exclude or complete each other.

As employers' association engaged nationally and in Europe in BCESA, ABI believes that what expressed by the EWCs in the fifteen years from the point of view of the spreading of a harmonizing system of industrial relations in Europe and its role in participatory business decisions has a high value: I believe however that the EWC should maintain its ability to intervene without becoming a too bureaucratic and slow acting tool, as this could impair its inherent capacities.

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