

Tandem Dialogue

Directive

N. 2009/38 and the most significant
aspects for a more effective
relationship between European Work
Council and Sector Social Dialogue

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Tandem Dialogue N.1

TRANSNATIONAL MATTERS

Directive 2009/38

15th recital → (...) *the competence and scope of action of a European Works Council must be distinct from that of national representative bodies and must **be limited to transnational matters.***

16th recital → *The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational. **These include** matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.*

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TRANSNATIONAL MATTERS

Art. 1 Directive 2009/38

Par. 3 → *Information and consultation of employees must occur at the **relevant level** of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to **transnational issues**.*

Par. 4 → ***Matters** shall be considered to be **transnational** where they concern the **Community-scale undertaking or Community-scale group of undertakings** as a whole, or **at least two undertakings or establishments** of the undertaking or group situated **in two different Member States**.*

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TRANSNATIONAL MATTERS

- 1) The competence of the EWC regarding transnational matters; The approach of the Recast Directive constitutes a restriction to the autonomy of the contracting parties.

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TRANSNATIONAL MATTERS

- Dir. 94/45
- The transnationality was restricted to the subsidiarity requirements;
- In the art. 6 the transnational issue was a *minimum minimorum* (“shall relate **in particular** to transnational questions which significantly affect workers’ interests”).

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TRANSNATIONAL MATTERS

- Dir. 2009/38
- The transnationality is in the body of the Directive;
- Art. 1 par. 3 → the competence of EWC (...) shall **be limited** to transnational issues;
- 16° recital, coda → *These include matters which (...) are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States).*

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EXPERTS AND TRADE UNION REPRESENTATIVES

Art. 5 par. 4 → *For the purpose of the negotiations, the special negotiating body may request assistance from **experts of its choice** which can include **representatives of competent recognised Community-level trade union organisations**. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.*

27th recital → *Recognition must be given to the role that recognised trade union organisations can play in negotiating and renegotiating the constituent agreements of European Works Councils, providing support to employees' representatives who express a need for such support.*

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EXPERTS AND TRADE UNION REPRESENTATIVES

- The Recast Directive recognizes a common practice on the institution of EWC to involve trade union in the negotiation.
- The trade union representatives participate as expert but not as representatives *iure proprio*.
- Both experts and trade union representatives can be involved.

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CONFIDENTIAL INFORMATION

- Art. 8 Dir. → Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorised 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.

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n.9 TRAINING

- Art. 10 par. 4 → *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.*
- 33th recital → *In order to perform their representative role fully and to ensure that the European Works Council is useful, employees' representatives must report to the employees whom they represent and must be able to receive the training they require.*

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TRANSPOSITION

- No later than 5 June 2011
- Way of transposition:
 - 1) By agreement between social partners;
 - 2) By law.

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Responsibility for the establishment of a European Works

- **Art. 4 par. 4** → The management of every undertaking belonging to the Community-scale group of undertakings and the central management or the deemed central management within the meaning of the second subparagraph of paragraph 2 of the Community-scale undertaking or group of undertakings shall be responsible for obtaining and transmitting to the parties concerned by the application of this Directive the information required for commencing the negotiations referred to in Article 5, and in particular the information concerning the structure of the undertaking or the group and its workforce.
- This obligation shall relate in particular to the information on the number of employees referred to in Article 2(1)(a) and (c).
- **18th recital** → The mechanisms for informing and consulting employees in undertakings or groups of undertakings operating in two or more Member States must encompass all of the establishments or, as the case may be, the group's undertakings located within the Member States, regardless of whether the undertaking or the group's controlling undertaking has its central management inside or outside the territory of the Member States.
- (see European Court of Justice: Case C-349/01 ADS Anker; Case C-440/00 Kühne & Nagel AG & Co.; Case C-62/99 Betriebsrat der bofrost)