

# Executive summary

## Introduction

The introductory chapter provides general information relevant for understanding the specific character and importance of proper implementation of the EWC Recast Directive. First, it briefly recalls some key facts about the climate pertaining to the process of adopting the directive. It goes on to present basic information about the process (and timing) of implementation of the directive into national law and provides an overview (in tabular form) of national implementing measures. The chapter then explains the origin and rationale for the study leading up to the present volume. Specifically, it explains the study's importance and timely relevance as an impartial evaluation of the quality of national transpositions on the eve of the official European Commission implementation study foreseen for mid-2016. It concludes by explaining the need for ensuring, in the process of reviewing national implementations of the EWC Recast Directive, its interlinkage and consistency with the general framework of information and consultation in EU law. This requirement is reinforced by explaining its anchorage in the newly introduced goal of improved articulation between EWC rights and their counterparts at other levels.

## Chapter 1

Chapter 1 deals with the question of the most fundamental principles set out in the EWC Recast Directive. It focuses on the right to information and consultation as the core of the EWC directive(s). The core rights of EWCs are discussed in terms of:

- the definitions of information and consultation (in all their breadth<sup>1</sup> as stipulated in the body and preamble of the directive), including references to and considerations of the general principle of effectiveness;
- the definition of the transnational character of matters that EWCs are competent to get involved in;
- articulation (linking) between various levels of information and consultation (mainly between the European and local levels);

This chapter analyses implementation of these aspects of the directive in the legal systems of individual member states, first by considering the general framing of information and consultation within the EU *acquis*. It then analyses national implementation measures concerning information and consultation, including the effectiveness and confidentiality of information and consultation. Finally, it considers assorted aspects of articulation between various levels of information and consultation, including the notion of 'transnationality' delimiting the translational competence of EWCs as opposed to purely national matters (and thus considered in the part on articulation), considerations on timing and priority between various levels, as well as workers' representatives' obligation to report back to their constituencies. The chapter concludes by pointing out that implementation of core rights has too often been a copy/paste from the directive, as well as being of mixed quality and too cursory. These obstacles may hinder the expected real boost in the transparency and efficiency of these rights.

## Chapter 2

Chapter 2 analyses implementation of the new provisions of the EWC Recast Directive with regard to setting up new EWCs. It highlights the importance of these modifications for one of

---

<sup>1</sup> An analysis of the means required to allow EWCs to engage in information and consultation is presented in [Chapter 4.3](#).

the main objectives of the directive, which is to increase the number of EWCs. The chapter starts by explaining the difficulties encountered by workers' representatives in setting up EWCs, making reference to the jurisprudence of the Court of Justice of the European Union. It goes on to present data on implementation of the new requirement imposed on managements by the EWC Recast Directive to provide information necessary to prepare a request for setting up a Special Negotiating Body. In this context it scrutinises the scope of '*parties concerned*', that is, those entitled to receive information and make requests. Particular attention is paid to the role of social partners – and specifically trade unions – whose role in the process of setting up EWCs was recognised in the Recast Directive for the first time. The specific role of social partners was to collect information on the creation of new EWCs; the chapter looks at the implementation and practical functioning of this new obligation to inform the recognised social partner organisations about the commencement of negotiations as a tool for better monitoring of EWC development. Finally, the question of modification (renegotiation) of existing EWC agreements with the purpose of ensuring the application of the new rights from the EWC Recast Directive is reflected upon. The chapter looks at implementation of Articles 13 and 14 of the Recast Directive that deal with the so-called 'adaptation clause', which makes it possible to renegotiate agreements in force in the event of significant structural changes in a company's structure. The chapter concludes by stating that in (too) many member states only formal, as opposed to substantial and effective, implementation has taken place. At the same time, even if one applies only the criterion of presence/absence of provisions on implementation of the Recast Directive in national systems as a qualifier of proper transposition not all member states have passed the test.

### Chapter 3

Chapter 3 of the book is devoted to analysing implementation of modifications of the Recast Directive that have an impact on the functioning of existing EWCs. The chapter starts by explaining the context of the Recast Directive's modifications for improving the functioning of European information and consultation procedures. It goes on to discuss extended competences, including the principle of information and consultation at a time and with a content that allow EWC members to perform an in-depth assessment in order to formulate an opinion on the envisaged measures; the broadening of different aspects of assistance and of means (for example, more regular and more frequent meetings), the right to extraordinary meetings and follow-up, the presence and operation of the select committee within the EWC, access to experts (and expertise) and training, and access to modern means of communication (including translation and interpreting services). Subsequently, implementation of selected key provisions at national level is analysed, which includes the requirement to ensure balanced representation of various categories of workers in EWCs, the right to obtain a reasoned response from management, workers' representatives' protection and right to training, means to collectively represent the interests of workers, the duty to report back to constituencies and, finally, access to expertise. The main conclusion of the chapter is that, again, implementation of the modifications of the Recast Directive varies significantly across the EU. Despite the positive message that most countries have embraced the changes and integrated them into national law, this transposition is in many respects only formal and limited to a copy/paste from the text of the Recast Directive itself; moreover, some novelties were introduced only as options. It therefore remains a matter of local interpretation and practice how some of these changes will be inserted in agreements, which is regrettable and counter-productive as it pushes responsibility for clarification onto the parties negotiating EWC agreements.

### Chapter 4

Chapter 4 complements the analysis of the implementation of new rights provided by EWC Directive 2009/38/EC with an examination of enforcement frameworks. To this end selected aspects of enforcement frameworks and their implementation at national level are scrutinised:

- collective (EWCs) and individual (workers' representatives') legal status and capacity (*locus standi*) in courts;
- costs of legal proceedings applicable in EWC court cases;

- sanctions for breach of EWC rights and provisions.

The chapter looks at the significant diversity of national solutions in the area of enforcement. While the authors find this diversity justified and natural due to the differing industrial relation traditions they highlight the consequences of such (excessive) variation of enforcement standards across the EU. The chapter discusses the far-reaching implications of specific national solutions and shows how negligence in providing effective and accessible enforcement tools impinges upon the functioning of EWCs. The chapter also draws attention to the need to ensure EWCs adequate resources to allow them to seek justice in the event of insurmountable differences of opinion with management. It also brings into the debate on implementation of the Directive the 'taboo' question of effective, dissuasive and proportionate sanctions and shows the stark contrast between the standard of the Directive and national laws. The chapter emphasises that implementation of the procedural enforcement provisions of the Directive is thus not merely a subsidiary technical complement to substantive rights provided to EWCs, but an important ingredient of the overall fundamental principle of '*effet utile*' and has a vital impact on the exercise of the core rights to information and consultation in everyday practice.