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European Works Councils in the Pharmaceutical Industry

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Abstract

The purpose of this study is to provide an overview of institutional development of employee participation in Europe and analyze European Works Councils (EWC) agreements in the pharmaceutical industry. Mergers and acquisitions in the pharmaceutical industry increased the number of EWC agreements. There are now 30 multinational pharmaceutical companies with an active EWC. The first part of the study explores the legal aspects of European Works Councils and the European institutional and regulatory framework for employee participation. The second part of the study analyzes the characteristics and scope of EWC agreements using 5 case studies from the pharmaceutical sector. The source used to identify the EWC agreements is the European Trade Union Institute database and the research method used is legal analysis of constitutional framework and qualitative analysis of the agreements. The EWC agreements in the pharmaceutical sector provide the opportunity for management and employees for information and consultation on transnational issues concerning the company structure, the economic and financial situation of the company, the status and trend of employment and substantial changes concerning the company. Although EWC directives provide the framework for information and consultation on transnational level the constant changes in the structures of pharmaceutical companies and the increasing rates of mergers and acquisitions in the pharmaceutical sector make it difficult for EWC's to effectively participate in decision-making and influence managerial decisions.

JEL classifications: M54, J50, K30.

Keywords: Employee participation, European Works Councils, Employee Relations, Human Resource Management

1. Introduction

Information, consultation and participation of workers is properly developed in accordance with the rules in force in the various Member States of the European Union. This applies to undertakings or groups having establishments or undertakings in more than one Member State of the European Community. This part examines the legislative definitions of employee participation and the institutional development of employee participation through the European Directives.

1.1 Legislative definitions of "employee participation"

The Annex to the Recommendation (92/443/EEC) of 27 July 1992 on the promotion of employee participation in the profits and results of enterprises (including participation in share capital) defines "Voluntary participation": the possibility for both enterprises employees, to express their preference, within the legal, regulatory and contractual framework that may exist in the Member States, for joining a system of participation or for the system or ways of financial participation in which they wish to participate (Point 4). Beneficiaries of participation are mainly employees, i.e. employees covered by employment contracts - as far as possible, access to profit-sharing systems should be available to all employees in the company. In general, employees under similar objective conditions should have equal rights regarding the conditions of access to participation systems (Point 8). Also, for the success of the various participation systems, a significant effort will be required to provide the appropriate information to all interested employees and possibly their training (Point 12).

Later, Council Directive 2001/86/ EC of 8 October 2001 supplemented the European Company Statute on the role of employees defined as "Participation" the influence of the employee's representative body and /or their representatives in the affairs of a company, through: - the right to elect or appoint some of the members of the supervisory or administrative body of the company or - the right to propose and / or reject the appointment of some or all members of its supervisory or administrative body company.

1.2 Legal aspects of EWS's: The European institutional and regulatory framework for employee participation

1.2.1 Institutional development of employee participation

In the EU, the first attempt to set up a European company committee or procedure in Community-wide companies and groups of companies to inform and consult employees is made through Directive 94/95 / EC. This directive was the first to establish the European Works Council. Directive 94/45/EC provides for the establishment of a European Works Council or a procedure for Community-wide undertakings and groups of undertakings for the purpose of informing and consulting employees (Waddington and Kerckhofs, 2003). The above Directive 94/95/EC ceases to be valid from 05-06-2009 and is replaced by Directive 2009/38 / EC.

Next, follows Directive 2002/14 / EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework laying down minimum requirements for the right to information and consultation of employees of undertakings or establishments within the Community. According to Article 3 (Scope) "This Directive shall apply at the discretion of the Member States: (a) to undertakings having at least 50 employees in a Member State or (b) to establishments having at least 20 employees in a Member State."

In 2009, the EU Directives were revised and Directive 2009/38/EC was adopted to improve the right of employees to information and consultation in companies and groups of Community level. Directive 2009/38/EC establishes a European Works Council or a process of informing and consulting employees in all undertakings and all Community-wide groups of undertakings for the purpose of informing and consulting employees. In line with the spirit of Directive 2009/38/EC, several substantial amendments to Council Directive 94/45/EC should be made to inform and consult employees. For the sake of clarity, it is appropriate to recast this Directive. It was also deemed necessary to modernize Community legislation governing the information and consultation of employees at the transnational level, in order to ensure the effective exercise of the rights of information and consultation of employees at

the transnational level, to increase the percentage of the European Works Councils set up, while ensuring the continued operation of existing agreements, to solve the problems identified the practical application of Directive 94/45/EC to address the legal uncertainty caused by certain provisions or the absence of provisions and to ensure the better interconnection of Community legislation in the field of employee information and consultation (Marginson, 1998). At the same time, according to Directive 2009/38 / EC, guarantees must be given to employees and their representatives regarding their information and consultation at the appropriate management level and level of representation depending on the respective issue (European Commission, 2018). To achieve the above, the competence and scope of the European Works Councils must be distinct from the competence and scope of the national representative bodies and limited to transnational issues (Gohde, 2005).

In accordance with Article 1 of Directive 2009/38 / EC (Subject matter) 1. The purpose of this Directive is to improve the right of employees to information and to consult at Community-level undertakings and groups of undertakings. The information of the employees and the consultation with them are carried out at the appropriate managerial level and level of representation, depending on the respective issue. To this end, the competence of the European Workers' Council and the scope of the process of informing and consulting employees covered by this Directive are limited to transnational issues. Paragraph 4 defines transnational "matters concerning the whole undertaking or group of undertakings at the Community level or at least two undertakings or establishments of the undertaking or group situated in two different Member States." The Directive stipulates that in order to determine the transnational nature of an issue, it is appropriate to take into account both the extent of its potential impact and the level of management and level of representation involved. For this purpose, issues concerning the whole undertaking or group or at least two Member States are considered transnational (Eurofound, 2015). These include issues that regardless of the number of Member States involved, are important to the European workforce both in terms of the extent of their potential outcomes and in terms of transfers of activities between Member States.

According to Article 2 (Definitions) 1. For the purposes of this Directive: (a) "Community-wide undertaking" means any undertaking having at least 1 000 employees in the Member States and at least 150 employees in each of the at least two different Member States (b) "group of undertakings" means any group comprising controlling and controlled undertakings; (c) "Community-wide group of undertakings" means any group of undertakings which meets the following conditions: - has at least 1 000 employees in the Member States, - has at least two member undertakings in different Member States, and - at least one member undertaking of the group has at least 150 employees in one Member State and at least one other member company of the group has at least 150 employees in another Member State.

Pursuant to Article 6 (Content of the Agreement) 1. The Central Management and the Special Negotiating Group shall negotiate in a spirit of cooperation with a view to reaching an agreement on the details of implementing the information and consultation of employees. Without prejudice to the autonomy of the Parties, the agreement between the Central Management and the Special Negotiating Group, shall specify: (a) the member companies of the Community-wide group of undertakings or the premises of the Community-scale undertaking covered by the Agreement; (b) the composition of the European Works Council, the number of members, the distribution of seats, taking into account, as far as possible, the need for a balanced representation of employees by activity, category of workers and gender, and the term of office. (c) the tasks of the European Works Council and the procedure for informing and consulting it, as well as the arrangements for liaison between informing and consulting the European Works Council and informing and consulting the national staff

representation bodies, referred to in Article 1 (3). d) the place, frequency and duration of meetings of the European Works Council. (e) where appropriate, the composition, the appointment procedure, the tasks and the rules of procedure of the limited composition committee set up within the European Works Council. (f) the financial resources and material resources available to the European Works Council. (g) the date of entry into force of the agreement and its duration, the arrangements under which the agreement may be amended or terminated, and the cases in which the agreement should be renegotiated and the procedure for its renegotiation, including; where appropriate, changes in the structure of the Community-scale enterprise or group of undertakings.

The European institutional framework for employee involvement and participation and European Works Councils (EWC) is presented below (Table 1) in chronological order (Triantafyllidou, 2021).

Table 1: European Institutional framework for EIP and EWC's

▪ 1992: 92/443/EEC: Council recommendation of 27 July 1992 concerning the promotion of participation by employed persons in profits and enterprise results (including equity participation)
▪ 1994: Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees
▪ 2001: Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees
▪ 2002: Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation
▪ 2009: Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)

Source: Analysis of Institutional Framework (own compilation)

Following the agreements of the European Employees' Councils (EWC) of the companies participating in the research are presented.

2. Method and materials

The research project is considered a way of conducting research, using different research methods. Each research design has its own specific approach to the collection and analysis of empirical data and therefore has its own advantages and disadvantages. Although each design has its own defining characteristics, there are overlapping areas that complicate the design selection process. The qualitative method approach is considered to best meet the requirements of the research design (see also Havlovic, 2020a; Havlovic, 2020b). Firstly, the researcher's personal interest is in studying behavioral issues and seeking answers to 'how' and 'why', rather than 'how much'. As the research questions show, what is being pursued essentially requires an in-depth understanding of the implementation of employee participation in subsidiaries of multinational companies operating in the pharmaceutical

sector and having a European Works Council. Case study, also known as case history, is a powerful research methodology. It is important to select multiple cases so that cross-analyses can be performed. The multiplicity of cases provides the researcher with a deeper understanding of the investigation of the process. The reason behind the choice of multiple cases is that these cases can offer similar results for predictable reasons (literal reproduction) or opposite results for predictable reasons (theoretical reprint). Sampling requires at least four cases and at most fifteen cases (Yin, 2003). The selection criterion of the Organizations participating in the case studies is to belong to the pharmaceutical industry and to fall within the scope of Directive 2009/38/EC/6.5.2009 on the right of employees to information and consultation at Community level companies and groups of companies. The ETUI database (www.ewcdb.eu) is used to search pharmaceutical companies with a European Works Council. The search result was a list of 30 multinational pharmaceutical companies doing business in Europe (Table 1). It is noted that out of the 30 multinational companies, 17 have a subsidiary in Greece. Based on these selection criteria, the agreements between employers and employees' councils at European level (EWC agreements) have been studied, which are available in the ETUI database in a total of 5 Organizations to extract useful data on employee participation practices.

Table 2: Multinational companies with an active EWC

Company Name	EWC body	Agreement Date	Status
1. A. Menarini Industrie Pharmaceutiche Riunite	Menarini European Works Council	05/09/2001	original installation agreement
2. Akzo Nobel	Akzo Nobel European Forum	25/10/2012	renegotiated (renewal or extension)
3. Algroup	Alusuisse-Lonza European Works Council	18/09/1996	original installation agreement
4. Astra	Astra European Forum	10/09/1996	original installation agreement
5. Astrazeneca	AstraZeneca Euro Consultation Committee	01/10/2000	renegotiated (renewal or extension)
6. Aventis	Aventis European Works Council	01/04/2004	renegotiated (renewal or extension)
7. Bausch & Lomb	Bausch & Lomb EWC	19/10/2016	renegotiated (renewal or extension)
8. Bayer	Bayer European Forum	27/08/2009	renegotiated (renewal or extension)
9. Boehringer Ingelheim	Boehringer Ingelheim European Forum Committee	25/06/1996	original installation agreement
10. Famar	FAMAR Group of Companies European Works Council	02/04/2014	original installation agreement
11. Fresenius	Fresenius SE Works Council	13/07/2007	renegotiated (renewal or extension)
12. Gehe	Gehe European	20/09/1996	original installation

	Works Council		agreement
13. Glaxosmithkline	Glaxosmithkline European Employee Consultation Forum	11/02/2016	renegotiated (renewal or extension)
14. Johnson & Johnson	Johnson & Johnson European Works Council	01/01/2018	renegotiated (renewal or extension)
15. Novartis	Novartis Euroforum	01/02/2013	renegotiated (renewal or extension)
16. Novo Nordisk	Novo Nordisk European Works Council	13/09/1996	original installation agreement
17. Nycomed Amersham Imaging	Hafslund Nycomed European Works Council	16/02/1996	renegotiated (renewal or extension)
18. Orion	Orion European Works Council	23/02/2004	original installation agreement
19. Pharmacia & Upjohn	Pharmacia & Upjohn European Forum	07/08/1996	original installation agreement
20. Phoenix Pharma	Phoenix Pharma SE Works Council	06/12/2016	original installation agreement
21. Rexam	Rexam European Forum (REF)	28/04/2004	renegotiated (renewal or extension)
22. Rio Tinto plc	Rio Tinto EWC	10/03/2017	renegotiated (change of terms of agreement)
23. Roche Holding (Hoffmann La Roche Ltd)	Roche Europa Forum	19/04/2000	renegotiated (renewal or extension)
24. Sandoz	Sandoz European Information Forum	19/02/1996	original installation agreement
25. Sanofi	Sanofi European Works Council Agreement	24/02/2005	renegotiated (change of terms of agreement)
26. Schering Plough	Schering Plough European Forum	14/11/2007	renegotiated (renewal or extension)
27. Solvay	Solvay European Works Council	20/06/2018	renegotiated (renewal or extension)
28. Teva Farm	TEVA European Works Council	09/12/2019	original installation agreement
29. UCB	UCB Euroforum	20/06/1996	original installation agreement
30. West Pharmaceutical Services	West Pharmaceutical Services European Works Council	31/03/2008	original installation agreement

Source: Data processing survey (Data extracted from ETUI, 2019 <https://ewcdb.eu/>)

3. Characteristics and scope of EWC agreements in the pharmaceutical industry

3.1 EWC 1: Novartis

Euroforum has the following objectives: a. providing information, dialogue and consultation mechanism that takes into account the organizational and management structures of the Company and the cultural, legal and business differences that exist between the participating countries, b. providing a direct dialogue between the Company's Management and the employees of the participating countries on transnational issues in Europe concerning them and c. to create an opportunity for Euroforum staff members to have access to Management and, therefore, the opportunity to convey different views and perspectives. The maximum number in Euroforum will be 45 Employee Members. Employee members will be elected for a term of 4 years unless local law provides for different terms. The Company is entitled to assign members of the management of the participating country (hereinafter "Management Members") to the Euroforum. The number and selection of the Board Members in Euroforum are at the discretion of the Company. The information and consultations regarding the Company Group and its entities refer in particular to: the current and planned structure of the Company Group, the current and planned development of sales / costs / operating income, the current and planned number of employees (FTEs), working conditions (e.g. social benefits, income structure, working hours), introduction and modification of corporate guidelines and systems, in particular in the field of HR, planned changes in the distribution of productive, development and other functions within the company, scheduled ancillary, mergers, closures and divestments, new working methods, code of conduct, corporate social responsibility, corporate culture, planned investments, rationalization projects, health, safety and environment, data protection, Companies of the Company (product pipeline, customers, market changes, etc.), outsourcing and off-shoring, other transnational processes or projects that may have a significant impact on the interests of employees.

3.2 EWC 2: Famar

The EWC will be involved in briefing and consulting on European transnational issues of the Company's Group of Companies that have an impact on employees. Once a year, after the publication of last year's results, the EWC will hold a regular meeting during which transnational information will be exchanged about the Company's group activities, regarding: its legal and organizational structure, including significant changes. the ownership structure, its results and the financial and financial condition of its activities, production and sales and their prospects, substantial changes in organization, the introduction of new working methods or new production processes, production transfers from one location to another, a major new production contract, significant in-house transfers, mergers and acquisitions, status and future prospects large-scale redundancies or closures of companies, facilities or important parts of them, large-scale collective redundancies, broad social policy, in particular training, gender equality, health and safety field. This information will be based on a report prepared by the management, which will include financial and financial information for the Group of the Company and, if necessary, will allow the preparation of consultations. The committee is composed jointly of representatives of the employees and the employer. The representatives are employees, i.e. with an employment contract with the company and are members of the local labor councils where they exist. To be a member of the committee, corporate seniority of at least two years is required. The members of the EWC are appointed in accordance with the relevant national rules. The representative unions appointing members of the EWC will be coordinated to acquire, within the EWC, as far as possible, a presence that will represent

the main functions of the Company. The EWC will consist of one country representative with at least 70 employees and less than 400 employees.

3.3 EWC 3: Boehringer Ingelheim

The purpose of the European Forum is to provide information and consultation to all employees working in the Company. The European Forum will have 31 members. 23 Employee Representatives and 8 Employers Representatives. The number of members of the European Forum reflects the number of persons employed in all the companies of the group in each Member State of the Territory and the number of the Member States of the Territory of the Company at the date of signing. The European Forum is regularly informed and consulted on the following issues in particular: the financial situation and financial position of the group of companies, the trend in the employment situation within the group, questions on corporate human resources policies, including training programs and development, safety, environment and health issues, substantial changes in the organization, including structural changes that significantly affect the interests of workers in at least two countries, significant trends and substantial changes in production and / or research and development (e.g. introduction of new technologies, new facilities, closure of existing sites).

3.4 EWC 4: Glaxosmithkline

The EWC will be a joint body composed of Employee and Management Representatives. Under the EWC, the Company will be represented by Management Representatives from the Company's large companies in Europe, at least one of whom will be Vice President / General Manager. Provided that the total number of employee representatives does not exceed 38, the right to be represented at the EWC by employee representatives will depend on the number of employees employed by the Company in the countries concerned. The EWC will receive information on the Company's business progress and prospects at the annual meeting or as required. This includes Information on transnational issues covered by this Agreement. The EWC will receive information and / or consult on issues such as: the strategy, structure, the economic and financial situation of the company in Europe, the potential growth of the company, production and sales in Europe, the situation and the possible trend in employment, the situation and the possible trend in investments, substantial changes concerning the organization, the introduction of new working methods or production processes and employees in agencies, transfers of productive activities, mergers, cuts or closures of companies, facilities or important parts, group redundancies affecting the operation of businesses in Europe.

3.5 EWC 5: Pfizer

The Pfizer Europe Employees Forum - PEEF is the body responsible for information and consultation on transnational issues. The issues are considered "transnational" when they concern the employment of the Company as a whole or in two companies or facilities in at least two different countries covered by this agreement. The PEEF is informed and consulted on the following issues: business development financial and financial situation, employment status and trend, business structure and its substantial changes, substantial changes in the organization, the introduction of substantially new methods of production and production processes, production transfers, mergers, significant cuts or closures of stores or important parts of them, and large group redundancies. Every incident must be characterized by a substantial impact on the workforce. Written information will be made available to PEEF members prior to the meetings. Where appropriate, information can be made available in a variety of ways. The information will be provided in a timely manner to give employees' representatives reasonable time to evaluate the information and prepare an opinion. Seats

shall be allocated in accordance with the following principles: One representative shall be available in each Member State covered by this Agreement. The distribution of positions in the PEEF should aim at a balanced representation of the various employees and activities of the Company.

Table 3: Characteristics and Scope of EWC agreements in the pharmaceutical industry

Role of EWC	Novartis	Pfizer	<i>Boehringer Ingelheim</i>	Glaxosmithkline	Famar
Information and consultation	√	√	√	√	√
EWC operation					
EWC composition	√	√	√	√	√
Meetings and agenda	√	√	√	√	√
Confidentiality	√	√	√	√	√
Protection of the members	√	√	√	√	√
Language	√	√	√	√	√
Costs	√	√	√	√	√
Applicable law	√	√	√	√	√
Trainings and experts	√	√	√	√	√
Extra meetings		√	√	√	√
Duration of agreement		√		√	√
Select Committee	√	√	√	√	
Competences of EWC					
Company structure	√	√		√	√
Economic situation of the company		√	√	√	√
Financial situation of the company		√	√	√	√
Sales, costs, income	√			√	√
Working conditions	√				
HR systems and policies	√		√		
Training and development			√		√
Changes in production	√	√	√	√	√
Mergers, acquisitions and closures	√	√		√	√
Investments	√			√	√
Changes to working	√	√		√	√

methods					
Health, safety and environment	√		√		√
Status and trend of employment		√	√	√	√
Substantial changes concerning the Organization		√	√	√	√

Source: Analysis of EWC agreements available at EWC database -own compilation (<http://www.ewcdb.eu/>)

3.6 The role of Human Resources Management (HR) Department in the European Works Councils (EWC)

The agreements establishing the European Works Councils provide for the role of the Human Resources Department in the European Works Councils. A copy of the original recommendation document of the European Works Council is usually sent to Human Resource Management Department of the subsidiaries of the multinational. The role of the Human Resources Management Department is to facilitate the convening, communication and conduct of the meetings in the context of the operation of the EWC. High-ranking executives of the Human Resources Department often attend the meetings of the EWC, address a greeting and present the Company's plans for the next period. At the same time, the HR Managers in each country ensure that the EWC representatives are appointed in accordance with national law and practice. In some cases, the EWC establishment agreements provide for specific roles and responsibilities for the Human Resources Management. In particular, the head of the Corporate Human Resources Department worldwide may be Vice President or Secretary of the EWC. At the same time, one of the above agreements establishing the European Council of Employees provides that the President of the EWC will be appointed by senior Human Resources executives, for a recommended minimum period of five (5) years. HR can play its part in the European Works Councils as it has the know-how to facilitate smooth transitions, prevent and de-escalate potential conflicts, ensure compliance with the law and the regulatory framework, and provide training and guidance in employment relationships. As the institutional framework is constantly changing, the Human Resources Department should be able to ensure compliance as well as identify, evaluate and resolve issues that may arise before they escalate.

4. Conclusion

Mergers and acquisitions in the pharmaceutical industry increased the number of EWC agreements. There are now 30 multinational pharmaceutical companies with active EWC. For the 10 of them the original installation agreement for the EWC was first established in 1996 and for 16 of them the EWC agreement is renegotiated (renewal or extension, change of terms of agreement). The EWC agreements in the pharmaceutical sector according to their terms provide the opportunity for management and employees for information and consultation on transnational issues concerning the company structure, the economic and financial situation of the company, substantial changes concerning the Organization including mergers, acquisitions, outsourcing and closures, changes in production and in working methods, the status and trend of employment, the working conditions and the HR systems and policies including training and development and health, safety and environment. Despite the institutional forecasts for information and consultation there are conflicts between management and trade unions and strikes in the pharmaceutical sector. In 2019 there is a

strike in Pfizer over pension scheme changes, in 2018 there is a strike in Teva over the plan on eliminating 340 positions, in 2016 there is a strike Sandoz Canada and at the core of labor dispute are pensions and wages, in 2016 there is a strike in Glaxosmithkline and after this strike GSK suspended operations temporarily at its factory. Although EWC directives provide the framework for information and consultation on transnational level the constant changes in the structures of pharmaceutical companies and the increasing rates of mergers and acquisitions in the pharmaceutical sector make it difficult for EWC's to effectively participate in decision-making and influence managerial decisions.

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