Impacts of new EU labor laws will be felt worldwide

Christian Schneider

Christian Schneider is associate director of the Wharton School Center for Human Resources, which he joined in 1976 after completing his graduate studies in Germany and the Netherlands. He is in charge of the Center’s multinational research advisory group which focuses on human resource issues. A labor law specialist, Schneider is also a consultant to companies on international labor relations issues and European Community social policy issues. Schneider is an invited lecturer at the Josef Lauder Institute of Management and International Studies at Wharton.

Against a background of high unemployment, the European Union is facing a huge challenge as it prepares to usher in a new employment policy that cuts across cultures and borders and underscores the importance of social rights, according to Christian Schneider in his address to the Global Executive Forum.

The goal of this policy, which is contained in the Treaty of Amsterdam, is to create a "coordinated strategy for employment and particularly for promoting a skilled, trained, and adaptable work force and labor markets responsive to economic change."

The EU already has in place an elaborate set of directives in the area of social policy, regulating, among other things, such issues as equal pay, minimum annual paid holidays, hours of work, portability of pensions, health and safety, maternity and paternity leave, mass redundancies, gender equality, and other nondiscrimination rules.

Schneider pointed out that given the highly regulated social policy area, it was of paramount importance for companies operating in the EU to be aware of, and adhere to, the various rules and laws both at European and national levels. Noncompliance would likely have legal consequences for a company and, in addition, may cause an image problem with the public because of press coverage that may be perceived to be negative.

It is important to note that the EU operates on the principle of subsidiary, which limits its jurisdiction to those policies that cannot be sufficiently achieved by the Member States.

European works council

The European Works Council Directive, adopted in September 1994, has been a highly controversial piece of EU legislation. At its heart is the "consult and inform" requirement that obligates employers to consult with employees about any decisions that could directly or indirectly affect their jobs, and to keep them informed about the financial health of the business, among other things.

The EWC Directive, which had to be transposed into national law by September 1996, applies to all companies with at least 1,000 employees within the EU, and at least 150 employees in each of at least two Member States. The United States, with some 190 companies falling under this law, is the second most affected business community after Germany.

Unlike its EU-based counterparts, American-headquartered companies with subsidiaries in the EU may designate one of their EU business units as agent for the purpose of establishing a European Works Council.
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"The EU Member States have European Works Council laws that follow the broad outline of the European law but with their own national characteristics," said Schneider, adding that companies that have a choice will try to headquarter in a Member State that appears to have pro-business, rather than pro-labor legislation.

European Works Councils, which must represent the interests of all employees in all Member States in which a company operates, do not replace local information and consultation laws and may not engage in either collective bargaining or strike actions.

There are currently some 600 European Works Councils; by Sept. 22, 1999, when the first phase of the law expires and becomes subject to a EU Commission review, approximately 1,400 more companies will have to have negotiated works council agreements.

What Renault has wrought

Renault's failure to properly consult with its European Works Council prior to closing a near-new plant in Belgium last year (see sidebar), has led to trade union demands for including stricter information and consultation rules after next year's revision procedure.

According to the unions, the requirement to "inform and consult" is treated rather vaguely right now. Therefore, they insist that the definition of "consultation" should be clarified by adding "before a decision is taken, with a view to reaching agreement," said Schneider.

"Although unions understand that management has the last word, what they want is a fair airing of decisions that impact hundreds of thousands of employees, their families and communities," Schneider added.

In the upcoming revision of the Directive, the unions are seeking sanctions that would punish a company for taking actions similar to those of Renault. For example, a company might be barred from receiving public contracts and may have its plant closure decision declared null and void until such time that a "proper" information and consultation procedure with the European Works Council has taken place.

Companies believe that this may create a competitive disadvantage in relation to businesses not restrained by the works council directive.

The unions are also asking that the threshold of employees for the establishment of a works council be reduced from 1,000 to 500, and that the distribution of the workers in other member states be reduced from 150 to 100.

Furthermore, the issue of experts who are to advise the employees in European Works Council negotiations is on the table. EU trade union federations are asking that the revised directive state clearly that the selection of outside experts, usually delegated from trade unions at the present time, is to be solely the choice of the employees and that these "experts shall take part in the negotiations with central management."

Euro and transparency

When the euro becomes the unifying currency on Jan. 1, 1999, disparities in prices and wages among Member States will suddenly become more transparent. Notwithstanding the national differences in economic performance, productivity, and cost of living, it will appear, for example, that a Volkswagen
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A worker in Portugal making 20 euros per hour is paid much less than his German counterpart receiving 40 euros.

Therefore, some EU trade union federations would like to see European Works Councils be granted certain regulatory authority in the area of cross-border wage policy matters.

World Works Councils

Increasingly, companies with European Works Councils are being asked to enlarge their geographic scope and turn them into World Works Councils so as to provide a forum for employee representatives from a company's operations worldwide. Aiding this development is the growth of global companies and mergers between EU-based companies and outsiders, such as Daimler and Chrysler.

Schneider believes that as more and more multinationals become involved in European and World Works Councils, the European concept of employee information and consultation rights is likely to spread to other areas of the world.

Renault fined for not consulting with workers

Last year Renault of France announced the closure of its Belgian plant in Vilvoorde that it had opened only two years before.

The decision, which affected more than 3,000 workers, came unexpectedly and without prior consultation with the European Works Council representatives. As this was a decision solely based on economic grounds, "the head of Renault knew what he was doing and knew there would be consequences," said Schneider.

Renault's European Works Council took Renault to court for failure to fulfill its information and consultation obligation under the Directive. Furthermore, in both France and Belgium the courts decided against the company, requiring it to pay heavy fines and provide for a very expensive layoff plan.

The reason that the Belgium plant closure decision became a European Works Council issue was the fact that Renault wanted to transfer its production to low-cost Portugal, a move that social policy advocates like to refer to as "social dumping." ²

While Renault, of course, had no problem recovering from the fines, it has yet to recover its image.
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**European Union: Structure/Definitions**

**Commission** - Comprised of 20 commissioners, two each from France, Germany, Italy, Spain and the United Kingdom, and one each from Spain, Belgium, Greece, Netherlands, Portugal, Austria, Sweden, Denmark, Finland, and Ireland. Appointed by their national governments for five-year terms, the commissioners’ loyalty is to the EU and not their national interests. The Commission proposes legislation, is responsible for administration, and ensures that provisions of the treaties and the decisions of the institutions are properly implemented. It has investigative powers and can take legal action against entities that violate EU rules. It manages the budget and represents the EU in international trade negotiations.

**Council of Ministers** - Comprised of 15 ministers, one from each member state. The Council balances the interests between national and Union interests. It enacts EU laws, and can accept or reject legal suggestions made by the Commission. Unlike the Commission, the ministers can defend their national interests.

**Council of Ministers Presidency** rotates among member states every six months.

**Parliament** - Comprised of 626 members elected to five-year terms by the 370 million citizens of the EU. The Parliament president is elected for a two-and-a-half year term. Parliament cannot enact laws but can veto legislation in certain policy areas, amend or reject the EU budget, dismiss the entire Commission through a two thirds vote, and supervise the EU’s new employment policy.

**Court of Justice** - Comprised of 15 judges, one from each member state, appointed for renewable terms of six years. It ensures that the treaties are interpreted and applied correctly by other EU institutions and by the member states. The court has final decision-making powers, and its judgments are binding on EU institutions, member countries, national courts, companies and private citizens, and overrule those of national courts.

**Court of Auditors** - Comprised of 15 members appointed by the Council for renewable six-year terms. The Court has extensive powers to examine the legality and regularity of receipts and expenditures and the sound financial management of the EU budget.

**Member States** - the 15 countries that are part of the European Union.

Source: European Union