

EUROPEAN PROJECT

VS/2019/0016

implemented with the financial support of the
European Commission- DG Employment, Social Affairs and Inclusion



THE EMPLOYEE INVOLVEMENT IN THE CHANGING WORK

WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS:

**TRAINING AND POLICY MAKING
FROM THE EU DIRECTIVES TO THE CURRENT PRACTICES**

This book and its contents have been made in the framework of the concerned European Project supported by the European Commission -DG Employment, Social Affairs & Inclusion. Sole responsibility for any use that may be done of the information that this book contains lies in its authors and therefore the EU Commission does not bear any responsibility in this respect.

**EUROPEAN PROJECT
VS/2019/0016**

***THE EMPLOYEE INVOLVEMENT IN THE CHANGING WORK
WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS:
TRAINING and POLICY MAKING
FROM THE EU DIRECTIVES TO THE CURRENT PRACTICES***

**edited by Mario Ongaro
ISRF-LAB/FISAC-CGIL Project Manager**

**implemented through the financial support of the EU Commission
- DG Employment, Social Affairs & Inclusion -**

A heartfelt thank-you to **our partners** in this Project:

- *UNI EUROPA and UNI FINANCE;*
- *all the participants who represented the employees of eight transnational groups with their respective E.W.C., Intesa SanPaolo, Unicredit, KBC, Bnp-Paribas, Crédit Agricole, Groupama, Société Générale, Santander, that are present in 28 European countries.*
- *the Albanian Union FSTBSH*
- *the Bulgarian Union FFSTUB*
- *the Romanian Union FSAB Cartel Alfa*
- *the Slovakian Union OZPPaP*
- *the Hungarian Union BBDSZ*
- *the Slovenian Union SBS*
- *the Belgian Union BBTk*
- *the Belgian Union LBC*
- *the French Union F.E.C./F.O.*
- *the Serbian Union SFOS*
- *the Maltese Union MUBE*
- *the Turkish Union BASISEN*

Special thanks to the Employers' Federation E.B.F. through their B.C.E.S.A. (Banking Committee for European Social Affairs)

CONTENTS

Foreword	page 1
Steering Group Meeting/Seminar in Sofia	3
<i>Agenda and Framework</i>	5
<i>This EU Project in its route and goals</i>	9
<i>Two Goals of the Project to be attained with the support of our External Expert</i>	14
<i>First Questionnaire</i>	17
Presentations by:	
<i>Banco Santander EWC</i>	27
<i>K.B.C. EWC</i>	34
<i>Crédit Agricole EWC</i>	39
<i>Unicredit Group EWC</i>	46
Presentations and Reports by the External Expert Professor Filip Dorssemont:	
<i>Employee Involvement in the EU Law</i>	48
<i>A Juridical Case from Article 27 of the EU Charter of Fundamental Rights</i>	66
<i>Commentary on the Articles of the EU Charter</i>	85
Plenary Seminar in Belgrade	109
<i>Agenda</i>	111
<i>Report on the Seminar</i>	114
<i>Again on Fitness Check</i>	123
<i>Goal VI. Of this Project: Transnational Company Agreements/Joint Declarations</i>	125
<i>Transfer of Undertakings, International Mergers, Social Plan, “Voluntary”EWC Agreem.</i>	126
<i>Again on New Member States and Accession Countries</i>	127
Presentations:	
<i>4.0 Banking in Europe</i>	129
<i>Merger Banco Santander/Banco Popular</i>	141
Professor Dorssemont:	
<i>EWCs facing digitalization</i>	149
<i>The European Social Dialogue Facing Digitalization</i>	152
Presentations:	
<i>EU Sectoral Social Dialogue by BCESA-EBF</i>	160
<i>Groupama EWC Agreement on Digitalization</i>	165
	171
Plenary Seminar in Rome	169
<i>Agenda</i>	
<i>Up-to-date Foreword to this Seminar and Involvement of Social Partners</i>	174
<i>State of Play and Follow-Up of the Project</i>	175
<i>Introductory Report to our Collective Work</i>	178
<i>The 13 Points: proposals to review the EU Directives on Employee Involvement</i>	182
<i>The Round Table with the Employers’ Representatives and MEP</i>	
Presentations:	
<i>The State of Play of the Project + Digitalization and Restructuring Processes: an Overview</i>	189
<i>Digital Innovation: the Global Challenge</i>	199
<i>The International Social Dialogue in Unicredit (by Unicredit Employer’s Representative)</i>	215
<i>Société Générale EWC</i>	224
<i>Digitalization and Employment in the Banking Industry in Turkey</i>	228
Presentation by Professor Dorssemont:	
<i>EU Directives on Employee Involvement: from Fitness to Purposive Review</i>	234
Steering Group Seminar and Joint Meeting with the Employers’ Representatives in Rome	249
<i>Agenda</i>	251
Report:	
<i>The 4 points: our proposal to review the EWC Directive</i>	256

The impact of Covid-19 on our Project
The acceleration of change due to Covid-19
The Speed of Change 1)
The Speed of Change 2)-3)
Update on 4 points + 13 points
Overview on EWC for Intesa Sanpaolo group-level
The experiences of two Bank Employees 4.0
The stories we heard by 4.0 employees and the analysis of their questionnaire
Our dialogue with the Employers' Representatives
Future prospects and credits

The Final Conference in Rome	page 287
<i>Agenda</i>	289
<i>Report on this Final Conference</i>	292
<i>The Final Round Table with the Employers Reps, Cgil, Uni Finance and the MEP</i>	300
<i>The Final Goal IX of this Project</i>	326
Presentations by our Sociologist Piero Valentini	
<i>Digitalization Impact and Social Dialogue</i>	327
<i>Digitalization and Involvement of Young Employees in Finance Industry</i>	332

Foreword

A European Project that's gone beyond any expectation, a real sharing of ideas and proposals:

this is the best and most concise conclusion I find for this Project and that our website engineer chose to define it.

Indeed we were aware, my team and I, of the technical and juridical complexity of the whole matter: analysing the change in working conditions, the change in the finance business, in the way the financial products are on sale, the change in the composition of a workforce as years go by, older employees retire or pre-retire happy to do it, while much younger and much more motivated women and men enter this industry.

At the same time we have believed in the Fitness Check of the EU Directives for the Employee Involvement and have decided to try and give our contribution to this Fitness Check, proud of a European legislation made to manage rights in a changing economy and society, a European legislation needing this check to keep up with such an impressive speed of this change.

Together with us, many colleagues, comrades and friends, elected by trade-unions and employees to manage their EWC and/or their national union, have believed in the opportunity and value of this Project, but with us we have also had (and will have, I am sure) some outstanding employers' associations top responsible persons, who share the goal of industrial relations well working in this continuous change as well as a up-to-date EU legislation.

The key word of this project has been "change". This word often causes fear.

We have wanted to turn such a fear into a more positive attitude able to see the change as an opportunity, as a perspective to have a future and as a challenge not to be avoided but to be taken to grow up.

Managing fear to keep it under control requires a willingness supported by awareness and knowledge to be provided by vocational training for employees of course but also fort their actual or potential trade-union reps who need to learn how to organise employees 4.0 by meeting their demands. Managing change requires tools to be used by competent trade unions reps and these tools have to be up-to-date with the speed of change: they are collective bargaining tools, information/ consultation tools whose sources are more and more the EU Directives for the Employee Involvement.

As well as trade-union approach, the concerned Directives need to be up-to-date.

Our little contribution in this respect may get stronger as long as we are able to involve our social partners in our goals and share with them all possible ideas and initiatives, being aware of the diversity of our respective role but bearing in mind the added value of an effective cooperation. Our voice has nevertheless to be spread and supported in the EU institutions through a link with MEPs whom we are in tune with and whom we can coordinate our action with. So these have been the concepts behind our goals that this action has in the end attained.

We are confident in such a follow-up of this Project, having clearly agreed with our social partners that we will be able to share the work and the effort to put this agenda forward.

Mario Ongaro

Project Manager

Our first collective event:

Steering Group Meeting/Seminar

in

Sofia

on

April 2nd and 3rd 2019



**EUROPEAN PROJECT
VS/2019/0016**

***EMPLOYEE INVOLVEMENT IN THE CHANGING WORK
WITHIN
THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS:***

***TRAINING and POLICY MAKING
FROM THE EU DIRECTIVES TO THE CURRENT PRACTICES***

**supported by
EUROPEAN COMMISSION
DG EMPLOYMENT, SOCIAL AFFAIRS and INCLUSION**

**FIRST MEETING/SEMINAR
OF THE PROJECT STEERING GROUP**

***Sofia,
2nd - 3rd April 2019***

***c/o
HOTEL ANEL***

***Todor Alexandrov 14, 1303 Sofia Center, Sofia, Bulgaria
tel.: +359 2 911 9900***

SIMULTANEOUS TRANSLATION ITALIAN AND ENGLISH

AGENDA

TUESDAY 02-04-2019

10.45 Participants' Registration

11.00 Welcome speech by the Bulgarian Union FTUFS

11.10 Digitalization and participation in the 4.0 changing work

Agostino Megale, ISRF-LAB President

11.40 This EU Project in its routes and goals

Mario Ongaro, ISRF-LAB EU Section Manager

12.15 Analysis of the answers to the First Questionnaire

Nicola Cicala, ISRF-LAB Manager

13.00 Lunch break

14.30 Feedback by the 8 transnational groups delegates towards the Questionnaire analysis

15.15 Presentations by the 8 transnational groups delegates about the priorities and main issues of the concerned EWC and group, with specific attention to the Project main issues (15' each presentation)

The hereunder mentioned delegates present their own EWC (and/or their group) current situation, priorities and perspectives and concentrate on the 4.0 changing work issues in the transnational group they represent and what the EWC policy is (or should be) towards these issues. Such feedback and presentations should also be a tool to confirm and/or to amend and integrate the analysis from the questionnaires outcomes.

They will have to make their own presentation **in Italian or in English** and may support them with power point slides if they wish.

- **Bnp-Paribas – Silvia Romano (Vice Segretaria CAE)**
- **Groupama - Bianca Cuciniello (Segretaria CAE)**
- **Société Générale – Cristian Mocanu (Segretario CAE)**
- **Crédit Agricole - Dominique Mendes (Select Committee CAE)**

16.15 coffee break

16.30 Presentations to be continued

- **K.B.C. - Guido Van Den Eeckhoudt (Presidente CAE)**
- **Unicredit group – Francesco Colasuonno (Presidente CAE)**
- **Santander - Noemi Trabado Gago (CAE)**
- **Intesa SanPaolo – Elena Cherubini (Segreteria Coordinamento Centrale)**

17.30 Feedback ISRF-LAB on the above Presentations in order to pick out some immediate common elements

Nicola Cicala – ISRF-LAB Manager

18.00 This EU Project in the framework of UNI FINANCE policies

Angelo Di Cristo – Head of Uni Finance

18.15 Organization and logistic information

Cristiano Hoffmann (Organization Manager) – Rita Diotallevi (Administration Manager)

18.30 End of this working session

20.00 Date for dinner

Wednesday, 3rd April 2019

9.15 State of play on 2nd April working session and route to prepare the Plenary on 19-20-21 June in Belgrade

Mario Ongaro -Project Manager

9.30

The European Directives on the Employee Involvement

Lesson by Prof. Filip Dorssemont – Louvain University

in cooperation with Francesca Carnoso- Fisac/Cgil Juridical Dept. Coordinator

This lesson is a key step along our Project route connecting theory with current practices

11.00 coffee break

11.15 Lesson to be continued

11.45 Q. & A.

12.15 Conclusions by Claudio Cornelli, Fisac-Cgil International Secretary

13.00 Lunch and departure

THE FRAMEWORK OF OUR SEMINAR IN SOFIA

We had meant this meeting not just as a mere kick-off one, but **also as a Seminar to start going in-depth a number of pillars of the Project**, according to a pattern that we would reiterate in all the other 4 collective events, even if of course by tailoring the Seminar approach according to the route of the Project.

We had **16 participants** including the Head of Uni Finance, Angelo Di Cristo and our external Expert, as well as 8 reps from the transnational groups and the Fisac staff for the Project

Our participants caught that meaning of ours very well and delivered presentations and contributions all aimed to provide us with the necessary information and knowledge about the transnational group and the concerned EWC that they represented.

Therefore **we got presentations on** Santander, Crédit Agricole, Unicredit Group, contributions on Bnp Paribas, Intesa SanPaolo, Soc.Générale, KBC.

The same participants had in the meantime filled in **the questionnaire** that our Research Institute had sent out to frame the 4.0 employees and their attitudes. The concerned report was delivered alongside the report of the Project Manager and the one of the Research Inst. President, covering all aspects introducing the Project and setting the Project in the economic, political and social scenarios.

In the framework of such a dense and committing Seminar **the lesson** by Prof. Filip Dorssemont about the EU Directive for the Employee Involvement was the **perfect training** element and conclusion of those 3 half days in Sofia.

Setting this First Meeting in Sofia was a concrete sign of our deep and now really historical relationship that we as Fisac Cgil have been building over the last 2 decades with the finance unions of the whole region OF Central/eastern Europe from Poland to Turkey. The same spirit is behind our choice to set the First Plenary Seminar in Belgrade.

This Seminar was prepared by a first questionnaire, addressed to the 8 transnational groups reps who were part of the Steering Group of the Project alongside with the Fisac staff. That "overall picture" was mainly focussed on the workforce 4.0 side and the main outcomes of this first survey were:

Employees (and in particular the 4.0 ones) are keen on flexibility, they think that salary increase has to be a result of productivity increase, the feeling of belonging to a company is not vanishing through smart working. So we got very challenging answers for the union movement, as long as we were immediately put through a specific section of the workforce, the section we were mostly interested in investigating, and we were discovering **their positive attitudes towards the change**, moreover a kind of attitudes that somehow were contradicting the defensive policy that unions had so far considered appropriate in order to protect these employees and their rights/ guarantees. Said that, these outcomes were strongly tempered by other outcomes which showed not only by a **demand of training not only by these 4.0 employees** whose demand of training was poorly met by their employer so that they were not enough enabled to perform their job with the skill required to perform it, **but also** a demand of training concerning the section of workforce made of "obsolete" employees whose jobs were either menaced or already cancelled as an organizational effect of digitalization, and whose perspective to be **relocated and redeployed** is mainly depending by a well centered and effective re-training plan.

The debate about the above outcomes of this first survey has in particular stressed the problematic issue of **trade-union recruitment of young employees** (who largely correspond with the 4.0 employees): the relationship with them has to be build up patiently by being next to them and getting their trust. The young employees' issue is already emerging in terms of **how to renew unions: more turnover?** ok, but the point is also how to organise young employees 4.0, those highly skilled ones and highly motivated to work, those 4.0 ones who are very used to flexibility and self management of their working time in order to attain their productivity goals, I mean the things that have then been confirmed by the surveys made between October 2020 and February 2021 by Valentini the sociologist.

But again, it's so difficult to organise people working somewhere else and isolated!
Unions need more resources and a specific training to cope with such a context..

This EU Project in its route and goals

***by Mario Ongaro
Project Manager***

The Project, with its inevitably long and complex title, was elaborated and presented last May by **Mario Ongaro**, Director of the European Section of ISRF LAB, the Research and Training Institute of Fisac-Cgil, and former Coordinator of the International Department. Our proposal was accepted by the DG Employment of the European Commission, which awarded us the funds necessary for its implementation.

This Project will take place over 2 years – until the end of 2020 – and it will require a lot of work and human resources on the part of Fisac-Cgil and ISRF LAB. Therefore, it has been necessary to integrate the Steering Committee (existing in every European Project) with a working group formed by **Agostino Megale**, President of ISRF LAB, **Giuliano Calcagni**, Secretary-General of Fisac-Cgil, and **Mario Ongaro**, Project Director. The basic political objective of the Project is to start a process aimed at introducing new procedures for the involvement and participation of employees in the changes brought about by industry 4.0. This will be done through a fitness check, requested by the European Commission, of the actual implementation of the Directives adopted in the last 4 decades to promote employee involvement.

The long title perfectly summarizes the topics covered by the Project. It also implicitly states its goals, as is required by the calls for proposals in which national trade unions, European federations of trade unions, as well as national and European employers' associations take part. These Projects must be aimed at analyzing issues and at indicating goals. In our case, we intend to work for 2 years with the trade union representatives of 7 large banking groups and 1 insurance group, all of which have a transnational, global dimension, with offices in all of the European Union and branches scattered in all continents.

For trade unions, a clearly fundamental element is **the overall number of employees: considering all the workers of the 8 groups around the world, the total amounts to almost 1 million** (despite the reduction due to restructuring processes and to the transfers of undertakings which have taken place in the last 10 years).

The groups involved in the Project are: **Intesa SanPaolo** and **Unicredit group** for Italy, **Crédit Agricole**, **Bnp Paribas**, **Société Générale** and **Groupama** for France, **Santander** for Spain, and **K.B.C.** for Belgium.

All of these groups have had a **European Works Council (EWC)** for years, except for Intesa SanPaolo, where procedures for the setting up of a EWC have already been launched. The EWC is the body established under EU Directive 2009/38 in which workers' representatives from all over Europe (including the 28 current EU Member States and Candidate Countries) meet top management representatives from the group's parent company to be informed and consulted on all the topics which have a significant impact on employees and which play a significant role for their working conditions and future prospects.

The EWC does not engage in collective bargaining, which remains the exclusive prerogative of union representatives who have industrial relations with local management and/or national employers' associations in the various countries. However, if all of their rights are fully implemented, EWCs can provide important social dialogue tools that can have an impact on the strategic transnational decisions of parent companies.

As pointed out by **Agostino Megale** (now President of ISRF LAB and former Secretary-General of Fisac from 2010 to 2018) in his introductory remarks at the Sofia meeting, EWCs should not radically change their role as information and consultation bodies, but

rather strengthen, update and fully implement it. In our opinion, in order to do so they must experiment innovative practices, capable of keeping up with the speed of change and to integrate the traditional information and consultation procedure with the anticipation of change. The latter can be achieved by building together with transnational groups what we may call a *social plan on digitized work*. Its elaboration should entail the involvement of workers and their representatives to discuss redeployment, retraining and training opportunities. In short, it should give a concrete application of the principle of employee involvement established by the Directives, whose fitness check was required by the European Commission and to which we want to contribute.

Agostino underlined that EWCs are the only example in the world of a workers' representation body in transnational groups. In our sector, we know that we have to deal with American banking giants which, after the crisis, are now back to double-digit profits, and with Chinese State giants which operate all over the world for the construction of new infrastructures.

In this competitive framework, the European banking system will be forced to proceed to further business combinations and mergers. However, this process must be guided and supported by public authorities, in order to protect workers, clients and the European economy as a whole.

A stronger social dialogue, which can keep up with the times and anticipate change, thus becomes an indispensable tool.

It is with social dialogue in mind that I considered the participation of the European Banking Federation as essential. The Federation represents private and commercial banks (i.e. the vast majority of credit institutions) in the EU and, together with its President, we will discuss possible proposals on joint objectives.

First, as trade union representatives, we will discuss between ourselves on which topics and goals we can work with the European Banking Federation. Then, we will involve not only the Federation, but also some representatives of the top management of these large groups. In an unprecedented approach for this kind of European Projects, we will exchange views, ideas and possible joint proposals with employers' representatives and we are determined to make the most of the opportunity.

Changes in work organization in the 4.0 finance industry clearly have a direct impact on workers and it is up to union officers to speak on their behalf.

This is **the essential reason why we decided to involve in all Project stages the union representatives in transnational groups and in their EWCs.** We certainly did not exclude national trade unions (we will have 14 of them from 13 different countries), but we are aware that company-level union representatives are in the front line in addressing change. Those of them who also chair EWCs (or are involved in industrial relations with the parent company) can get first-hand access to information on change and future prospects in good time, so they can help trade unions to react quickly and appropriately. The response will certainly also involve national unions, but it should always start from the input of company-level union representations and EWCs.

The speed of change is the challenge we have to tackle

and it is what strongly characterizes the 4.0 era in our sector:

- speed of change in work organization,
- and in the workplace(s) which companies create for their employees;
- speed of change in the nature of the employment relationship: from typical employees to parasubordinate workers (i.e. formally self-employed but dependent on a single employer for their income);
- speed of change in working hours, in two directions. On the one hand, working hours are more flexibly distributed across the day, the week, or the year. This has led to an extension in the time period between the beginning and the end of work,

- so much so that Italian trade unions have claimed the workers' right to disconnect from the tools (phone, email, etc.) which employers can use to contact them;
- on the other hand, flexibility is combined with a sort of self-management of working hours which is functional to the achievement of production and sales targets.

These are challenges that we must necessarily address. Otherwise – as pointed out by Agostino – we will lose our representativeness and ability to negotiate change. Furthermore, we need to promote a productive and professional synergy in banks between older generations and digital natives.

This is a challenge emerging from the new composition of bank workforce following the changes of the 4.0 era.

On the one hand, industry 4.0 change in banks

is causing major employment issues in the entire traditional segment of the production cycle. Most standard jobs with none to little added value have been outsourced or completely automated. However, some still exist, as is the case in traditional branches and in the back office of Central Departments. These segments of the production cycle employ relatively old workers, who can hardly be redeployed to tasks with a higher added value. As trade unions, I think we can only negotiate a number of guarantees that can protect the income and the pensions of these older workers. This has been the case, for instance, in Italy in recent decades.

On the other hand, industry 4.0 change in banks

leads to the emergence of a new workforce, or to the renewal of part of the existing workforce. Through smart working, digitization, teleworking, new jobs which combine the characteristics of employees with time management schemes and tasks more typical of self-employment, this new workforce is necessarily more flexible when it comes to working hours and place of work. However, the added value of this new workforce is based on specialist professional skills, which can open up important opportunities of career advancement and pay rise.

The role of trade unions at a national level and, even more so, at a company level is to represent both types of workers: the traditional workforce and the "smart" one of industry 4.0. In other words, trade unions must protect the former from the repercussions of marginalization and expulsion from the production cycle. At the same time, they must meet the needs and expectations of the new workforce. If trade unions fail to do so, this new workforce would only have management (up to the top levels) as its only interlocutor.

This brings us back to the involvement of the European Banking Federation (EBF), represented by **Jens Thau**, President of the Banking Committee for European Social Affairs of the EBF. We need to involve the EBF if we want trade unions to be able to talk to the new workforce segment in banks. Not only it is our duty to represent these new workers, but we also have to learn how to represent them, as some EWC Presidents told us in Sofia. Part of the problem is indeed the training of trade unionists, who must acquire new skills and tools in order to be on the same wavelength as younger workers. The horizons of the latter are no longer (or no longer exclusively) made of a monthly fixed salary for fixed working hours and standardized, predictable work. The new generation of workers now has variable goals, variable working hours, relative autonomy and self-management opportunities, very good relational skills and the willingness to address complex and ambitious tasks.

First, we must complete our analysis of change processes, in such a way to be well-prepared for **an open, in-depth discussion with the European Banking Federation, but also with some representatives of top management of the groups represented in the Project** (i.e. with those who represent central management for the EWCs involved in our Project).

In this key stage of the Project, we will ask **UNI Finance** to collaborate with our Steering Committee. In particular, UNI Finance will be asked to play its typical political role in our dialogue with the social partners of the finance industry, similarly to what it does in Banking Social Dialogue. To this purpose, we will work together with **Angelo Di Cristo** to be adequately prepared and to agree on the approach which UNI Finance should adopt. In doing so, we will take into account that – as suggested by Agostino – one of the goals of our interaction with the social partners is the elaboration of a Social Plan on employee involvement.

In my capacity as the Project Director, I would now like to underline one last aspect. The legal pillar of our Project is the analysis of the existing connections between changes in work organization in the 4.0 finance industry and the European Directives on employee involvement.

Our argument is that the full implementation of workers' rights under these Directives – in EWC Agreements, in company-level and in national collective bargaining – is a powerful and essential tool to allow us to tackle the challenge of change and to address it jointly with management. It is certainly not the only tool, but a powerful and mandatory one.

This topic was addressed in the lecture by **Professor Filip Dorsemont**, with whom we are going to closely collaborate until the Belgrade Plenary and afterwards.

We already had a very fruitful collaboration with Filip Dorsemont (Professor of European Labour Law at the Catholic University of Louvain) in our latest Project. During this Project, his documentation will be promptly published on the website of Fisac.

In Sofia, **Nicola Cicala**, Director of ISRF LAB, presented the results of the survey carried out among all the union representatives taking part in the Project. The objective of the survey was to give a preliminary overview of the current situation, prospects and union stances in EWCs on industry 4.0 change. The survey results basically confirmed our initial perceptions and analysis. Together with Nicola's report, they will soon be published on our website.

The following speakers, representing their respective EWCs and transnational groups, were:

- Bnp-Paribas - Silvia Romano (EWC Deputy Secretary)
- Société Générale – Cristian Mocanu (EWC Secretary)
- Crédit Agricole - Dominique Mendes (member of the EWC Select Committee)
- K.B.C. - Guido Van Den Eeckhoudt (EWC President)
- Unicredit group – Francesco Colasuonno (EWC President)
- Santander - Noemi Trabado Gago (EWC member)
- Intesa SanPaolo – Elena Cherubini (member of the Secretariat of the Central Coordination Unit)

In their speeches, they explained the peculiarities and common aspects of change and of the policies they adopted to handle it. The following exchange with us (the Project coordinators) and with Professor Dorsemont ranged from the involvement of young workers to the related renewal of union officers, from the adequacy/inadequacy of existing EWC Agreements to the illustration of company-level agreements, like the one of Intesa SanPaolo about the so-called "hybrid" forms of employment (which combine the characteristics of employees with others more typical of self-employment).

The contents of these speeches will also be made available on the website of Fisac-Cgil. The same will be done for the conclusions by **Claudio Cornelli**, National Secretary of Fisac-Cgil (also in charge of International Affairs), who spoke on behalf of the Secretary-General **Giuliano Calcagni** (legal representative of the Project), and for the speech by **Angelo Di Cristo**, Head of UNI Global Finance. The latter has been collaborating extensively with the Steering Committee of our European Project since the first meeting in Sofia. In addition to the trade union representatives of the 8 transnational groups mentioned above, the Project involves the staff of Fisac-Cgil and of ISRF LAB, namely

Agostino Megale, Mario Ongaro, Nicola Cicala, as well as **Francesca Carnoso**, Legal Expert of Fisac-Cgil, **Cristiano Hoffmann**, Organizational Director of Fisac-Cgil, and **Rita Diotallevi**, Head of Administration at Fisac-Cgil. This staff is well-prepared to perform all the obligations under the contract signed with the European Commission.

**TWO GOALS OF THE PROJECT
TO BE ATTAINED WITH THE SUPPORT OF OUR EXTERNAL EXPERT
PROF. FILIP DORSSEMONT**

Goal II. Analyze the tools that relevant EU Directives provide to manage 4.0 processes and their effects on employees in finance industry and check the level of awareness and effective use of such tools within the participating EWCs.

Goal III. Check the level of effective implementation and compliance of such Directives in the various national contexts concerned by the transnational groups represented in the Project, in order to check the effectiveness of the LINK between the transnational and national levels as per article 12 of 2009/38 ("Fitness Check").

Please find hereunder some examples of how we met the goal II. and III. above mentioned here:

A RELEVANT TOOL is to be found IN THE **SUBSIDIARY REQUIREMENTS OF 2009/38 DIRECTIVE TO MANAGE 4.0 PROCESSES**, so that any EWC Agreement should explicitly include it:

ART. 1 a)

*The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and **substantial changes concerning organisation, introduction of new working methods or production processes**, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.*

This is literally **the most precise tool we have got in the 2009/38 to manage 4.0 changes in terms of information and consultation**. We can find similar tools in the other Directives for the Employee Involvement (such as the 2002/14, the 98/59, the 2001/86), but this one is crucial of course for the EWCs.

Before getting to this very point, we were able to meet the above mentioned goals II. and III. with the decisive support of **our external expert Prof. Dorssemont training and lessons**.

Please find a number of relevant results in this respect hereunder.

They are here resumed in a number of sentences showing the core of the analysis we have made, after collecting the participants feedback about their level of awareness and effective use of the tools provided for by the concerned EU Directives:

#Employee involvement fundamentally means up to what extent the employees' reps are able, or are enabled to influence the decision making process. #Employee involvement means that the opportunity to influence a decision has to be guaranteed by informing and consulting before taking the final decision.

#The right to be informed and consulted should turn into an obligation for the employer to inform and consult in case of restructuring process.

#The right to information and consultation is strictly connected to the right to be represented and to be an employee representative. This is not necessarily guaranteed everywhere in Europe. We have found relevant differences, depending on the actual unions' strength in the various EU countries and on the national legislation about unions rights.

#Consultation and negotiation are well distinct, but both need the information to be given in a timely manner, or "in a good time" just to use the precise wording of the concerned Directives: the point is that this timely manner is not clearly defined in any Directive. On top of that the 2002 14 finalises the consultation to reaching an agreement.

#Art 27 Nice Chart does not say what the object of the consultation should be. Therefore when national laws do not provide for a clear right to be consulted about specific issues, the art.27 does not have any direct effect.

#Transnationality is another important weak point that should be defined in order to avoid that the Management turns transnational issues into national issues (when they are not as a matter of fact), in order to prevent its concerned EWC from being informed and consulted about them.

#Confidentiality should be restricted to third parties, can't prevent from informing in a timely manner and to report back to the employees whom the individual EWC member represent in his/her own country

#Subsidiarity, subsidiary requirements: what can be done at a lower level, should be done at a lower level and what can be agreed between social partners should be agreed at their own level, without prescriptive rules. **This is the win-win principle of the EWC and of its Directive** i.e. to be a procedure to be put in practice through a free negotiation between the social partners.

Indeed only when such negotiation proves not to get to any agreement the Subsidiary Requirements should apply.

First questionnaire

Employee involvement in the changing work within the 4.0 finance industry transnational groups

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- To which company/organization do you belong?

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Is it possible to think of employment independently from working hours?

YES

NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Does flexible time management increase productivity?

YES

NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Does the free management of one's own workplace increase productivity?

 YES NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Would a worker who can freely manage his/her working hours have a weaker sense of belonging to the company?

 YES NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Would a worker who can freely decide where to work have a weaker sense of belonging to the company?

YES

NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Under which conditions can the current legislation on work in our industry be made compatible with an increased flexibility in working hours and workplace management?

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Is it possible to think of employment only on the basis of objectives?

YES

NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- What are the possible risks of leaving employees free to organize their working hours and to only rely on objectives?

- What are the possible advantages?

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- What are the possible risks of leaving employees free to organize their workplaces?

- What are the possible advantages?

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Do you think there any differences across European countries with regard to the possibility of having flexible working hours?

 YES NO

- If yes, what are they?

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- In your opinion, do workers have the right to disconnect?

YES

NO

- If the answer is yes, how would you define it, both with regard to the type of contract (national collective agreement, company-wide agreement, etc.) and in qualitative terms (when? How?)

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- What would you think if, in the various countries, the national collective bargaining agreements provided for different types of employment (e.g. some forms of employment based on working hours and others linked to the achievement of certain objectives)?

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Salaries in our industry have remained basically stable in recent years. Do you think that, in order to increase salaries, it is necessary to adopt collective bargaining policies that focus more on productivity?

YES

NO

- If the answer is yes, do you think it is necessary to include technological innovation in collective bargaining policies aimed at anticipating change?

YES

NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

If collective bargaining policies focus more on productivity, do you deem it appropriate to further widen the scope of bargaining towards company and/or industry-wide policies, in such a way to have a comprehensive discussion of business plans - not only limited to their impact on workers?

YES

NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- Have recent changes led to an improvement of professional skills in the banking sector?

 YES NO

- If the answer is yes, do you think workers have been adequately rewarded with increased salaries?

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- In your opinion, is there a link between the profound restructuring of the sector at a national and European level and technological change?

 YES NO

Employee involvement in the changing work within the 4.0 finance industry transnational groups

- In your opinion, has the increase in productivity due to technological change made some “classic” figures of the banking sector obsolete?

YES

NO

- If the answer is yes, in your opinion what should be done to retrain people whose skills are no longer needed in the banking production cycle?

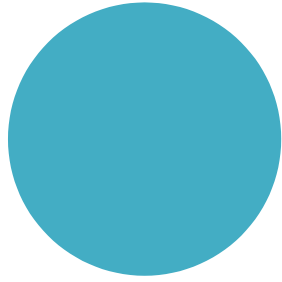
Employee involvement in the changing work within the 4.0 finance industry transnational groups

- In recent years, has training in the banking sector been adequate to address the changes brought about by Finance 4.0?

YES

NO

- If the answer is no, what type of training is needed?



EMPLOYEE INVOLVEMENT IN THE CHANGING WORK WITHIN THE 4.0 FINANCE

Sofia, 2nd – 3rd April
2019



Group Santander

• WORLD

- Presence in Europe, USA, Mexico, Brasil, Chile and Argentina.
- 202.713 employees

• EUROPE

- Presence in 17 European Countries
- 94.789 employees

Global profit in 2018: 7.810 millions €



- Within Banco Santander: largest trade union, around 40% of affiliates; maintaining results in the last elections on February 2019.
- Within Financial Sector: largest representation in Spanish FS with around 50%.



EWC IN THE GROUP SANTANDER

The agreement of constitution was signed in March 2005, and later on in 2012 this agreement was adapted to the changes established in the new European Directive, 2009/38/CE

CCOO is present since the beginning, as the main trade union in the bank as well as in the financial sector.






European Framework Agreement in the Group



• **2008: Gender Equality**

- Promotion and establishment of gender equality between woman and man.
 - Improving the acces to management positions for women.
 - Stopping sexual harrassment.
 - Prevention of labour discrimination based on gender.
 - Establishment of actions to improve the balance of work and personal life.
- 

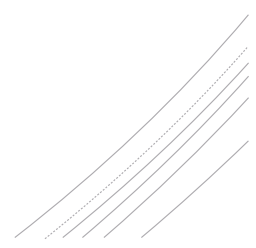


European Framework Agreement in the Group



• **2009: Social rights and labor relations**

The agreement talks about the Principles and Social Rights, established in the Universal Declaration of Human Rights and the ILO Fundamental Conventions.



European Framework Agreement in the Group



- **2011: Labor relations framework for the provision of financial services**

- Promotion of responsible sales of financial products and risk management policies, focused on the quality of the service
- Employees will only offer the product more suitable to the needs of the clients.

European Framework Agreement in the Group



- **2016: Workforce Reorganization processes in the European area**

- Promoting the dialogue and participation of Legal Representation of Workers, in order to find agreements.
- Considering alternative solutions such as relocation within the group
- Engagement to promote the continuous formation to improve the employability.
- Monitoring Committees for the restructuring agreements, with the Legal Representation of Workers.



What Now?

What are our challenges with the 4.0 Finance?



TECHNOLOGY IS CHANGING HOW WE ENGAGE & CONSUME

MOBILE:

- USERS UNLOCK PHONE 80X PER DAY
- CHECK 20X MORE PER DAY THAN WE DRINK WATER

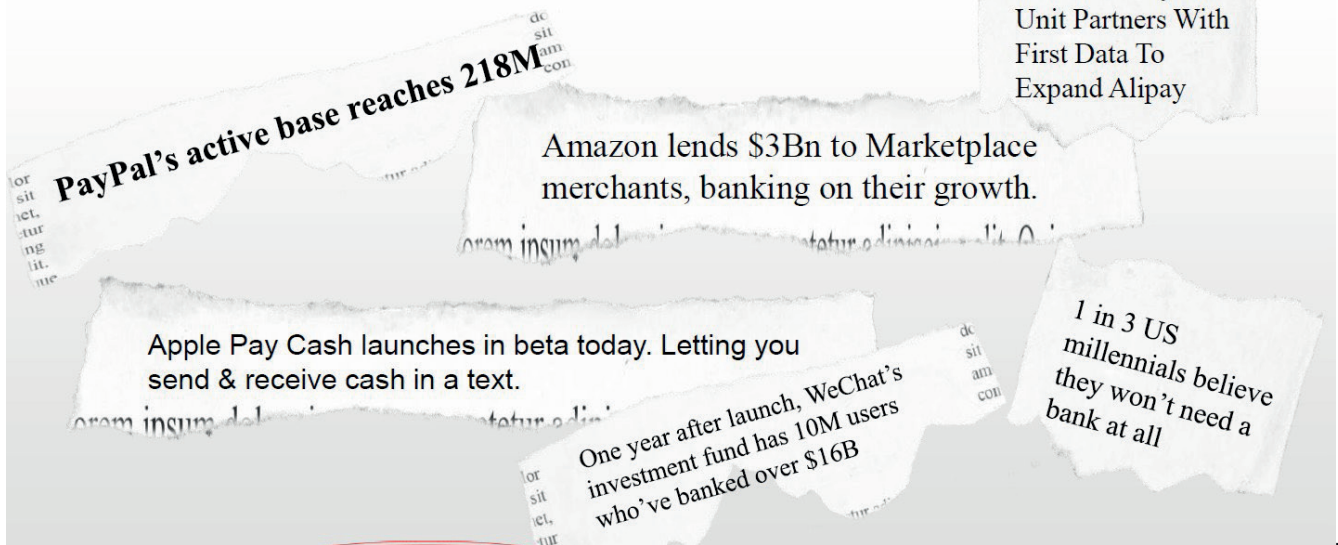
USER INTERFACE:

- 105M SMART HOME DEVICES TO SHIP IN 2018
- 600M USING VOICE-ACTIVATED ASSISTANTS PER WEEK

CONNECTED & INTELLIGENT:

- 20BN CONNECTED DEVICES TODAY
- 50BN IOT DEVICES BY 2020

A NEW SET OF COMPETITORS ARE ENTERING FINANCIAL SERVICES...



Our requirements for EWC

Training in new technologies and new types of work 4.0 for employees.

Transformation of current jobs to avoid their obsolescence.

Compensation to worker's adjustment with this situation, since changes will be fast-paced.

The Trade Unions

The Trade Unions and their members must be trained in new technologies and new kinds of work 4.0

Necessary to be able to continue reaching the workers and help them.

Our attitude must be proactive and anticipate problems at the same time we offer solutions.

CCOO servicios santander

UAI
global
union



Thank you for your attention

Noemí Trabado Gago

CCOO servicios santander

UAI
global
union

EWC KBC Group NV

Sofia April 2019

KBC Group NV : a bank and insurance group

- Core countries : Belgium, Czech Republic, Slovakia, Hungary, Bulgaria and Ireland
- Number of employees : 42.000
- Business units :
 - BU Belgium
 - BU Czech Republic
 - BU International Markets : Slovakia, Hungary, Bulgaria, Ireland

EWC : general information

- Established in September 1996
- Official language is English
- Composed with employee representatives and employers representatives (mostly HR) from Belgium, Czech Republic, Slovakia, Hungary and since 2018 Bulgaria
- maximum 30 seats
- Select Committee EWC
- National Committee : only possible in countries where we have different/separate entities (Bank, Insurance, IT, Lease, ...)
- Secretariat : Guido Van Den Eeckhoudt, Deputy Secretary Chris Vervliet
- President : Daniel Falque (member Exco KBC Group NV)
- Yearly meeting : 3 days in Juni in Elewijt Center (BE)

Composition EOR

- Belgium (13)
 - LBC-NVK : 6
 - CNE : 1 (CBC)
 - ACLVB : 3
 - BBTK : 2
 - NCK : 1
- Czech Republic (6)
- Slovakia (3)
- Hongaria (4)
- Bulgaria (2)
- UNI Representative LBC-NVK Vic Van Kerrebroeck

Composition Select Committee

- BE (4) + UNI representative
 - LBC-NVK (2)
 - ACLVB (1)
 - BBTK (1)
- CZ (2)
- SK (1)
- HU (1)
- BG (1)

Select Committee can have max 2 meetings/year (in practice can be more as long as we do not exceed our budget)

EWC in practice :

- 1 yearly meeting in June : official language English
- Select Committee is preparing this yearly meeting (March-April)
- EWC members can send (transnational) questions to the Secretary EWC by the end of April the latest, whereby Corporate HR (coordinator) provides an answer by the end of May
- Information is being shared 2 weeks upfront to the yearly meeting :
 - Overview FTE figures
 - Annual report
 - Presentations yearly meeting ...

EWC in practice (2) :

- The minutes of the yearly meeting are being distributed in English for approval to all EWC members.
- After approval the minutes are translated into all local languages and afterwards are published on the intranet/sharepoint site(s)
- Select Committee : we have the possibility to meet with local management or HR department

Information for Belgium

- Jobcenter (internal labour market) : after a reorganization, people who loose their job are not being fired (e.g. ING) but are being stationed in the jobcenter for 1 year, whereby they perform temporary jobs and in the mean time they can look and apply for another job in KBC
- there is a new project called Talent Mobility organised by Febelfin (Belgian Federation for Banks) on sector level whereby the partnerbanks can decide on what they want to do with it : KBC will use track 1 & 2 only for colleagues in the jobcenter
 - - Track 1 : individual coaching
 - - Track 2 : individual coaching, skill training and apprenticeship
 - - Track 3 : Experience@work
 - - Track 4 : Bridge2work
- Link : <http://www.mobilitedestalents.be/>

Information for Belgium :

- Experience@work : “Minerva in KBC” : already in place since 2017 whereby KBC is one the founding companies. Colleagues 55 and 55+ can apply for a job outside KBC whereby they remain a KBC colleague but work for another company and where this company is paying a part of the wage of the colleague (<http://experienceatwork.be/en/>)

Digitalization :

- Referring to the mobile apps (smartphone) of KBC where you can buy a ticket for tram/bus/train, or pay for a parking space, rent a shared bike, check your balance on lunch vouchers (KBC Mobile), or only for employees, register holidays, illness or reserve a parking space in KBC buildings, ... (App your service)
- Agile : home office (max 2 min 2) : an employee can work maximum 2 days at home, but he should be minimum 2 days at his working place (or decentral working places)
- We don't use physical desk phones any longer, all calls (internal and external) go via skype (computer)
- We share desks and we operate with clean desk principle : 80% desks of the total number of employees

PRESENTATION DU COMITE D'ENTREPRISE EUROPEEN



GRUPE CREDIT AGRICOLE



TABLE DES MATIERES

1. Le Comité d'Entreprise Européen (CEE) : définition
2. Répartition des sièges
3. Fonctionnement de cette instance
4. Le CEE : finalité
5. Le dispositif de formation
6. Les projets en cours

Le CEE :

Le CEE est une instance de représentation du Personnel dans le périmètre Européen qui regroupe des membres titulaires et suppléants des Pays où chaque entité du Groupe est implantée

Objectif

Le dialogue social via un processus d'information et de consultation entre les représentants des Salarié-e-s Européens et la Direction Générale du Groupe

Le CEE : (suite)

Les sujets transnationaux traités au sein du CEE touchent la situation économique, financière et sociale du Groupe

Pour qu'un sujet spécifique soit traité au niveau de cette instance, deux entités au moins doivent être concernées

Au niveau Européen, la Directive 94/95/CE fixe le cadre général pour un CEE

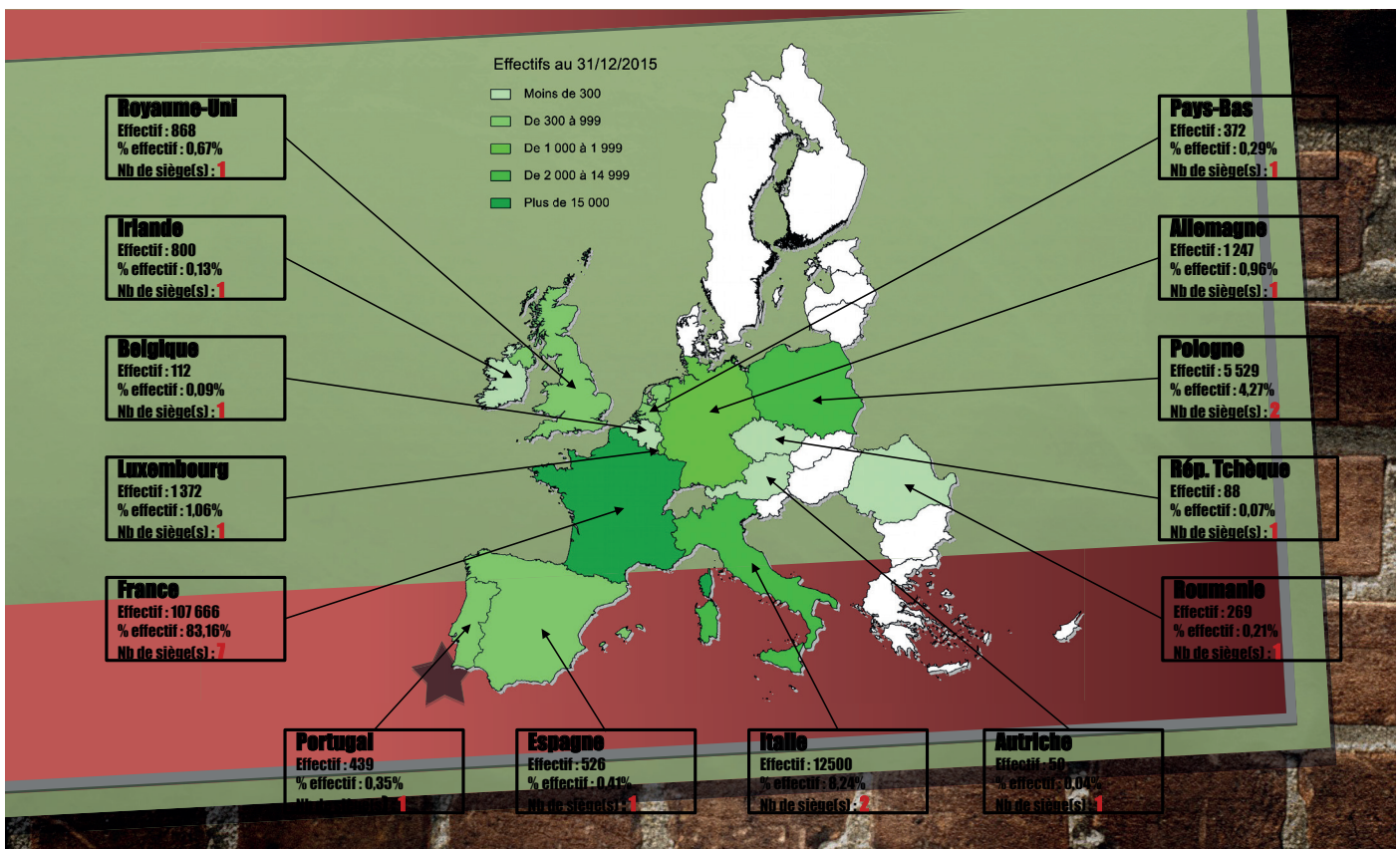
Le Groupe Spécial de négociation a négocié - en 2006/2007 - un Accord qui fixe le cadre du CEE du Groupe Crédit Agricole

Répartition des sièges

L'Accord du CEE du Groupe prévoit un maximum de 30 sièges répartis entre les Pays et stipule qu'il faut au moins 50 effectifs par entité pour avoir un siège

Chaque membre titulaire et suppléant est élu ou désigné pour une durée de 4 ans selon la Loi en vigueur du Pays

Depuis le 08 juillet 2016, le CEE compte 22 sièges et 14 Pays



Répartition des sièges (suite)

7 titulaires et 7 suppléants pour la France
2 titulaires et 2 suppléants pour l'Italie et la Pologne
1 titulaire et 1 suppléant pour les autres Pays

PAYS	MEMBRES EFFECTIFS	MEMBRES SUPPLÉANTS
ALLEMAGNE AUTRICHE BELGIQUE ESPAGNE FRANCE	RALF LUCANTONI CHRISTIAN STARITZBICHLER AURORE VERSELE MARIA OSTOLAZA PASCAL FESQUET CEDRIC MOUTIER MICHAEL GAUJOUR ODILE BAUDET-COLLINET ERIC ALEXIS CHRISTINE FOURNIER PHILIPPE POIREL A POURVOIR	MUNDORFF MARIANNE BERNHARD GREIFENEDER A POURVOIR GARCIA CESAR SYLVAIN COUFFRANT BENJAMIN COQLIN FABIEN REINERT PEGGY THEISS PHILIPPE RELIN LAURENCE BIELKIN BENOIT POMAS A POURVOIR
IRLANDE		

Répartition des sièges (suite)

7 titulaires et 7 suppléants pour la France
2 titulaires et 2 suppléants pour l'Italie et la Pologne
1 titulaire et 1 suppléant pour les autres Pays

PAYS	MEMBRES EFFECTIFS	MEMBRES SUPPLÉANTS
ITALIE	LEONELLO BOSCHILORI FRANCO CAPPELLINI DOMINIQUE MENDES KEMBEL ASHLEY ANETA BILSKA KATARZYNA LUCZYNSKA EDUARDO REGO ZUZANA MULLEROVA JULIAN TAMS SILVIO PETRESCU	LUCIA CASTAGNETTI MATTEO SALSI OLIVIER BOLLE PETRANOVIC ALEKSANDRA SZYMON KASIMIERSKI SZYGENDA ADAM MARIA MANUELA SOARES STASTNOVA MARIE BENJAMIN BOUCHET CATALIN GEORGESCU
LUXEMBOURG PAYS BAS POLOGNE		
PORTUGAL REPUBLIQUE CHEQUE ROYAUME-UNI ROUMANIE		

Fonctionnement de cette instance

Sur base d'une ou de deux réunions plénières ordinaires annuelles, en présence de tous les membres : représentants des Salarié-e-s et de la Direction Générale du Groupe

Dans l'objectif d'une préparation professionnelle de chaque réunion plénière, celle-ci est précédée d'une réunion préparatoire avec l'ensemble des représentants des Salarié-e-s

Chaque réunion préparatoire est précédée d'un Comité restreint

Fonctionnement de cette instance (suite)

Dans l'objectif du dialogue social avec les représentants des Salarié-e-s et de la Direction Générale du Groupe, le CEE se fait assister et conseiller par Syndex, un cabinet d'Experts Français

Ainsi, il est garanti que le CEE est en connaissance de cause des éléments financiers, économiques, culturels, organisationnels et sociaux du Pays ou du métier en question

Afin de fournir toutes les informations essentielles, le CEE s'est doté d'un groupe de travail Communication qui publie des è-flash d'actualité, une Newsletter annuellement et un bilan en fin de mandat

Fonctionnement de cette instance (suite)

Responsabilités:

Secrétaire : Pascal FESQUET

Secrétaire adjoint : Cédric MOUTIER

Trésorier : Odile BAUDET-COLLINET

Trésorier adjoint : Katarzyna LUCZYNSKA

Groupe Communication :

Michael GAUJOUR (responsable), Léonello BOSCHIROLI, Maria OSTOLAZA,

Graphisme : Franco CAPPELLINI, Expert François POUJOL

Relations internationales et RSE : Dominique MENDES, Léonello BOSCHIROLI.

Juridique : Philippe POIREL

Expert UNI : Philippe RELIN

Le CEE : finalité

- ✓ Dialoguer et communiquer avec nos collègues Européens
- ✓ Représenter les Salarié-e-s du Groupe en Europe auprès de la Direction Générale du Groupe
- ✓ Information et Consultation sur les sujets Transnationaux
- ✓ Rendre des Avis motivés préalablement aux opérations
- ✓ Etudier les métiers du Groupe, les pays où ils s'exercent et exprimer une opinion

Le CEE : Etudes pays

Une Etude pays annuelle pour comprendre et échanger sur :

- ✓ La situation du pays, des métiers exercés
- ✓ La compréhension du modèle
- ✓ L'analyse de la stratégie, des perspectives, des risques,...
- ✓ Les relations sociales
- ✓ Le bilan social
- ✓ L'analyse de l'approche RSE (« indice FReD »)

Le dispositif de formation

Un dispositif de formation est en place pour permettre aux membres titulaires et suppléants de :

- ✓ Développer leurs compétences sur des thèmes spécifiques afin d'optimiser l'exercice de leur mandat
- ✓ Ancrer l'exercice de leur mandat dans la réalité du Groupe, tout en leur permettant de s'ouvrir sur l'extérieur pour se confronter à d'autres modèles
- ✓ Mieux se connaître pour mieux travailler ensemble, au-delà des pratiques professionnelles et syndicales

Le contenu pour la formation de cette année est : Dialogue Social Européen.

Les sujets d'actualité

- ✓ Le Plan moyen terme du Groupe « Ambition 2020 »
- ✓ L'acquisition de Pioneer par Amundi,
- ✓ L'acquisition de trois banques en Italie, d'une extension du dispositif Polonais ?
- ✓ d'une banque privé Banca Leonardo
- ✓ La mise en œuvre d'un accord Mondial avec UNI.



WHAT IT IS...

Founded in 2007, UniCredit European Works Council (UEWC) is an **international board** composed by the **Employees' Representatives of all the Countries** where the Group is present, EU Member States and not.



THE PURPOSE...

Improve the **right of information and consultation** for employees with regard to transnational Group related matters



Improve the **Social Dialogue**




Improvement of **our Employees' understanding of Management decisions**









Give a **Global Strategic Overview** to facilitate the social dialogue at **local level**

UNICREDIT EUROPEAN WORKS COUNCIL

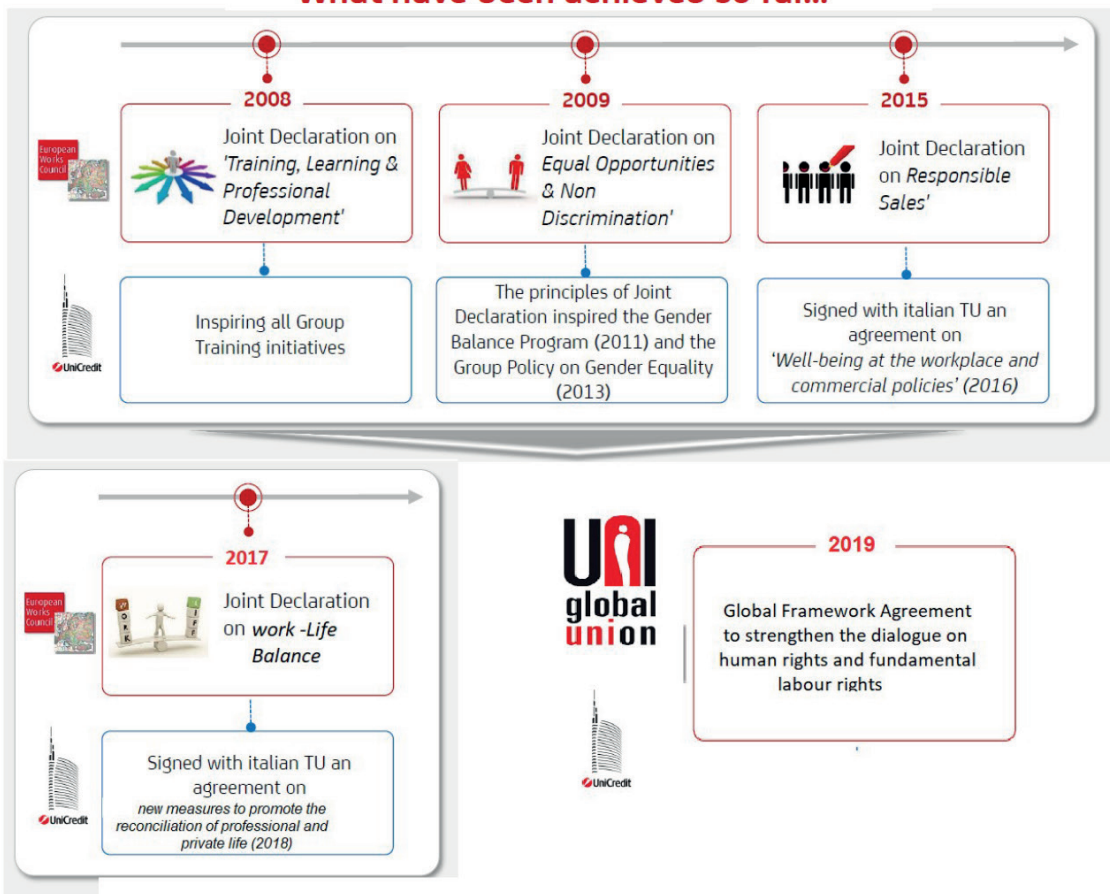
A snapshot



-  **39 Employees' Representatives**
-  **9 Select Committee Members**
(Italy, Germany, Austria, Romania, Czech Republic)
-  **17 Countries represented**
-  **2 Ordinary Meetings a year**
-  **53 Select Committee Meeting**
-  **More than 350 official communications**
to the Select Committee

UNICREDIT EUROPEAN WORKS COUNCIL

What have been achieved so far...



- 2008**
Joint Declaration on 'Training, Learning & Professional Development'
Inspiring all Group Training initiatives
- 2009**
Joint Declaration on 'Equal Opportunities & Non Discrimination'
The principles of Joint Declaration inspired the Gender Balance Program (2011) and the Group Policy on Gender Equality (2013)
- 2015**
Joint Declaration on 'Responsible Sales'
Signed with Italian TU an agreement on 'Well-being at the workplace and commercial policies' (2016)
- 2017**
Joint Declaration on 'work-Life Balance'
Signed with Italian TU an agreement on 'new measures to promote the reconciliation of professional and private life (2018)'
- 2019**
Global Framework Agreement to strengthen the dialogue on human rights and fundamental labour rights

Worker involvement in EU law

Institutional issues

Catalogue raisonné of EU Directives

Legal basis and paradigm?

A glossary

Some principles

The object of information and consultation

Institutional Issues

- Information and Consultation has been an *explicit* EU competence ever since Maastricht Treaty (1993) : *qualified majority*
- BUT : Representation and collective defence, Dismissal protection require *unanimity*
- How to dissociate INFO § Consultation and Representation and Dismissal protection

Focus : How to dissociate?

- A number of EU Directives adopted under different legal bases already deal(t) with the issue of **representation**
Directives related to information and consultation favour the exercise of this right in an indirect way, id est through representation (CR, Transfer of Undertaking, Framework Directive INFO/CONS)
- b) The intervention of the EU legislator is often based upon a *renvoi* (reference) to the MS or to management and labour in order to identify workers' representatives
- c) The CJEU has elucidated that EU Directives presuppose an obligation to provide a system of workers' **representation**
→ CJEU, 8 June 1994, *Commission v UK*, C-382/92 and CJEU, 8 June 1994, *Commission v UK*, C – 383/92
- d) *(Recast) EWC Directive institutes bodies of representation for the sake of negotiation (SNB) or for the sake of INFO/CONS (EWC)*

Focus : How to dissociate?

- **INFO and Consultation entails Corollary rights (often linked to unanimity)**
- a) The EU legislator tends to impose a system of protection against unfair dismissal of workers' representatives
- b) The EU legislator tends to capacitate trade unions\reps to have access to justice for the defence of workers' rights
- c) The EU legislator has provided right to training in EWC Recast Directive (prefigured by the H&S Framework Directive)
- d) The EU legislator tends to facilitate communication between reps and their constituency (Recast EWC Directive)

Institutional Issues

- *Article 27 (CFREU)*

Workers' right to information and consultation within the undertaking

“Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices”

Impact of Article 27 CFREU

-Article 27 has major flaws

The object is not indicated

The reference to « in the cases and under the conditions provided for by Union law and national laws and practices”

The CJEU ignores Article 27 (*Mono Car Styling*) or denies it to have a direct effect (*Association de médiation sociale*)

Institutional Issues

- The **diversity of systems of industrial relations** constitutes a potential limit to EU intervention

-Article 151 :

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations

-Article 152:

The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.

-The principle of subsidiarity corroborates this approach

Institutional Issues

- Workers representation in the field of INFO and CONSULTATION needs to respect the freedom of association

According to standing ILO conventions and recommendations recourse to « elected » workers' representatives (*id est* reps not elected by all workers, or designated by the trade unions) cannot undermine the position of trade unions

ILO Workers' representatives Convention Nr 135

Article 5

Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.

Recommendation 94 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking

Focus : Workers' representatives *versus* trade unions in EWC's

- An institutional framework for EWC's has been established prior to any framework for trade union recognition at the level of Community-scale level
- The EWC is *not per se* composed of elected representative distinct from trade union reps, but It might be composed of elected representatives
- The involvement of European representative organisations of workers is cosmetic :

Article 5 2) c) : The central management and local management and the competent European workers' and employers' organisations shall be informed of the composition of the special negotiating body and of the start of the negotiations.

Focus : Workers' representatives *versus* trade unions in EWC's

- Article 5 4) Recast Directive :

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

- De facto the EWC have impeded upon a prerogative which has always been reserved for trade unions outside any kind of empowerment : CB

Catalogue raisonné : at all levels

- *Ratione loci* : establishments, undertakings and entities with a Community-scale dimension
- *Ratione materiae* : scenario's of restructuring (*ad hoc* information) and comprehensive information on a recurring basis (related to social, economic and financial situation), retrospective and prospective (including anticipatory measure to cope with the prospects)
- Worker involvement focuses on information and consultation procedures “not affecting the managerial prerogative” (no **offensive** approach to workers' participation neither any kind of co-decision rights (co-détermination or *Mittbestimmung* : unanimity)

Catalogue raisonné : Overview

- D **98/59** : Licenciements collectifs- Collective Redundancy (**1975**)
- D **2001/23** : Transfert d'entreprise-Transfer of Undertaking (maintien des droits-acquired rights) (**1977**)
- [D **2008/94** : Insolvabilité des travailleurs –Insolvency (**1980**)]
- D **2009/38** : Comités d'entreprises européens- European Works Councils (**1994**)
- D **2001/86** *Societas Europaea* (**2001**)
- D **2002/14** : Directive Cadre Info Consultations- Framework on Information and Consultation (**2002**)
- D **2003/72** *Societas co-operativa europaea* (**2003**)

A body of directives which has been updated, consolidated, made coherent, recasted : NO formal codification of the directives (but rather of the case law)

Focus : Legal basis , a key to the understanding ?

- *(Market Integration): Articles 94 (115) and 308 (352 TFEU) TCE* ←-----→
- *A Social Policy perspective : Article 137 (TCE- ASP) (153 TFEU) : putting fundamental workers'rights at the heart of the matter*

MI: CR; TU, SE, SCE

SP : EWC, FIC

- *Caveat* : also references to CCFSRW in the recitals of TU and CR (!)
- *Caveat* : a very economic and “business oriented” approach in the FIC and the EWC (Recast) (cf Employment policy)

Legal basis and paradigm

- *Article 27 (CFREU)*

Workers' right to information and consultation within the undertaking

“Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices”

Legal basis and paradigm

- 7) 'There is a need to strengthen dialogue and promote mutual trust within undertakings **in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training within the undertaking while maintaining security, make employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability,** promote employee involvement in the operation and future of the undertaking and increase its competitiveness' **(FIC)**

Legal basis and paradigm

- « without slowing down the decision-making process in undertakings » **(recital 22 EWC Recast)**
- “To that end, informing and consulting the European Works Council should make it possible for it to give an opinion to the undertaking in a timely fashion, without calling into question the ability of undertakings to adapt. Only dialogue at the level where directions are prepared and effective involvement of employees' representatives make it possible to *anticipate and manage change*”. **(recital 14 EWC Recast)**

A glossary

- Information, Consultation, Participation and Worker' Involvement
- **Definitions** do affect the *hard core* beyond contractualisation

A glossary

“Workers’ involvement”

- “any mechanism, about the identity of the participating companies, concerned including information, consultation and participation, subsidiaries or establishments, and the number of their through which employees’ representatives may exercise employees, to start negotiations with the representatives of the an influence on **decisions** to be taken within the company(SE)
- *Generic expression*
- Mute on co-decision and exclusive of collective bargaining (though QUID with “information and consultation on decisions likely to lead to substantial changes in work organisation or in **contractual relations** » (FIC)

A glossary

'Information'

- 'the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE' (SE)
- « means transmission by the employer to the employees' representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it » (FIC)
- Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation. (FIC)

A glossary

- "information" means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings (RecastEWC)

A glossary

« *Consultation* »

« means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such **time**, in such **fashion** and with such **content** as enables employees' representatives to express an opinion on the basis of the information provided about the **proposed** measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings; (REWC)

A glossary

- "consultation" means the exchange of views and establishment of dialogue between the employees' representatives and the employer » (FIC)
- « while ensuring that the timing, method and content thereof are appropriate » (FIC)

A glossary

- Consultation : “dialogue” or “exchange of views”
 - *Consultation versus Bargaining*
 - *Quid* with a view to reach an agreement
 - Anteriority continues to be ambiguous
1. The use of the word circumstances in SR (“and decisions” EWC)
 2. “appropriate” in FIW

A glossary

Participation :

- *" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:*
- *the right to elect or appoint some of the members of the company's supervisory or administrative organ, or*
- *the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ (SE)*
- The Nice Charter is mute on the issue of participation

Some principles

- Is information and consultation a right or a duty? /of whom?
 - **Doesn't touch the "prérogative entrepreneuriale"- managerial prerogative**
 - The spirit of co operation
- EWC, SE, FIC, SCE :
- a) SNB and central management
 - b)EWC, body of workers representatives and the central management
- Co-operation, not collaboration ?
- Ideological meaning?
- Legal meaning : bargaining in Good faith or institutional good faith :
-→ *boomerang* against employer (Cfr. *Bofrost*)

Some principles

- Horizontal subsidiarity:
- Historically subsidiarity refers to the relation of management and labour towards the State
(cfr. *Quadragesimo Anno*)
- 'cfr.subsidiary requirements'
- Ratio* :
- Lack of consensus: no unique model
- Search of tailored solution
3. *Collective Laissez faire or Laissez passer*

Some principles

-*Critique* :

Institutional Theory : there is a risk of discontinuity

Can fundamental rights be alienated?

Focus : The problem of the contract-institution : you will build the Church on solid rock

Contract

- No genuine common interest (*res publica*)
- Subject to expiration, termination

Institution

- Based upon an idea (une idée)
- Aimed to be lasting, sustainable

Focus : Article 13 Recast Directive

- Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the central management shall initiate the negotiations referred to in Article 5 on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States. At least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed pursuant to Article 5(2). During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central man

Focus : Inalienability of fundamental rights

- Fundamental rights are considered to be « inalienable »
 - waivering by employees constitutes a problem
 - “individuals applying for employment often find themselves in a vulnerable situation and are only too eager to comply with the terms of employment offered.” (*Sorensen and Rasmussen v Danmark*, 2006)
 - “that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate”. (*Eweida and others v UK*, 2013)
 - waivering by representatives of employees is MORE problematic

Focus : Article 5. 5) Recast Directive

- 5. The special negotiating body may decide, by at least two thirds of the votes, not to open negotiations in accordance with paragraph 4, or to terminate the negotiations already opened.
- A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period.

Object of Information and Consultation

- The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of **employment**, investments, and **substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings**, establishments or important parts thereof, and collective redundancies. (SR Recast EWC Directive)

Substantive issues

- Where there are **exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies**, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted. (SR Recast Directive)

Substantive Issues

Article 4 D 2002/14

Practical arrangements for information and consultation

1. In accordance with the principles set out in Article 1 and without prejudice to any provisions and/or practices in force more favourable to employees, the Member States shall determine the practical arrangements for exercising the right to information and consultation at the appropriate level in accordance with this Article.

2. Information and consultation shall cover:

(a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;

(b) information and consultation **on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;**

(c) information and consultation on decisions likely to lead to **substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).**

3. Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

Substantive Issues

4. Consultation shall take place:

- (a) while ensuring that the timing, method and content thereof are appropriate;
- (b) at the relevant level of management and representation, depending on the subject under discussion;
- (c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees' representatives are entitled to formulate;
- (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c). (EU Directive 2002/14)

The object of information and consultation

(b) Without prejudice to meetings held pursuant to paragraph (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SCE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SCE and its prospects. The local managements shall be informed accordingly.

The competent organ of the SCE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its members.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, initiatives with regard to corporate social responsibility, the situation and probable trend of employment, investments, **and substantial changes concerning organisation, the introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.**

(c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request, the competent organ of the SCE or any more appropriate level of management within the SCE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

(SR Directive 2003/72)

CASE NOTES

THE RIGHT TO INFORMATION AND CONSULTATION IN ARTICLE 27 OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Less than a Right and Less than a Principle, just an Ordinary Provision Lacking Direct Effect?

Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, Judgment of 15 January 2014

FILIP DORSEMONT*

§1. INTRODUCTION

On 15 January 2014, the Grand Chamber of the Court of Justice (CJEU) delivered a judgment on a request for a preliminary ruling in Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*.¹ The fact that the CJEU was composed as a Grand Chamber suggests that the case was ‘of exceptional importance’.² The reference related to the interpretation of Article 27 of the Charter of Fundamental Rights of the European Union (the Charter), which recognizes a workers’ ‘right of information and consultation within the undertaking’. Despite the existence of an impressive body of directives in the field of worker involvement, a request for a preliminary reference concerning Article 27 of the Charter is unprecedented. More importantly, the judgment sheds light on the question whether and to what extent Charter principles, as opposed to genuine Charter rights, are ‘judicially cognizable’.

However, a reference to the distinction between a Charter principle and a Charter right, which lays at the heart of Article 54(5) of the Charter, has been scrupulously

* Professor of Labour Law, Université catholique de Louvain.

¹ Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, Judgment of 15 January 2014, not yet reported.

² See Article 16 of Protocol (No 3) on the Statute of the Court of Justice of the European Union, [2010] OJ C 83/210.

avoided. The judgment does not encourage domestic judges to take an activist stance in the face of statutory provisions implementing EU directives, where these statutory provisions are manifestly incompatible with the provisions of the directive they seek to implement. Apparently, the mere fact that such directives can be viewed as implementing the Charter principles did not make any difference. The judgment is relevant as far as labour law directives come into play which define the personal scope of application by way of a reference to the law of the Member States. In these directives, there is no autonomous concept of an employee. The judgment puts a restriction on the leeway offered to the Member States. It restricts the ability of Member States to preclude workers under a contract of employment according to the law of a Member State from the scope of statutory provisions implementing these directives. In this respect, the Grand Chamber confirms an older judgment in *CGT and others v. Premier Ministre de l'Emploi, de la Cohésion sociale et du Logement*.¹

The fact that the French Republic seems to have a bad record, in circumventing the application of Framework Directive 2002/14/EC on Informing and Consulting Employees² did not stimulate the CJEU to empower the French tribunals envisaging to uphold European Union law to disapply statutory provisions incompatible with Directive 2002/14/EC. In the end, the French employees have been abandoned by their national legislator as well as by their Constitutional Court (*Conseil constitutionnel*). A reference to the CJEU proved not to be helpful, in allowing the Supreme Court (*Cour de Cassation*) to safeguard the employees' right to information and consultation. The dialogue between these various courts has not proven to be very beneficial to the rights of employees, although the right to information and consultation has a constitutional status in both the French and the European legal order.

In this article, I will describe the facts of the case and the legal proceedings surrounding the preliminary reference. After analysing the CJEU's judgment, I will focus on a number of issues that make up the core of the judgment.

§2. THE FACTS OF THE CASE

The *Association de Médiation Sociale* (AMS) is a non-profit organization active in Marseille. The name refers to its most prominent activity, which pertains to the field of 'social mediation'. Through the presence of so-called 'mediators' in critical areas of Marseille, its goal is to contribute to the prevention of crime. The AMS seeks to provide

¹ Case C-385/05 *CGT and others v. Premier Ministre de l'Emploi, de la Cohésion sociale et du Logement* [2007] ECR I-634.

² 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, [2002] OJ L 8/29.

job opportunities for unemployed persons or persons with social and professional difficulties, in order to promote their reintegration into working life. Under French law, the ‘*contrat d’accompagnement dans l’emploi*’ (the accompanied employment contract) is the most appropriate tool available for that purpose. The French Labour Code (*Code du Travail*) makes it abundantly clear that such a contract needs to be qualified as an employment contract (*contrat de travail*).³ At the time of the proceedings, AMS had thus recruited between 120 and 170 employees under accompanied employment contracts. If a threshold of 50 employees is reached, the French Labour Code provides for a dual channel system of workers’ representation.⁴ The employer is required to recognize a trade union representation (*une section syndicale*) designated by a representative trade union as well as to organize elections for the establishment of a works council (*comité d’entreprise*). However, there is a caveat. Under French law, workers under a ‘*contrat d’accompagnement*’ are not taken into account for the calculation of the threshold of 50 employees.⁵ This rule allowed AMS to claim that the threshold of 50 employees had not been reached, since only 8 employees could be taken into account.

The French trade union CGT decided to designate one of the permanent workers as a member of a *section syndicale* under construction at AMS. Opposing the trade union’s decision, AMS argued that the threshold of 50 employees had not been reached and, thus, worker’s representation pursuant to French Labour Code was not triggered. Subsequently, AMS suspended the employment contract of the designated permanent worker and challenged the proposed formation of the *section syndicale* in court (*Tribunal d’Instance de Marseille*).

§3. THE PROCEDURE OF THE CASE

The *Tribunal d’Instance* had doubts regarding the constitutionality of the statutory provisions, which seem to differentiate between employees based on the nature of their employment contract. For this reason, it referred a preliminary question to the French Constitutional Court in order to determine whether the provisions did not violate the constitutional principle of equality as well as the fundamental right to organize (*liberté syndicale*) and the right to worker involvement at enterprise level (*la participation des travailleurs à la détermination collective des conditions de travail et à la gestion des entreprises*). However, the French Constitutional Court⁶ considered that neither of

³ See Article L 5134–24 of the French Labour Code.

⁴ See in this respect, P. Lokiec, *Droit du travail. Les relations collectives de travail* (1st edition, PUF, 2011), p. 13–146; and P. Lokiec, ‘Trade Union representation in France’, in C. La Macchia, *Representing employee interests: trade union systems within the EU* (Editorial Bomarzo Albacete, 2013), p. 135–152.

⁵ See Article L 5134–66 of the French Labour Code.

⁶ Conseil constitutionnel, Decision n°2011–122, QPC of 29 April 2011, www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2011/2011-122-qpc/decision-n-2011-122-qpc-du-29-avril-2011.96630.html.

these constitutionally anchored principles had been violated. If it would have judged otherwise, no reference for a preliminary ruling to the CJEU would have been necessary at a later date. The French Constitutional Court adopted a rather insular approach to the questions submitted. No reference at all was made to the very existence of any EU directives. There is no trace of an intellectual assessment whether the outcome of the preliminary reference could affect the implementation of Directive 2002/14/EC and whether this could have been prevented by a more activist interpretation of the constitutional principles concerned.

The French Constitutional Court ruled that the principle of equality was not violated. It did not deny the existence of a different treatment between workers based on the nature of their employment contract, but it considered that employment policy objectives constitute a legitimate and proportionate justification.⁷ As far as the right to organize and the right to worker involvement were concerned, the French Constitutional Court adopted a rather formalistic approach. It argued that the provisions did not deprive the employees with a *contrat d'accompagnement à l'emploi* of their right to represent or to be represented once the threshold had been reached.⁸ Finally yet importantly, the Court considered that the statutory provisions did not formally prevent these workers from establishing or joining a trade union.⁹

Since a constitutional pathway in order not to apply the statutory provisions had thus been blocked, the *Tribunal d'Instance* adopted another avenue. It considered that the French statutory provisions were *not* in conformity with Directive 2002/14/EC.¹⁰ Such an assessment does not come as a big surprise, since Directive 2002/14/EC is applicable to any person benefitting from protection as an employee under employment law in accordance with national practice in the Member States.¹¹ It was not disputed that persons bound by a *contrat d'accompagnement dans l'emploi* were in fact bound by a a general employment contract (*contrat d'emploi*). Furthermore, although Article 3(1) of Directive 2002/14/EC provides that the Member States shall determine the method for calculating the thresholds of employees, this provision 'precludes national legislation which excludes, even temporarily, a specific category of workers from the calculation of staff numbers within the meaning of that provision'.¹² The *Tribunal d'Instance* decided

⁷ Ibid., para. 5: 'que les différences de traitement qui peuvent en résulter entre catégories de travailleurs ou catégories d'entreprises répondent à ces fins d'intérêt général et ne sont pas, dès lors, contraires au principe d'égalité'.

⁸ Ibid., para. 8: 'qu'il ne leur interdit pas, en particulier, d'être électeur ou éligible au sein des instances représentatives du personnel de l'entreprise dans laquelle ils travaillent; que, par suite, il ne porte pas atteinte, en lui-même, au principe de participation des travailleurs à la détermination collective des conditions de travail ainsi qu'à la gestion des entreprises'.

⁹ Ibid., para. 9: 'que la disposition contestée ne fait pas obstacle au droit des salariés mentionnés à l'article L. 1111-3 du code du travail de constituer librement une organisation syndicale ou d'adhérer librement à celle de leur choix'.

¹⁰ Directive 2002/14/EC.

¹¹ Article 2(d) of Directive 2002/14/EC.

¹² Case C-385/05 *CGT and others v. Premier Ministre de l'Emploi, de la Cohésion sociale et du Logement*.

that the lack of conformity empowered the French judiciary to disapply the statutory provisions of the French Labour Code providing for the exclusion of the workers under a *contrat d'accompagnement dans le travail* in matters concerning employee participation.

As a result, AMS had far exceeded the threshold of 50 employees. For this reason, the *Tribunal d'Instance* considered that the appointment of the permanent worker was indeed valid. There was no reason to declare the designation null and void.

AMS brought an appeal before the *Cour de Cassation*. The legal consequence which the Tribunal attached to the assessment that the statutory provisions were contrary to the Framework Directive is the non-applicability of these provisions to a dispute between a trade union and an employer. This approach challenges the established case law of the CJEU that EU directives have no horizontal effect between private individuals.¹³ However, in its preliminary reference, the *Cour de Cassation* seems to contemplate whether Article 27 of the Charter could serve as a catalyst to empower the judiciary to disapply the French statutory provisions, which are clearly at odds with Directive 2002/14/EC. The Framework Directive raises a fundamental rights issue. It explicitly refers to the Community Charter of Fundamental Social Rights of Workers in its recitals. In an explanatory note on Article 27 of the Charter, the Community Charter of Fundamental Social Rights for Workers is quoted as a source of inspiration in the drafting of that article.¹⁴

§4. PRELIMINARY QUESTIONS

The *Cour de Cassation* refers two questions to the CJEU:

- (1) May the fundamental right of workers to information and consultation, recognised by Article 27 of the [Charter], and as specified in the provisions of Directive [2002/14], be invoked in a dispute between private individuals in order to assess the compliance [with European Union law] of a national measure implementing the directive?
- (2) In the affirmative, may those same provisions be interpreted as precluding a national legislative provision which excludes from the calculation of staff numbers in the undertaking, in particular to determine the legal thresholds for putting into place bodies representing staff, workers with [assisted] contracts?

In essence, the preliminary procedure is about the interpretation of *primary law*, that is, the Charter of Fundamental Rights of the European Union, which has the same legal value as the Treaties.

¹³ See P.J.G. Kapteyn and P. Verloren Van Themaat, *Introduction to the Law of the European Communities* (Kluwer Law International, 1998), p. 547. See Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-08835, para. 109; and Case C-282/10 *Maribel Dominguez v. Centre informatique du Centre Ouest Atlantique, Préfet de la région Centre*, para 42.

¹⁴ F. Dorssemont, 'Article 27', in S. Peers et al., *The EU Charter of fundamental rights* (Hart Publishing, 2014), p. 750–752.

Thus, the first question explicitly refers to Article 27 of the Charter. The second question, to the contrary, refers to the provisions of the Directive 2002/14/EC. Indeed, in the first question a distinction is drawn between articles and provisions. What seems to be at stake in the second question is rather whether Article 27 of the Charter can be used to permit the judiciary to disapply statutory provisions that are not in conformity with the Directive 2002/14/EC. In sum, both questions essentially deal with the issue whether articles of the Charter can be invoked in a dispute between individuals in order to disapply incompatible statutory provisions which implement a directive into national law.

The CJEU has thus integrated both questions as followed:

The referring court seeks to ascertain, in essence, whether Article 27 of the Charter, by itself or in conjunction with the provisions of Directive 2002/14, must be interpreted to the effect that, where a national provision implementing that directive, such as Article L. 1111-3 of the Labour Code, is incompatible with European Union law, that article of the Charter can be invoked in a dispute between individuals in order to disapply that national provision.¹⁵

§5. JUDGMENT

Despite its intention to combine the two questions, the CJEU in fact follows a three-step approach. First, it assesses the compatibility of the French provisions with Directive 2002/14/EC. Second, it examines to what extent Article 3 of Directive 2002/14/EC meets the conditions to have a ‘direct effect’, and to what extent the defendants in the main proceedings may rely on that direct effect against AMS. Third, the CJEU assesses whether Article 27 of the Charter can be invoked in the dispute in order to preclude the application of the statutory provisions deemed incompatible with Directive 2002/14/EC.

The CJEU clearly recognizes that the encouragement of recruitment constitutes a legitimate aim of social policy.¹⁶ The Court does not indicate whether it refers to domestic or European social policy, however, it clarifies that the margin of discretion the Member States have in fulfilling such policy cannot be used as a justification to frustrate the implementation of fundamental principles of European Union law or of a provision of EU law.¹⁷ Thus, it reiterates the dictum in *CGT and others*¹⁸ that Article 3 of Directive 2002/14/EC (the provision of EU Law concerned) precludes statutory provisions that exclude a specific category of workers from the calculation of staff members. By doing so, the CJEU has in fact given an answer to the second question raised by the *Cour de Cassation*.

In the case at hand, it is not the direct effect of the provisions concerned which raises a problem, but rather the question whether the French trade unions and the designated

¹⁵ Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, para. 4.

¹⁶ *Ibid.*, para. 26.

¹⁷ *Ibid.*, para. 27.

¹⁸ Case C-385/05 *CGT and others v. Premier Ministre de l'Emploi, de la Cohésion sociale et du Logement*.

representative could invoke these provisions against a purely private employer. According to the Court, Article 3(1) of Directive 2002/14/EC, which defines the personal scope of the Directive and urges the Member States to determine the method for calculating the threshold of employees, is sufficiently precise and clear to have direct effect. Indeed, although this provision does not indicate the manner in which Member States should calculate employees, it does require that the employees concerned are taken into account.¹⁹ This conclusion is not surprising since the previous assessment illustrated that the French provisions were not compatible with Directive 2002/14/EC.

Concerning the question whether the defendants could rely on Article 3(1) of Directive 2002/14/EC to have direct effect against the private employer, the CJEU reiterates its well-known case law that defendants cannot rely on the provisions of a directive having a direct effect against a private individual, such as an association. The best way to remedy the lack of such a horizontal effect is a proper implementation of a directive or an interpretation of the implementation which is in conformity with the objectives of a directive. Hence, the Court states that the existence of a directive has an impact on the judicial interpretation of the domestic law implementing a directive. Thus, the domestic judges need

to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive.²⁰

The CJEU stresses that there is a limit to such judicial activism, insofar as such ‘an obligation cannot serve as the basis for an interpretation of national law *contra legem*’.²¹

According to the CJEU, in the case at hand, there was no leeway for the *Cour de Cassation* to interpret French law in a way to achieve an outcome which was consistent with the objective pursued by Directive 2002/14/EC. In fact, the contradiction between the French implementation provision and Directive 2002/14/EC was unambiguous and beyond repair.

Hence, the CJEU examines whether Article 27 of the Charter can be invoked by itself or in conjunction with the provisions of Directive 2002/14/EC in order to preclude the application of those national provisions. According to the Court, the Charter is applicable, insofar as the facts of the case show that the dispute was ‘governed by European Union Law’.²² This criterion is fulfilled as the reference to Article 27 of the Charter falls in the scope of the deficient implementation provisions of Directive 2002/14/EC.

¹⁹ Ibid., para. 34.

²⁰ Ibid., para. 38.

²¹ Ibid., para. 39.

²² Ibid., para 42.

The legal precedent to consider here is *Küçükdeveci*.²³ In this case, the CJEU ruled that the principle of non-discrimination on the basis of age permitted the domestic judges to disapply domestic provisions implementing Directive 2000/78,²⁴ since the principle was ‘sufficient in itself to confer on individuals an individual right which they make invoke as such’.

According to the CJEU, contrary to the provisions of Directive 2002/14/EC, Article 27 of the Charter is deprived of such a kind of direct effect. This conclusion is based on an analysis of Article 27 of the Charter read in isolation, disregarding Directive 2002/14/EC. Furthermore, the CJEU explicitly states that this finding ‘cannot be called into question by considering Article 27 of the Charter in conjunction with the provisions of Directive 2002/14’.²⁵

The CJEU recalls that the party injured as a result of domestic law not being in conformity with European Union law can claim for compensation of the loss sustained on the basis of state liability (*Francovich and Others*)²⁶.²⁷

§6. COMMENTS

A. THE CONCEPT OF AN ‘EMPLOYEE’ IN DIRECTIVE 2002/14/EC

As is quite common for directives in the field of EU social policy, the notion of an employee in Directive 2002/14/EC is defined by reference²⁸ to domestic labour law. Such reference can also be found in the Transfer of Undertaking Directive 2001/23/EC which deals with the issue of worker involvement.²⁹ This notion can be distinguished from a more autonomous approach concerning the notion of employee, which has been prompted by the CJEU in a number of fields relevant to labour law. The most striking examples of this autonomous approach concern the personal scope in the context of the

²³ Case C-555/07 *Küçükdeveci* [2010] ECR I-635.

²⁴ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [2000] OJ L 303/16.

²⁵ Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, para. 49.

²⁶ Joined Cases C-6/90 and C-9/90 *Frankovitch and Others* [1991] ECR I-5367.

²⁷ Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, para. 51.

²⁸ See for the notion of ‘employee’ in Directive 2002/14/EC, the observations of J. Heuschmid in his annotation to the *AMS* judgment: J. Heuschmid, ‘Horizontalwirkung von Art 27 Europäische Grundrechtscharta Fehlanzeige?’, 4 *EuZA* (2014), p. 514–515. For a more general overview: S. Borelli, ‘The concept of employee and quality of employment’, in S. Borelli and P. Vielle, *Quality of Employment in Europe* (PIE Peter Lang, 2012), p. 112–123.

²⁹ See inter alia, Council Directive of the European Parliament and of the Council of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, [2001] OJ L 82/16.

free movement of workers, the Framework Directive on Health and Safety,³⁰ and non-discrimination in the field of employment and occupation. The Court controls in an autonomous way whether work under subordination as a counterpart of remuneration is being performed. The genesis and the qualification of the employment relation under national law are immaterial.

The question arises whether the holdership of the right to information and consultation in Article 27 of the Charter should be interpreted autonomously as well. Article 27 of the Charter indicates that the holders of the right to information and consultation are workers *or* their representatives. The heading of the Article exclusively designates workers as the holders of such a right, thus apparently precluding workers' representatives. However, the Court has recently adopted a rather collectivist approach to the issue of the holdership of the right to information and consultation. In *Mono Car Styling*,³¹ the CJEU ruled that the right to information and consultation as fleshed out in the Collective Redundancy Directive³² is addressed to workers representatives and not to employees individually. Here, no reference was made to the Charter.

The title of Article 27 of the Charter does contain an element which could narrow the scope of such a right, since information and consultation is confined to workers in an 'undertaking'. The concept of an 'undertaking' is not defined. The lack of definition is in my view consistent with the fact that neither the level nor the object of the information is defined. In my view, the concept of an 'undertaking' needs to be defined in relation to the level and the object.

On the one hand, there is no indication whatsoever to assume that the concept of worker in the Charter would need to be interpreted in another way than an 'autonomous way'. Since the Charter is not applicable to the Member States 'as such', it hardly makes sense to assume that the notion would have a different meaning depending on the Member State concerned. The idea that Member States could define the personal scope of a Charter recognizing fundamental rights does not make sense. This would deprive such a recognition of its useful effect.

On the other hand, since the Charter only applies to Member States implementing Union law, in practice, the application of these rights risks being dependent on the personal scope of a given instrument of European Union law. To the extent that an instrument adopts an approach following the concept of work by means of a *renvoie* (reference) to the law of Member State, this will boil down to a restriction of the effective application of the Charter. The present case sheds no light on this issue, since it was undisputed that the workers concerned fell within the ambit of both Directive 2002/14/EC

³⁰ Council Directive 89/391 of the European Parliament and of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, [1989] OJ L 183/1.

³¹ Case C-12/08 *Mono Car Styling SA, in liquidation v. Dervis Odemis and Others* [2009] ECR I-06653.

³² Council Directive 98/58 of the European Parliament and of the Council of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, [1998] OJ L 225/16.

and the Charter. In the case at hand, it was abundantly clear that the employees working under a *contrat d'accompagnement dans le travail* were employees according to French law. The Court considered that the Charter did apply to the facts of the case concerned, 'since the national legislation at issue in the main proceeding was adopted to implement Directive 2002/14'.³³ For the Court, there is an obvious link between the French statutory provisions, Directive 2002/14/EC and the right to information and consultation in the Charter. In fact, the only reasons why the *Travaux préparatoires* of the Charter did not refer to Directive 2002/14/EC is that they predate the adoption of the Directive. They have not been updated at a later stage, prior to the conclusion of the Lisbon Treaty.

It is however questionable whether the European legislator can still continue to delegate to the Member States the issue of defining the notion of worker within the framework of a directive that elaborates fundamental workers' rights enshrined in the Charter.

The fact that employees under a *contrat d'accompagnement dans le travail* fall within the scope of Article 27 of the Charter might be at variance with the standing case law of the CJEU with regard to the free movement of workers. In the past, the Court has indeed accepted national provisions which were at odds with substantive provisions on the free movement of workers, since it considered that the persons concerned were not engaged in a 'genuine and effective economic activity'.³⁴ For this reason, they did not fall within the personal scope of the free movement rules. In the case concerned, work undertaken as a part of a drug rehabilitation program was not considered as being performed under the normal conditions to qualify as such a genuine and effective economic activity.³⁵ Hence, in the same vein, the question whether persons which are employed in order to be reintegrated into the labour market fall under the rules for free movement of workers and under Article 15(2) of the Charter, in my view, remains an open question. In my view, the issue is not of immediate relevance to this case. The concept of a worker within the meaning of Article 27 and Article 15(2) of the Charter does not necessarily need to be identical.

B. PRECLUDING WORKERS FROM THE SCOPE OF THE IMPLEMENTATION OF DIRECTIVE 2002/14/EC: A DÉJÀ VU?

The Grand Chamber extensively referred to and confirmed the previous case *CGT and others*.³⁶ In both cases, workers who were considered as employees on the basis of an employment contract were precluded from the scope of application of the legislation

³³ Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, para. 43.

³⁴ See C. Barnard, *EU Employment Law* (4th edition, Oxford University Press, 2012), p. 149.

³⁵ Case C-344/87 *Bettraye v. Staatssecretaris van Justitie* [1989] ECR I-1621, para. 17 and 18 See C. Barnard, *EU Employment Law* (4th edition, Oxford University Press, 2012), 149_150.

³⁶ For an extensive annotation of the Case C-385/05 *CGT and others v. Premier Ministre de l'Emploi, de la Cohésion sociale et du Logement*, see F. Dorssemont, 'Eens Franse werknemer, altijd Europese werknemer', 2 *Arbeidsrechtelijke annotaties* (2007), p. 102–122.

implementing into national the directives concerning worker involvement. In the older case, the union attacked the temporary preclusion in an administrative decree (*Ordonnance*) of workers under a so-called *contrat de nouvelles embauches* from statutory thresholds implementing Directive 2002/14/EC as well as from the reference period for the calculation of collective redundancies before the *Conseil d'Etat*.

However, this confirmation of the older case law by the Grand Chamber was not sufficient to bring relief to the trade unions trying to request the French judicature to disapply the statutory provisions deemed incompatible with Directive 2002/14/EC.

There are some major differences between both cases and the way they were dealt with.

In the first case, the trade unions did not request the *Conseil d'Etat* to disapply the provisions, but to annul the provisions of the governmental decree (*Ordonnance*) concerned. Since these provisions were not of a statutory nature, the *Conseil d'Etat* was competent to examine their legality in the light of Framework Directive 2002/14 and the Collective Redundancy Directive 1998/59. In *AMS*, the statutory provisions concerned could only be annulled by the French Constitutional Court. It rejected that request. Apparently, the French *Cour de Cassation* sought to circumvent the judgment of the French Constitutional Court by submitting a preliminary reference to the CJEU regarding Article 27 of the Charter. It wanted the CJEU to examine whether Article 27 of the Charter would actually allow the French judicature to refrain from applying the statutory provisions. In the first case, neither the CJEU nor the Advocate General referred to the Charter. Technically speaking, the Charter did *not* have the status of primary law at that time. It acquired such a character after the entry into force of the Lisbon Treaty.³⁷ Neither was there a technical need to recognize the right to information and consultation as a 'general principle' of EU law. Such a recognition has often been perceived as Trojan horse. As is elucidated by the *Viking* and *Laval* cases, as well as by *Commission v. Germany*, this is often a prelude for a balance operation justifying restrictions of rights alleged to be 'fundamental'.³⁸ Neither in *CGT and others* nor in *AMS* could a case for a balancing operation be made, though the French government tried to put forward an alleged conflict with employment policy objectives.

In casu, the reference to the fundamental character of a collective workers' right is enshrined and suggested in the preliminary questions. The reference does not seek to invite the CJEU to engage in a balancing operation, but to invite it to empower the French judges to disapply statutory provisions deemed incompatible with Directive 2002/14/EC which implement this fundamental right.

³⁷ C. Kollonay-Lehoczky, K. Loercher and I. Schoemann, 'The Lisbon Treaty and the Charter of Fundamental Rights of the European Union', in N. Bruun, K. Loercher and I. Schoemann, *The Lisbon Treaty and social Europe* (Hart Publishing, 2012), p. 61–104.

³⁸ Case C-438/05 *International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line ABP and OÜ Viking Line Eesti* [2007] ECR I-10779; Case C-341/05 *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet* [2007] ECR I-11767; and Case C-271/08 *Commission v. Germany* [2010] ECR I-07091.

As shown above, the CJEU does not really accept that kind invitation.

In both cases, the role of the French Constitutional Court needs to be outlined as well. In both cases, it has refused to validate a request seeking to annul or disapply a statutory provision.³⁹ In 2005, the statute concerned was the law granting extra-ordinary powers to the Government. In 2011, the provision in the French Labour Code that organizes the preclusion of some workers under an employment contract was under attack. In both cases, the Court refused to acknowledge that the constitutional principle of equality had actually been violated by not considering some employees. The French Constitutional Court considered in both cases that there was a differential treatment, but that it could be justified, since the objective of the promotion of employment did constitute a legitimate reason of general interest.⁴⁰

In *CGT and others*, the Advocate General Mengozzi as well as the Commission argued that there was no discrimination. However, they followed another line of reasoning.⁴¹ They both considered that the effect of the preclusion of some categories of workers for the sake of the reference period or for the sake of the thresholds did not discriminate between younger and older workers. Hence, there was no differential treatment. Indeed, if as a result, the amount of workers to be made collectively redundant was not reached or if the threshold of 50 workers was not reached, the information and consultation were not engaged and neither did a worker representative body have to be established. These results affected young and old workers alike. Though the Second Chamber did not dwell in an explicit way on the issue of non-discrimination, it did make it abundantly clear that there was no such thing as a justification in public employment policy allowing for the preclusion of young employees from the scope of Directive 2002/14/EC.

In view of this clear-cut assessment of the French legislation, it is astonishing to read that the French Constitutional Court in its 2011 judgment considers that there is no principle of constitutional value prohibiting the legislator to adopt measures promoting the employment of specific categories of workers.⁴²

Thus, the Constitutional Court completely ignores the impact of Directive 2002/14/EC and makes no effort at all to interpret and apply the existing French constitutional provisions in a way which would in fact allow an outcome that is consistent with the objectives pursued by the Directive. It goes beyond doubt that the outcome generated by the Constitutional

³⁹ See Cour constitutionnel, Decision n° 2005-521, DC of 22 July 2005, www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2005/2005-521-dc/decision-n-2005-521-dc-du-22-juillet-2005.970.html, and Cour constitutionnel, Decision n°2011-122, QPC of 29 April 2011.

⁴⁰ S. Sciarra, 'Association de médiation sociale. The Disputed Role of EU Fundamental Principles and the Point of View of Labour Law', in A. Tizzano et al. (eds.), *Scritti in onore di Giuseppe Tesaro* (Editoriale Scientifica, 2014), p. 2436-2438, 2441: the author builds argues that in AMS, there was an unjustified differential treatment or discrimination.

⁴¹ Opinion of Advocate General Mengozzi in Case C-385/05 *Confédération générale du travail and Others* [2007] ECR I-00611, para. 27.

⁴² Cour constitutionnel, Decision n°2011-122, QPC of 29 April 2011.

Court did not guarantee that objective. The outcome has been to uphold statutory provisions which violated EU directives. One might argue that the constitutional principle of equality did not provide any leeway for the Constitutional Court to guarantee such an outcome. Still, a less formalistic approach to some of the fundamental rights concerned (the right to information and consultation, the right to organize) might have made a difference.

C. THE RIGHT TO INFORMATION AND CONSULTATION IN ARTICLE 27 OF THE CHARTER: ‘RIGHT’ OR ‘PRINCIPLE’?

The *AMS* judgment is one out of many judgments related to the right to information and consultation of workers at the level of an undertaking. However, for the very first time, the CJEU had to refer – and actually did refer – to Article 27 of the Charter. This provision reads as follows:

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

The Court has not elucidated at great length why this provision cannot be invoked in a dispute between private parties. The litmus test seems to be related to the question whether the provision is ‘sufficient in itself to confer on individuals an individual right which they make invoke as such’.⁴³ For the Court, Article 27 of the Charter cannot be fully effective, without ‘a more specific expression in European Union or national law’.⁴⁴

The Court does not explain why this is the case. It just refers *verbatim* to the text of Article 27 of the Charter. There are two reasons which might explain why the text does not seem sufficient to confer rights to citizens. First, it lacks precision with regard to the level, the object and the holdership of the right. Thus, it does not clearly indicate whether these rights are held by employees or by a representative, let alone how the representative can be identified. Furthermore, the provision explicitly refers to ‘cases and conditions provided for by European Union and national law and practices’.

The distinction between provisions which confer ‘rights’ and those which do not, is reminiscent of a well-known semantic distinction between rights and principles. Astonishingly, the Court has scrupulously avoided referring to the latter.⁴⁵ This

⁴³ Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, para. 47.

⁴⁴ *Ibid.*, para. 45.

⁴⁵ See, D. Dittert, ‘Droits fondamentaux européens: vers un effet direct horizontal généralisé?’, 1 *R.A.E./L.E.A.* (2014), p. 182. The author argues that it is regrettable that the Court does not refer to this distinction and misses an opportunity to clarify it. E. Dubout, ‘Principes, droits et devoirs dans la Charte des droits fondamentaux de l’Union européenne’, 2 *Revue trimestrielle de droit européen* (2014), p. 412; and S. Lulom, ‘Les seuils d’effectifs: une confirmation et une déception’, 1640 *Semaine sociale Lamy* (2014), p. 12.

distinction⁴⁶ made in Article 52(5) of the Charter lays at the heart of the Opinion of Advocate General Cruz Villalón. The Advocate General has argued that Article 27 of the Charter needs to be qualified as a ‘principle’. This statement comes close to the thesis that the provision is not sufficiently precise and clear to confer a ‘right’ to citizens. The Advocate General goes to greater length than the Court to explain why this qualification is indeed warranted. He points out that the right to information and consultation is not fleshed out properly. There is no indication of the holdership, the object, and the geographical scope (levels) of the right concerned. For this reason, the Advocate General construes this provision as an instruction to the competent (European) authorities to elaborate this right. *Obviously*, this suggestion presupposes that the European Union is competent to adopt directives in this field. *In casu*, Article 252 TFEU provides such a basis.

In my view, the mere fact that a reference is made to the law of the European Union and of the Member States is not a sufficient indication to downgrade the legal status of some of the rights enshrined in the Charter. A typical example is the right to collective action, including the right to strike. Amongst the Member States, France and Italy have granted a constitutional status to the right to strike in the aftermath of the Second World War (1946/1948). In both provisions, which are almost identical, an instruction is given to the legislator to determine the conditions under which these rights can be exercised. Up to this day, neither the French nor the Italian legislator adopted a statutory instrument that systematically describes these conditions. Hence, Italian and French law in this context is essentially judge-made law. The French and Italian judges have never refused to consider that these provisions do constitute the necessary legal foundation for conferring a right to citizens.

Furthermore, the Advocate General argues that the mere fact that the right to information and consultation ranked under the heading ‘Solidarity’ provides a presumption that it constitutes a principle.⁴⁷ In my view, such a presumption is not justified by general considerations because it totally neglects the specific wording of the respective articles under the *Solidarity* title. Such a presumption clearly downgrades rights – often qualified as social, economic and cultural rights – and undermines their justiciability. The presumption is rebuttable. The Advocate General rightly points out that the semantics of the Charter are not conclusive. Indeed, some rights have been phrased as principles, whereas some rights are qualified as principles.

The Opinion of the Advocate General and the judgment of the Court are divergent in respect to the legal consequences attached to the semantic distinction raised above. Whereas the Court has ruled that the lack of precision and clarity precludes citizens from

⁴⁶ See on that distinction, S. Robin-Olivier, ‘La contribution de la Charte des droits fondamentaux à la protection des droits sociaux dans l’Union européenne: un premier bilan après Lisbonne’, 1 *Journal européen droits de l’homme* (2013), p. 14–116; and E. Dubout, ‘Principes, droits et devoirs dans la Charte des droits fondamentaux de l’Union européenne’, 2 *Revue trimestrielle de droit européen* (2014), p. 414–416.

⁴⁷ See Opinion of Advocate General Cruz Villalón in Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, delivered on 18 July 2013, para. 55.

invoking these rights in order to disapply a statutory provision implementing Directive 2002/14/EC (in a way which is incompatible with the latter), the Advocate General adopts a much more nuanced stance.

Whereas the CJEU makes no reference at all to Article 52(5) of the Charter, the Advocate General argues that this provision, which is not deprived of ambiguity and obscurity, does not constitute an obstacle to the empowerment of the French judiciary to disapply the French statutory provisions deemed incompatible with Directive 2002/14/EC. The Advocate General elaborated the conditions under which a so-called ‘principle’ can be judicially cognizable. The CJEU makes no reference to this model. In essence, the Advocate General seeks to demonstrate how articles related to principles might come into play and might become judicially cognizable in the meaning of Article 52(5) of the Charter. Unfortunately, the guidance that the Advocate General gives related to this provision is not entirely uncomplicated.⁴⁸ Thus, the Advocate General describes a model with three layers.⁴⁹ He distinguishes the articles of the Charter enshrining a principle, the legislative acts which give ‘specific expression’ to the principle and the legislative acts whose interpretation and review is allowed in the meaning of Article 52(5) of the Charter.

In sum, the Advocate General tries to submit the French implementing provisions providing for an exclusion to a test based on Article 27 of the Charter combined with a provision of Directive 2002/14/EC, which he considers ‘capable of giving specific substantive and direct expression to the content of a “principle”’. Article 3(1) of Directive 2002/14/EC is considered to be such a provision. Hence, the Advocate General considers that a principle in combination with such a provision is judicially cognizable. It is judicially cognizable for the sake of the interpretation and the ruling on their legality of a *distinct* provision, being the French statutory provisions implementing Directive 2002/14/EC.

In view of the ambiguity of Article 52(5) of the Charter, it is regrettable that the Court of Justice does not make use of the occasion to provide some guidance. Following the reasoning of the Court, it goes without saying that Article 27 of the Charter cannot be invoked since the article is not sufficiently precise and clear to confer *a right* to EU citizens. In my view, it fails to provide a reason for this.

The refusal of the Court to refer to Article 52(5) of the Charter has been helpful to avoid a semantic discussion on the question whether the right to information and consultation could be qualified as a right or a principle. If the Court had engaged in such an analysis and had qualified that right as a principle, it would, in my view, have been obliged to recognize that the right to information and consultation was judicially cognizable. Indeed, the right has been implemented both by an act of an EU institution

⁴⁸ S. Laulom exercises her diplomatic skills, while stating: ‘*Il est vrai que la proposition de l’avocat général pouvait sembler complexe. Néanmoins, cette complexité est issue de la Charte même et de la distinction qu’elle opère entre droits et principes et des effets incertains qu’elle y rattache.*’ S. Laulom, 1640 *Semaine sociale Lamy* (2014), p. 13.

⁴⁹ See Opinion of Advocate General Cruz Villalón in Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, Judgment of 15 January 2014, para. 57–80.

(in form of Directive 2002/14/EC adopted by the Council), and by an act of a Member State (through the implementation provision of Directive 2002/14/EC).

In my view, the decision of a judge not to apply a national statutory provision based on its incompatibility with a provision of a directive in combination with a Charter provision, can be qualified as a ‘ruling on the legality of an act’ (here, the statutory provision) in the meaning of Article 52(5) of the Charter. However, the Court seems to substitute this distinction between rights and principle with the distinction between provisions with direct effect and those without. Therefore, the CJEU seems to have embraced (knowingly or not) a *thesis* previously developed by Prechal, who considers the distinction between rights and principles as rather unimportant and even redundant compared to the characteristic of direct effect as a more appropriate tool to assess the justiciability of EU norms.⁵⁰ Though it is no secret that Prechal had a seat in the Grand Chamber ruling in the *AMS* case, it is impossible for any outsider (and even inappropriate) to estimate the impact of her academic writings on the deliberation. The observations of Prechal have been inspired by ‘the fear that positive obligations will be read by courts into provisions which should, for various reasons, be dealt with by other branches of government’. Though it is quite honourable to combat a ‘*gouvernement des juges*’, one might also fail to understand how an obligation *not* to apply a statutory provision could be seen as a positive obligation. Furthermore, it is difficult to understand how a constitutional court like the CJEU can actually ignore an explicit provision of primary law. The applicability of Article 54(4) of the Charter in fact amounts to a more nuanced position. Despite the ambiguity of the distinction between ‘rights’ and ‘principles’, and despite the problems surrounding the exact scope of the justiciability of mere principles, it takes into account the interplay between the Charter provisions *and* their implementation in order to assess the issue of justiciability. Furthermore, it avoids depriving provisions which are not considered to have ‘direct effect’ of any kind of justiciability. In order to avoid any misunderstanding, Prechal has never explicitly argued that her interpretation of Article 52(5) of the Charter would *per se* exclude applying the *Mangold/Kükücedevici* rule to ‘implemented principles’.⁵¹

D. A PARADOX: JUDGES MIGHT NEED TO ANNUL BUT CANNOT REFUSE TO APPLY STATUTORY LAW

Some commentators have expressed their discontent or their disappointment with the Court’s ruling.⁵² The judgment tends to broaden the gap that the Charter has tried to

⁵⁰ See S. Prechal, ‘Article 52’, in S. Peers et al., *The EU Charter of fundamental rights*, p. 1510–1511. This contribution has been drafted between the Opinion of the Advocate General and the judgment of the Grand Chamber as is evidenced by note 225 on page 1507 of Prechal’s contribution.

⁵¹ No references are made to both judgments in her analysis of Article 52(5) of the Charter.

⁵² See especially J. Heuschmid, 4 *EuZA* (2014); S. Sciarra, in A. Tizzano et al. (eds.), *Scritti in onore di Giuseppe Tesaurò*, p. 2444; and S. Laulom, ‘Les seuils d’effectifs: une confirmation et une déception’, 1640 *Semaine sociale Lamy* (2014), p. 9–15.

overcome between civil and political rights on the one hand, and economic, social and cultural rights on the other hand. Indeed, the distinction between provisions conferring rights and those which do not, or the distinction between provisions enshrining rights and others enshrining ‘principles’ tends to overlap with this historic distinction.

It is obviously acceptable to state that articles allegedly enshrining ‘principles’ cannot *as such* have any direct effect. They do not *as such* confer rights on citizens. They are not *as such* judicially cognizable in a case between individuals. Indeed, in any dispute between citizens, the Charter can only come into play insofar as Member States have actually implemented Union law that can be related to the provisions of the Charter. This basic rule transcends and predates the distinction between rights and principles. From the point of view of private citizens involved in a dispute, no *isolated* Charter provision has a direct – let alone a horizontal – effect. However, an isolated approach is not at all warranted. As is shown by the facts of the case concerned as well as by the proceedings, the right to information and consultation was the objective pursued by Directive 2002/14/EC. In fact, the issue of worker involvement belongs to one of the most developed parts of EU labour law. Over nearly four decades, a set of directives has been established, regulating the right to information and consultation at all appropriate levels (establishment or undertaking and community scale-group of undertakings) in minute detail.⁵³

In the present case, there was no conflict between individuals with regard to the scope of a subjective right (*contentieux subjectif*). The legal conflict at hand is about a conflict between legislative provisions (*contentieux objectif*), although this discussion takes place within a context of a dispute between an employer and a trade union. The conflict is about the interpretation of statutory provisions and about a ruling on the ‘legality’ of these provisions. Article 52(5) of the Charter states that principles are solely judicially cognizable in *this* respect.

The CJEU demands that the judges of the Member States undertake everything in their power to uphold the law of the European Union. Insofar as the French judiciary system allows to declare some statutory provisions unconstitutional and to annul them, it is remarkable that the CJEU refuses to empower French judges to opt for a much lesser evil, being the decision to merely disapply a provision implementing a provision of EU law deemed incompatible with secondary and primary law. Remarkably, the CJEU failed to do what it requires domestic judges to do, namely to utilize every tool it has at its disposal (for the Court of Justice this is European law) ‘to achieve an outcome consistent with the objective pursued by the directive’.⁵⁴ In the case at hand, this would have meant empowering the French judges to disapply statutory provisions at odds with the Framework Directive, which has given form to a right considered ‘fundamental’. Such a

⁵³ F. Dorssemont, in S. Peers et al., *The EU Charter of fundamental rights*, p. 749–771.

⁵⁴ Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others*, para. 119. The Court refers to this paragraph in Case C-176/12 *Association de médiation sociale v. Union locale des syndicats CGT and others*, para. 38.

decision would not have forced the judges to interpret French statutory provisions *contra legem*, but would have allowed them to ignore the bad parts of French law incompatible with European Union law.

One might argue that such a form of judicial activism is at odds with an idea of legal security. However, why should we uphold an ideal of legal security which is unable to protect European citizens against a violation of their fundamental rights and which forces domestic judges to abdicate? Thus, Heuschmid has pointed out that the preclusion of workers from the Framework Directive might raise an issue of compatibility with Article 21 of the revised European Social Charter.⁵⁵ This article has been expressly mentioned in the Explanations. The supervisory body of the revised European Social Charter has in fact sought inspiration in the previous *CGT* judgment to insist on the necessity not to exclude workers from the scope of the right to information and consultation.⁵⁶

Article 52(5) of the Charter states that principles are judicially cognizable. In other words: principles can be invoked by European citizens in legal proceedings. After examining the *AMS* judgment, the question arises to what extent these principles are still judicially cognizable and what might be the added value of such a provision.⁵⁷

Surely, citizens can invoke principles in order to plead for an interpretation of the law of the Member States implementing European Union law in a way that is as consistent as possible with the fundamental rights enshrined in the Charter. In the given case, these 'nice thoughts' have no added value at all for two reasons. First, taken on its own, Directive 2002/14/EC was sufficient to warrant the conclusion that the questioned French statutory provisions could not preclude the workers concerned and that the judges had to do everything in their power to interpret French law in a way which would have allowed to include those workers. Second, this was by no means possible, since it would have forced the French judges to rule *contra legem*.

Surely, the CJEU indicates an avenue to pursue for the (defendant) trade union, which was affected by the statutory provisions deemed incompatible with European

⁵⁵ Article 21 RESC: 'With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a) to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b) to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.'

⁵⁶ J. Heuschmid, 4 *EuZA* (2014), p. 520.

⁵⁷ In this respect, see the observations of S. Laulom, who argues that the hypothesis identified in Article 52(5) of the Charter seems to have been fulfilled, *id est* that of a principle which had been implemented by EU law and thus had to be recognized as judicially cognizable. S. Laulom, 1640 *Semaine sociale Lamy* (2014), p. 13.

Union law. However, the *Francovich*-doctrine on state liability is old news. An isolated view towards Directive 2002/14/EC was sufficient to argue that there was state liability. Hence, this remedy is not related to the existence of principles in the Charter. The question arises to what extent this remedy is dissuasive. It will be extremely difficult to identify, let alone to quantify the damages to the trade union as a litigating party for not being able to appoint a workers' representative. Heuschmid has pointed out that a violation to the right to the defense of collective interests will generate damages that are qualified as moral damages.⁵⁸ Some judges tend to sanction such violations by assessing the damage *ex aequo et bono*. In Belgium, this has amounted to awarding compensation of one Belgian Franc. Fortunately, the introduction of the Euro has prompted the Belgian judges to be more generous and award a symbolic Euro, which however, has not proven very dissuasive either.

Some commentators 'looking at the bright side of life'⁵⁹ have argued that the judgment delineates the conditions under which provisions in the Charter that are implemented into national law by virtue of a directive containing articles with a direct effect, could generate genuine horizontal direct effect. Even though the ability of commentators to engage in damage control is a virtue, it is useful to state that such a conclusion can only be derived very implicitly and is based on a tricky '*a contrario*' way of reasoning. Pertaining to the text of the judgment, one can only state that the words 'horizontal effect' have not made their appearance in the judgment.⁶⁰

⁵⁸ J. Heuschmid, 4 *EuZA* (2014), p. 522.

⁵⁹ D. Dittert, 1 *R.A.E./L.E.A.* (2014), p. 181–182.

⁶⁰ J. Heuschmid, 4 *EuZA* (2014), p. 520–521. For a comprehensive study on the 'horizontal effect' of fundamental rights in a comparative constitutional and European (Council of Europe as well as European Union) perspective, see A. Seifert, 'L'effet horizontal des droits fondamentaux', 4 *Revue trimestrielle de droit européen* (2012), p. 801–826. The author recognizes that the character of a principle restricts (but does not exclude) the horizontal effect. He is reluctant to admit that principles which have not been implemented at all could generate some effect. More positively, he does not exclude that insofar as principles have been implemented, a standstill effect might come into play, precluding a reform *in pejus*. In sum, nothing in the analysis of Seifert seems to suggest that the *Mangold/Kücükdevici* doctrine would not be applicable (p. 824).

Article 27

Article 27

Workers' Right to Information and Consultation within the Undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Text of Explanatory Note on Article 27

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Community law and by national laws. The reference to appropriate levels refers to the levels laid down by Community law or by national laws and practices, which might include the European level when Community legislation so provides. There is a considerable Community *acquis* in this field:

Articles 138 and 139 of the EC Treaty, and Directives 98/59/EC (collective redundancies), 77/187/EEC (transfers of undertakings) and 94/45/EC (European works councils).

Select Bibliography

- A Alaimo, 'Il coinvolgimento dei lavoratori nell'impresa: informazione, consultazione et partecipazione', in S Sciarra and B Caruso (eds), *Il lavoro subordinato* (Torino, G Giappichelli editore, 2009) 641–707.
- T Blanke, 'Workers' right to information and consultation within the undertaking (Article 27)' in B Bercusson (ed), *European Labour Law and the EU Charter of Fundamental Rights* (Baden-Baden, Nomos, 2006) 255–89.
- G Braibant, *La Charte des droits fondamentaux de l'Union européenne* (Paris, Seuil, 2001) 171–75.
- F Dorssemont, 'Worker involvement in secondary EC law prior to Recast Directive' in F Dorssemont and T Blanke (eds), *The Recast of the European Works Council Directive* (Antwerp, Intersentia, 2010) 31–90.
- , 'The recast of the European Works Council Directive', in T Blanke et al (eds) *Recasting Worker Involvement* (Deventer, Kluwer, 2009) 127–56.
- C Kollonay Lehoczky, 'The fundamental right of workers to information and consultation under the European Social Charter' in F Dorssemont and T Blanke (eds), *The Recast of the European Works Council Directive* (Antwerp, Intersentia, 2010) 3–30.
- P Lorber, 'Labour Law', in S Peers and A Ward (eds), *The EU Charter of Fundamental Rights* (Oxford, Hart Publishing, 2004) 211–30.
- B Ryan, 'The Charter and Collective Labour Law' in T Hervey and J Kenner (eds), *Economic and Social Rights* (Oxford, Hart Publishing, 2003) 67–90.

A. Field of Application of Article 27

Article 27 is bound to be extremely relevant due to a long standing *acquis* in the field **27.01** of information and consultation rights. The explanations refer to some major EU Directives in this field which were in force in 2000. This catalogue can be updated.

At present, it needs to be complemented by the Framework Directive 2002/12 and the Recast Directive 2009/39. The ‘geographical’ field of application (*ratione loci*) of these intertwined rights is indicated in a very summary manner, ie ‘at the appropriate levels’. The ‘personal’ scope (*ratione personae*) is indicated in a much more precise way. The holders of such a right are ‘workers’ or ‘their representatives’. The provision is entirely mute on the object of information and consultation (scope *ratione materiae*).

27.02 In my view, the mutism on the object could warrant the qualification of the right to information and consultation as constituting a ‘principle’ in the meaning of Article 52(5) of the Charter. Hence, this right would not be judicially cognisable in absence of an implementation within EU law. In my view, this flaw is far from being problematic, since the subject matter constitutes one of the most highly developed parts of EU labour law.

27.03 According to the explanation, the ‘conditions’ are defined both by EU law and by national laws. In my view, this explanation is not very consistent with the main idea that the Charter is only applicable to EU institutions and to the Member States *implementing EU law*. Thus, it is more consistent to state that the appropriate levels regarding the right to information and consultation are defined by the EU Directives implementing such a right. The latter will obviously be implemented in their own right by national legislation and/or practices in the Member States. However, these conditions defined by national law should be consistent with the EU Directives. Insofar as these EU Directives refer to national law and practices, the latter might come into play.

27.04 An analysis of the applicable EU Directives amounts to the conclusion that the right to information and consultation will come into play at a variety of levels

- establishment and undertaking;
- the ‘company’ in the meaning of company law;
- the group of undertakings.

B. Interrelationship of Article 27 with Other Provisions of the Charter

27.05 The right to information and consultation cannot be dissociated from the exercise of the managerial prerogative. It constitutes a procedural restriction of the latter. The exercise of the managerial prerogative is deeply rooted in the freedom to conduct a business.¹ This right is recognised ‘in accordance with Union law and national laws’. Many EU Directives have stressed the idea that the right to information and consultation should not affect the exercise of the managerial prerogative.²

27.06 The right to information and consultation needs to be distinguished from the right to ‘negotiate and conclude collective agreements at the appropriate levels’ of Article 28 of

¹ See Art 16 Charter of Fundamental Rights of the European Union.

² Part 2(c) *in fine* of the Standard Rules of the SE Directive; Point 3 *in fine* of the subsidiary requirements of the Recast Directive (EWC) 2009/38, Art 2(1)(e) of the Framework Directive ‘Decisions within the scope of the employer’s power’.

the Charter. Whereas the right to information and consultation precedes the adoption of a *unilateral decision* by management, the right to negotiate amounts to a legal act, ie an agreement, which will be concluded by management and labour. There is another distinction that is related to the issue of the holdership of the right. The right to negotiation is attributed to workers and employers *or* their respective organisations. The right to information and consultation is attributed solely to workers and their ‘representatives’. Contrary to the provision related to the right to ‘negotiate’, the ‘representatives’ are not identified as such. It is not at all clear whether the ‘representatives’ involved refer to representatives designated by trade unions, or representatives which are elected by workers’ representatives. In sum, whereas the right to negotiate is being construed as a trade union prerogative, the right to information and consultation is not being approached *per se* in such a manner. This potential dissociation in the holdership of the right to information and collective bargaining can constitute a problem, insofar as adequate information is a prerequisite for meaningful negotiations.

The question arises as to whether the right to information and consultation could be related to other provisions which help to contextualise the right to information and consultation. In cases of restructuring, the right to information and consultation could serve as a means to prevent or mitigate collective redundancies. At first sight, it seems challenging to relate the ‘right to protection against *unjustified dismissal*’³ to the right to information and consultation. In *Mono Car Styling*⁴ Advocate General Mengozzi examined to what extent the violation of the right to information and consultation was intertwined with the right to protection against unjustified dismissal. The Advocate General distinguished between an employment protection aimed at combatting unjustified dismissals and employment protection related to merely irregular dismissals. He concluded that ‘Breaches of Directive 98/59, on the other hand, do not appear to be such as to justify reference to Article 30 of the Charter for, given the content of the directive, it is intended that the result of such breaches will be illegality of a formal/procedural kind.’⁵ 27.07

In our view, Article 31 of the Charter (the right to working conditions which respect his or her health, safety and dignity) might be relevant for the issue of information and consultation, insofar as a case could be built that worker involvement is essential to the issue of health and safety (the right to working conditions which respect his or her health, safety and dignity). Many arguments seem to plead in favour of such a case. Thus, the Community Charter of Fundamental Social Rights of Workers (1989) insists on the adoption of measures which ‘take account, in particular, of the need for the training, *information, consultation and balanced participation of workers as regards the risks incurred and the steps taken to eliminate or reduce them*’ in view of the right to enjoy satisfactory health and safety conditions in his working environment.⁶ Article 22 of the Revised European Social Charter recognises a right to take part in the determination and improvement of the working conditions and working environment in the 27.08

³ See Art 30 Charter of Fundamental Rights of the European Union (emphasis added).

⁴ See Opinion of AG Mengozzi in Case C-12/08 *Mono Car Styling* [2009] ECR I-6653.

⁵ *Ibid* [96].

⁶ See Point 19 of the Community Charter for fundamental social rights of workers: www.aedh.eu/plugins/fckeditor/userfiles/file/Conventions%20internationales/Community_Charter_of_the_Fundamental_Social_Rights_of_Workers.pdf (emphasis added).

undertaking. Last but not least, the Framework Directive 89/391 insists in the recitals on the necessity of ‘information, dialogue and balanced participation on safety and health at work’.⁷ Article 11 of the Directive adopts a very progressive stance to the issue of worker involvement. As opposed to worker involvement in scenarios of restructuring, worker representatives are not only informed and consulted, but are entitled to play a more proactive role by submitting proposals to the employer. The article refers to ‘participation’.

27.09 In *Commission v Netherlands*,⁸ the CJEU has considered that ‘the aim of the Directive is to promote balanced participation of employers and workers in activities related to protection against and prevention of occupational risks’.⁹

27.10 The Court has rejected the view that this objective is merely instrumental to the protection of health and safety. Though the Court had to rule in a dispute on the precedence which the Directive has given to the internal organisation of protective and preventive services, the considerations of the Court with regard to the aims of the Directive transcend the issue of the organisation of these services. It has considered that these aims are ‘not solely improving the protection of workers against accidents at work and the prevention of occupational risks, but also intending to introduce specific measures to organise that protection and prevention’.¹⁰ The considerations are also relevant to assess the quintessential nature of other modalities of worker involvement, such as the role played by worker representatives.

C. Sources of Article 27 Rights

27.11 As indicated in the Explanation, two obvious sources can be put forward which have stressed the fundamental character of the right to information and consultation. Both sources are fairly recent. The Explanation refers to Article 21 of the Revised European Social Charter.¹¹ Article 21 states:

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

- (a) to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality;

⁷ See Recital Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183/1–8.

⁸ Case C-441/01 *Commission v Netherlands* ECR I-5463.

⁹ *Ibid* [54].

¹⁰ *Ibid* [38].

¹¹ For a more comprehensive analysis of the right to information and consultation in the RESC, see in minute detail the excellent contribution of C Kollonay Lehoczky, ‘The fundamental right of workers to information and consultation under the European Social Charter’, in F Dorssemont and T Blanke (eds), *The Recast of the European Works Council Directive* (Antwerp, Intersentia, 2010) 3–30.

- (b) to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

This article dates back to the adoption of the 1988 Additional Protocol and has been integrated in the 1996 Revised European Social Charter. It is to be regretted that the explanation does not refer to the more specific Article 29 RESC, which recognises a right to information and consultation ‘in situations of collective redundancies’. The article adopts a less rigorous stance on the issue of the timing of the information and consultation procedure, as opposed to EU Directive 98/59. It prescribes information and consultation ‘in good time prior to such collective redundancies’, whereas EU Directive 98/58 obliges an employer to inform and consult as soon as he contemplates collective redundancies. The RESC illustrates how the consequences of collective redundancies could be mitigated. In this respect, it suggests, inter alia, recourse to accompanying social measures aimed, in particular, at aid for the redeployment. EU Directive 98/59 also suggests such measures, but also mentions the idea of aid for retraining workers. **27.12**

The Explanation also point to Articles 17 and 18 of the Community Charter of Fundamental Social Rights of Workers. These provisions state: **27.13**

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States. This shall apply especially in companies or groups of companies having establishments or companies in several Member States of the European Community.
18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:
 - when technological changes which, from the point of view of working conditions and work organisation, have major implications for the work force are introduced into undertakings;
 - in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers;
 - in cases of collective redundancy procedures.

The question arises whether the right to information and consultation could possibly be related to the progressive development of the scope of Article 11 of the European Convention of Human Rights. In *National Union of Belgian Police*, the European Court of Human Rights acknowledged that a police union which was not recognised as representative for the provincial and municipal civil service, had the right ‘to be heard’ by the government.¹² The right of unions ‘to be heard’ is the first corollary right which the European Court of Human Rights has recognised as being ‘necessarily inherent’ in the right to form and join trade unions to ‘protect’ the interests of workers. The Court in fact argued that the phrase ‘for the protection of his interests’ is not redundant.¹³ Thus the teleological coda of Article 11(1) serves as the basis for the development of corollary rights which have not been explicitly recognised. The Court ruled that a trade union has the right to make its position known to the government (as employer), to be heard and to defend the interests of its members. The union in question in fact enjoyed this right. **27.14**

¹² *National Union of Belgian Police* App no 4464/70 (ECtHR, 27 October 1975).

¹³ *Ibid* [39].

- 27.15 The *right to be heard* needs to be distinguished from the right to be consulted. As evidenced by the facts of the case, the trade union concerned had the right to be heard, but it did not have a right to be consulted with regard to the adoption of the regulations applicable to the municipal and provincial staff. This process needs to be distinguished from collective bargaining. The regulations were adopted through a unilateral act of the administration. They were related to the employment conditions of the entire municipal and provincial staff. Obviously, the police union was not representative at all in this respect. In contrast to several judges who issued dissenting opinions, the Court felt that the police union likewise did not have a right to be involved in the adoption of those provisions pertaining solely to police members.¹⁴
- 27.16 The precise scope of the ‘right to be heard’ is troublesome. In *National Union of Belgian Police*, the Court did not provide much guidance. In *Wilson* the Court reaffirmed the recognition of the right to be heard as a general principle.¹⁵ In applying this general principle to the facts of the case, it elaborated on the existence of a ‘right to seek to persuade the employer to listen to what it has to say on behalf of its members’.¹⁶ Referring to the development of ‘essential elements’ in its case law, the Grand Chamber in *Demir and Baykara II* did not refer to ‘a right to be heard’, but solely to this more elaborated formula. Hence, there can be no doubt that these two formulas refer to an identical element considered to be inherent in the right to organise.¹⁷
- 27.17 The right to be heard has been construed as an essential element of trade union freedom. Its object remains unclear. The right to be informed and consulted goes further. It will force an employer to provide precise information in a more proactive manner, whereas he only has to receive a trade union which wants to be heard if it insists on being heard. The right to be heard does not in my view force an employer to substantiate the reasons why the observations expressed could not be taken into account. Furthermore, the right to be heard has been construed as an essential trade union prerogative, whereas the right to be informed and consulted can be exercised by workers’ representatives. There is no reason to assume that the latter will have to be trade union officials.
- 27.18 Though it would be erroneous to suggest that information and consultation rights ought to be construed as trade union prerogatives, the attribution of those rights to elected workers’ representatives might generate a risk of undermining the position of trade unions within the enterprise. Equally, however, it guarantees representation in work places where trade unions are not organised.¹⁸
- 27.19 Last but not least, the right to information and consultation has been given a constitutional status in some EU Member States.¹⁹ As a general rule, most of the provisions which could be used as a basis to warrant that the right to information and consultation is constitutionally anchored, do not refer as such to the existence

¹⁴ Ibid [49].

¹⁵ *Wilson, National Union of Journalists and Others v United Kingdom* App no 15573/89 (ECtHR, 2 July 2002) [42]. See also KD Ewing, ‘The implications of *Wilson* and *Palmer*’ [2003] *Industrial Law Journal* 1–22.

¹⁶ *Wilson, National Union of Journalists and Others* (n 15) [44].

¹⁷ *Demir and Baykara v Turkey* App no 34503/97 (ECtHR, 12 November 2008) [145].

¹⁸ Case C-382/92 *Commission v United Kingdom* [1994] ECR I-2435.

¹⁹ See in this respect T Blanke, ‘Workers’ right to information and consultation within the undertaking (Article 27)’ in B Bercusson (ed), *European Labour Law and the EU Charter of Fundamental Rights* (Baden-Baden, Nomos, 2006) 269–78.

of a right to information and consultation. Instead they use a more generic formula related to an idea of ‘participation’ of the workers in the management of the firm. Examples are legion:

- Article 46 of the Italian Constitution;
- the Preamble of the French Constitution (1946);
- Article 54 of the Portuguese Constitution (which also refers to information in an explicit way); and
- Article 19 of the Dutch Constitution.

The word ‘participation’ is somewhat ambiguous. It could refer to a generic concept like ‘worker involvement’ or to the idea that workers through their representatives have a right to co determination. This general formula was first used in the Constitution of the Weimar Republic.²⁰ **27.20**

D. Analysis

I. General Remarks

An analysis of the *acquis* of workers’ involvement Directives reveals that the European legislator regulates national as well as transnational information and consultation procedures. One can spot a certain historic fluctuation. The Collective Redundancy Directive²¹ and the Transfer of Undertakings Directive²² which came into being in the mid seventies, are primarily aimed at national restructuring operations. This does not prevent a transnational transfer of undertaking from falling within the scope of the Transfer of Undertakings Directive. The subsidiarity principle should not be explained in such a way that the European legislator must refrain from regulating purely national restructuring operations. **27.21**

The interest of the European Commission in transnational issues of worker involvement issues led to a successful breakthrough only at the beginning of the 1990s, with **27.22**

²⁰ Art 165 of the Weimar Constitution: ‘Workers and employees are called to collaborate on equal footing with the entrepreneurs to the regulation of wages and working conditions as well as to the overall economic development of the productive forces. The organisations of workers and entrepreneurs and their agreements are recognised. Workers and employees will be represented for the furtherance of their social and economic interests in workers’ councils as well as in district workers’ councils at professional level as well as in the Federal workers’ council.’ (Original German: Die Arbeiter und Angestellten sind dazu berufen, gleichberechtigt in Gemeinschaft mit den Unternehmern an der Regelung der Lohn- und Arbeitsbedingungen sowie an der gesamten wirtschaftlichen Entwicklung der produktiven Kräfte mitzuwirken. Die beiderseitigen Organisationen und ihre Vereinbarungen werden anerkannt. Die Arbeiter und Angestellten erhalten zur Wahrnehmung ihrer sozialen und wirtschaftlichen Interessen gesetzliche Vertretungen in Betriebsarbeiterräten sowie in nach Wirtschaftsgebieten gegliederten Bezirksarbeiterräten und in einem Reichsarbeiterrat.)

²¹ Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies [1998] OJ L225/16–21.

²² Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses [2001] OJ L82/16–20.

the adoption of the EWC Directive (in 1994).²³ A second breakthrough was the SE Directive (2001).²⁴ Workers' participation within the *Societas Europaea* was already at the heart of the proposal for a Council Regulation on the statute for a European limited liability company (1970).²⁵ The Framework Directive 2002/14²⁶ links up again with the concern to regulate information and consultation on a national level. The amendments and rewriting of the Collective Redundancy Directive and the Transfer of Undertakings Directive in 1992, 1998 and 2001 show that this concern has been ongoing.

- 27.23 As regards content, the legislator seems to have paid attention to the issue of permanent and general economic and social information (and consultation), as well as to that of information and consultation in extraordinary circumstances affecting workers' interests to a considerable extent.
- 27.24 The European legislator seems to have expended most of his efforts on the issue of information and consultation. The more delicate matter of participation—more delicate because it is more conditioned by national and ideological differences—remained mostly untouched. It is not consecrated by the Charter.
- 27.25 In 1998 and 2001, the Directives of 1975 and 1977 respectively were repealed and replaced. In this process, a remarkable recital was added.²⁷ In this recital, a specific reference to the Community Charter of the Rights of Workers was made. Regrettably, neither Directive refers to the Additional Protocol of the European Social Charter.

II. Scope of Application

(a) *Holdership Ratione Personae*

- 27.26 The workers' involvement Directives aim at developing a so-called right to information and consultation or participation. The Directives clearly show that workers' representatives have a natural vocation to exercise these rights. This, however, does not make them per se *holders* (in French: *titulaires*) of these rights.
- 27.27 In our view, the right to information and consultation are best described as *collective freedoms* (*libertés collectives*). The collective character of these freedoms stems from three factors. First, these rights do not consider their holders primarily as atomised individuals of civil society, but as members of a collective. Second, these employment rights are not only collective due to the way they are exercised, their content is of a collective nature as well. The subject of the information and consultation is fundamentally the global or collective situation of workers.

²³ Council Directive 94/45/EC 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 [1994] OJ L254/64–72.

²⁴ Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees [2001] OJ L294/22–32.

²⁵ [1970] OJ C124/1.

²⁶ Directive 2002/14/EC 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 [2002] OJ L80/29–34.

²⁷ Recital 6 of the Preamble of the Collective Redundancy Directive and Recital 5 of the Preamble of the Transfer of Undertakings Directive.

However, the holders of these collective freedoms are, in our opinion, individual workers. ‘The collective’, the ‘labour’, the ‘trade union’ or the body representative of the workers is *not* the holder of these collective liberties. 27.28

The Community Charter construes this right to information and consultation unequivocally as a fundamental right of workers. At first sight, the wording of the Additional Protocol of the European Social Charter and the Charter of Nice is more ambiguous. The right to information and consultation is declared as a right for the benefit of workers *or* their representatives. The Explanatory Report to the Additional Protocol explains that the use of the word ‘or’ has no exclusive meaning. The explanation seems to indicate an inclusive use. The distinction between the legal capacity to enjoy the benefits of these rights and the legal capacity to actually exercise these rights is not emphasised.²⁸ 27.29

It is remarkable that the Charter only mentions the right to information and consultation of workers in the heading of Article 27. Employee representation is only mentioned in *the wording* of the fundamental right following the heading. The manner in which this fundamental right is drafted seems to indicate the exercise rather than mere enjoyment of the right. The reference to employee representatives in both declarations does not seem to be an argument to edge off the thesis that employees are the real holders of these fundamental rights. On the contrary, it seems to emphasise the importance of employee representation in the exercise of this fundamental right. Moreover, this reference seems to create a buffer against direct or atomising employee representation systems. 27.30

In the recent *Mono Car Styling*²⁹ judgment with regard to the Belgian transposition of the Collective Redundancies Directive, the Court of Justice considered that the right to information and consultation is addressed (*destiné*) to workers’ representatives and not to employees individually. It was said to benefit the employees as a whole. The Court did consider that the right is *exercised* by workers’ representatives. These elements are not at odds with the idea that employees as members of a group can be considered to be the holders of a right to information and consultation as a collective freedom. However, the Court rejected such an approach and decided to qualify the right to information and consultation as being of a ‘collective nature’. It allowed Member States to deny an individual employee’s access to justice in the event of a violation of information and consultation procedures. Thus, it seems the Court is unable to recognise that the right to information and consultation is being held by employees as opposed to workers’ representatives. The Court did not look into the human rights instruments related to information and consultation. The judgment was merely based on a teleological and systematic interpretation of the Collective Redundancies Directive. 27.31

²⁸ See ‘Rapport explicatif au Protocol additionnel’ in *Charte sociale européenne* (Strasbourg, Editions du Conseil d’Europe, 2001) 131: ‘que les droits reconnus par ces deux dispositions peuvent être exercées par les travailleurs ou par leurs représentants, ou par les uns et les autres’.

²⁹ Case C-12/08 *Mono Car Styling* (n 4).

III. Specific Provisions

(a) Information

- 27.32 The most embryonic form of ‘involvement’ is the right to *information*. In a number of European Directives the content of the term ‘information’ is not defined.³⁰ The SE Directive and the Framework Directive do contain such a definition.³¹ The definition of the right to information violates the *id per id* prohibition in some languages. The Dutch versions link the right to information to the provision of data by the employer to the employee representatives in order to allow them to acquire knowledge, explore a relevant subject and assess it. The emphasis is on the auxiliary function of information, as opposed to consultation.
- 27.33 Information does not imply the transfer of knowledge or the transfer of an opinion on certain facts. It aims at the transfer of data which constitutes the basis of knowledge and the formation of an opinion by the employee representatives.
- 27.34 The employer’s duty to cooperate with the consultative bodies forces the former to perform this duty to inform in good faith.³² The definitions according to the SE Directive and the Framework Directive emphasise the implications of this principle with respect to the time, the manner and content of this information.
- 27.35 Neither the Framework Directive’s nor the SE Directive’s definitions of ‘information’ make it clear that this information must be in writing. More specific clauses of these Directives do not mention the written character of this information, either. Article 2 of the Subsidiary Requirements of the EWC Directive mentions ‘the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management’. The extraordinary information and consultation meeting takes place on the basis of a report (oral or written?) of the central or any another management at a more appropriate level.
- 27.36 Neither the European Social Charter, the Community Charter, nor the Charter of Nice mentions the oral or written nature of the information.
- 27.37 The Recast (EWC) Directive 2009/38 defines the concept of information as ‘a transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it’.³³ Furthermore, the Recast Directive indicates that ‘information shall be given at such *time*, in such *fashion* and with such *content* as are appropriate to enable employees’ representatives to undertake an *in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings*’.³⁴

³⁰ See, eg the Collective Redundancy Directive, the Transfer of Undertakings Directive and the EWC Directive.

³¹ Art 2(i) SE Directive and Art 2(f) Framework Directive.

³² For the implications of a pre-institutional and pre-negotiational duty to cooperate, see Case C-62/99 *Bofrost* [2001] ECR I-2579 (analysed below).

³³ Art 2(1)(f) Recast Directive.

³⁴ *Ibid* (emphasis added).

(b) Consultation

The ‘right to consultation’ can be defined best by contrasting it with a process of ‘collective bargaining’.³⁵ Consultation is a procedure in which employees or their representatives can influence employers’ decisions. This decision takes on the form of a unilateral expression of the will. Formally, employee representatives do not take part in this final decision. The idea of ‘consultation’ suggests that there is a scope of powers exercised by the employer. A number of provisions refer to this scope as the ‘managerial prerogative’.³⁶ 27.38

The objective of collective bargaining is a meeting of the wills in a collective agreement. This implies a voluntary reduction of the unilateral managerial powers. With this procedure, certain matters are withdrawn from the scope of the *managerial prerogative*. As long as a certain collective agreement remains in force, its subject matter cannot be unilaterally changed by the employer. 27.39

The Collective Redundancy Directive, the Transfer of Undertakings Directive, the SE Directive and the Framework Directive seem to obscure the clear-cut distinction between ‘consultation’ and ‘collective bargaining’ According to the Collective Redundancy Directive and the Transfer of Undertakings Directive, the employee representatives, for instance, are consulted ‘with a view to reaching an agreement’ (Art 2).³⁷ 27.40

The SE Directive mentions consultation in the event of ‘exceptional circumstances affecting the employees’ interests to a considerable extent’. The Standard Rules determine that, in such circumstances, the representative body is entitled to express an opinion on ‘measures significantly affecting employees’ interests’. Where the competent organ decides not to act in accordance with the opinion, a further meeting will take place ‘with a view to seeking agreement’. 27.41

The Framework Directive mentions the opinion of employees’ representatives followed by ‘a response and the reasons for that response’ obtained from the employer. If this exchange of opinions or dialogue concerns ‘decisions likely to lead to substantial changes in work organisation or in contractual relations’, the consultation must take place ‘with a view to reaching an agreement’.³⁸ The passage ‘with a view to reaching an agreement’ expresses the objective of the consultation procedure. In the EWC Directive and the Transfer of Undertakings Directive, the objective of the consultation procedure is not clarified. The use of the terminology ‘with a view to reaching an agreement’ is somewhat puzzling. 27.42

It would be better not to interpret the term ‘agreement’ as a formal collective agreement. Such an interpretation seems problematic for the following two reasons. 27.43

³⁵ In this respect, see also O Kahn-Freund, *Labour and the Law* (London, Stevens & Sons, 1972) 91–92 and T Van Peijpe, ‘Industrial Relations Processes’ in J Malmberg (ed), *Effective Enforcement and EC Labour Law* (The Hague, Kluwer International, 2003) 78–80.

³⁶ Part 2(c) *in fine* of the SE Directive; Art 3 *in fine* of the EWC Directive, Art 2(1)(e) of the Framework Directives ‘Decisions within the scope of the employer’s power’. In this respect, see: R Blanpain, F Blanquet, F Herman and A Mouty, *Vredeling Proposal. Information And Consultation Of Employees In Multinational Enterprises* (Deventer, Kluwer, 1983) 22 and F Dorssemont, ‘Richtlijn 94/45’ [1995] *Revue de droit social* 462–63. See also ILO Recommendation no 94.

³⁷ Art 2(1) Collective Redundancy Directive and Art 7(2) Transfer of Undertakings Directive.

³⁸ Art 4 Framework Directive.

- 27.44 The terminology used in certain language versions ('akkoord', 'overeenstemming', 'accord', 'accordo', 'Einigung') is not the traditional terminology used to indicate binding collective agreements in the Member States. It is unlikely that the European legislator would have wanted the organs with traditional information and consultation obligations to obtain real power to enter into collective agreements. The Framework Directive mentions information and consultation explicitly with a view to reaching an agreement on decisions which fall within the scope of the managerial prerogative. The opposite conclusion would imply some kind of competition between employee representatives which belong to a trade union and those who do not. A number of ILO instruments emphasise the fact that information and consultation rights must not be used to undermine the position of trade unions.³⁹ This interpretation interferes directly with the issue of employee representation.
- 27.45 A more plausible and meaningful interpretation of the use of the word 'agreement' seems to be that the consultation process should not be reduced to a formal juxtaposition of a proposal for a decision from the employer's side, and the opinion on this proposal from the employees' side, after which the autocratic managerial decision process can continue. The Framework Directive indicates in a constructive way that the employer with a duty to consult must give reasons for not taking into account this opinion.
- 27.46 The Court of Justice, however, does not seem to accept this interpretation. In two cases of 8 June 1994, the Court did not deem the UK legislation transposing this Directive to be in conformity with the Directive. The Commission was of the opinion that the UK Employment Protection Act and the Transfer of Undertakings Regulations had not correctly implemented the duty to consult with a view to reaching an agreement. Both Acts provided only for an obligation to consult with respect to intended redundancies, the obligation to take remarks into account, reply to these remarks and motivate rejections. The Court acknowledged the critique of the Commission.⁴⁰ The Court, however, did not indicate the added value of this formula.
- 27.47 The EWC Directive, the SE Directive and the Framework Directive give definitions for the 'right to consultation'. The common denominator of these definitions is that consultation is indicated as a 'dialogue' or 'an exchange of points of view or thoughts'.⁴¹
- 27.48 The litmus test to assess the efficiency and 'progressiveness' of the different definitions and approaches in all of these Directives is a matter of anteriority. This matter is about the chronology of the obligation to consult. The subject and the direct cause of the obligation to consult are usually referred to as circumstances affecting the employees' interests to a considerable extent.⁴² The use of the term 'circumstances' seems somewhat surprising. 'Circumstances' seems to refer to events beyond the control of the employer or undertaking, which take him by surprise or which are related to the state of affairs he happens to run into.
- 27.49 In reality, consultation is a process of legal acts on behalf of and at the expense of the employer. This is exactly why it is invariably stated that the information and consultation

³⁹ In this respect, see also Art 5 ILO Convention no 135 and ILO Recommendations nos 94 and 113.

⁴⁰ Case C-382/92 *Commission v United Kingdom* (n 19).

⁴¹ Art 2(f) EWC Directive, Art 2(j) SE Directive and Art 2(e) Framework Directive.

⁴² In this respect see Recital 3 of the Subsidiary Requirements of the EWC Directive; Part 2(c) SE Directive.

procedure does not affect the ‘managerial prerogative’. In the end, the exercise of these prerogatives is the subject of the information and consultation procedure. The use of the word ‘circumstances’ seems to act as some kind of lightning rod. It distracts attention from the fact that in the end, the legal acts of the employer are at stake. Secondly, it puts up a smoke screen. It is not clarified at all whether consultation relates to decisions or to proposals of decisions. In this respect, the wording of Article 4 of the Framework Directive, in which the term ‘decisions’ is used, can only be applauded.

The Directives related to workers’ involvement seem to suggest that the employer **27.50** has a duty to inform and consult in circumstances affecting the employees’ interests to a considerable extent. This assumption ignores the fact that the negative impact of such ‘circumstances’ will always be caused by a decision of the employer (collective redundancy, closure). ‘Circumstances’ will never affect the employees’ interests to a considerable extent.

Inevitably, the question arises whether consultation should take place before or on the **27.51** moment the decision is taken.

The most important international human rights instruments concerning the right to **27.52** information and consultation have weighty indications that information and consultation must take place before the employer takes his decision. Article 2 of the Additional Protocol to the European Social Charter⁴³ mentions a ‘right to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking’. Article 18 of the Community Charter emphasises that consultation must be implemented in due time (inter alia) ‘in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers and in cases of collective redundancy procedures’. Article 27 of the Charter of Fundamental Rights of the EU stipulates that: ‘workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.’ It does not indicate the subject of consultation.⁴⁴ The use of the terms ‘restructuring’ and ‘procedures’ in the Community Charter is somewhat vague. It is not clear in which phase of the process consultation must start. According to the so-called Action Programme launched by the European Commission as a result of the Community Charter, information and consultation needed to be operated ‘before taking any decision liable to have serious consequences for the interests of workers.’⁴⁵

In the Collective Redundancy Directive, wording was used which removes all doubt **27.53** about the fact that the consultation procedure must take place before the employer’s

⁴³ For an analysis of this article, see: L Samuel, *Droits sociaux fondamentaux* (Strasbourg, Editions du Conseil de l’Europe, 2002) 475–77; F Van Damme, ‘Les droits protégés par la Charte sociale, contenu et protégée’ in J-F Akandji-Kombe and S Leclerc, *La Charte sociale européenne* (Brussels, Bruylant, 2001) 24–25. See also ‘Rapport Explicatif au Protocole additionnel de 1998’, nos 29–44 in *Charte sociale européenne* (n 29) 131–34.

⁴⁴ G Braibant, *La Charte des droits fondamentaux de l’Union européenne* (Paris, Seuil, 2001) 171–75.

⁴⁵ COM (89) 568 final, 33.

decision. The Court of Justice has emphasised this anteriority abundantly in *Junk*⁴⁶ and recently in *Fujitsu Siemens*.⁴⁷

27.54 The duty to consult arises from the moment the employer *contemplates* collective redundancies. The anteriority is a function of the objective of the consultation procedure since it is primarily aimed at avoiding collective redundancies. A consultation to reduce the dimensions of or mitigate the adverse effects of the decision is a second best option. It is regrettable that the legislator has abandoned such unambiguous and progressive position in the wording of the more recent Directives. In the Subsidiary Requirements of the EWC Directive, the wording is somewhat compromised. The versions preceding the final version of the Directive mention a consultation procedure for proposed decisions whilst at the same time pointing at the responsibility of the central management for the final decision. The chosen wording does not show how the anteriority issue has been solved. This vagueness is probably intentional—to make the text capable of compromise.

27.55 Whilst the Subsidiary Requirements of the Recast (EWC) Directive indicate that information and consultation must take place as soon as possible, this was omitted in the Standard Rules of the SE Directive. The general definition of the term ‘consultation’ indicates that consultation must take place ‘at a time ... which allows the employees’ representatives ... to express an opinion ... which may be taken into account in the decision-making process.’⁴⁸

27.56 It is our view that the decision-making process regarding restructuring is a strongly phased process. Schematically, four stages can be distinguished:

- (a) the moment at which the employer actually contemplates a restructuring decision;
- (b) the moment at which the employer makes this decision;
- (c) the moment at which the decision is communicated to employees’ representatives or third parties;
- (d) the moment at which the decision is implemented.

27.57 It is completely unclear to which moment in time the chronology of the EWC and SE Directives refers.

27.58 The Framework Directive makes no reference to the chronology of the consultation procedure, either in the definition of ‘consultation’ or in its body text. Article 4(4) of the Framework Directive mentions in rather vague terms that consultation shall take place ‘while ensuring that the timing [is] appropriate’. In the original version of this Directive, the effectiveness principle was also expressly referred to in the definition of the term ‘consultation’. The definition then added ‘ensuring that the timing, method and content are such that this step is effective’. The reference to effectiveness in Article 1(2) of the Framework Directive⁴⁹ will hopefully act as a catalyst for a progressive interpretation which does justice to the principle of anteriority.

⁴⁶ Case C-188/03 *Imtraud Junk v Kühnel* [2005] ECR I-885. For an interpretation, see our annotation in (2006) 43 *Common Market Law Review* 1–17.

⁴⁷ Case C-44/08 *Akavan Erityisalojen Keskusliitto v Fujitsu Siemens Computers* [2009] ECR I-8163.

⁴⁸ Art 2 SE Directive.

⁴⁹ [1999] OJ C2.

The previous EWC Directive has defined consultation as ‘the exchange of views and establishment of dialogue between employees’ representatives and central management or any more appropriate level of management’.⁵⁰ The Recast Directive has added precision to this definition. Thus, consultation is being described as ‘the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content *as enables employees’ representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings*’.⁵¹ 27.59

In sum, the Recast Directive has underlined the essence of timing, form and substance for information and consultation. It correctly defines information as the transfer of data rather than of knowledge. The timing, the form and substance of the communication should allow the workers’ representatives to ‘undertake an indepth assessment’—to acquire knowledge. Both definitions are in line with good legislative practices expressed in the SE Directive and the Framework Directive. 27.60

The definition of information combines elements of the definition enshrined in the latter Directives. 27.61

IV. Limitations and Derogations

(a) *Limitations of the Fundamental Right to Information and Consultation*

Fundamental employment rights are hardly ever absolute rights. The right to information and consultation is no exception to this. Numerous European and international human rights instruments have already indicated these limitations. Below, these limitations are considered at this level first, and then analysed in the workers’ involvement Directives. 27.62

(b) *Limitations Ratione Personae*

Thresholds

Article 2(2) of the Additional Protocol of the European Social Charter (1988) gives the Contracting States the opportunity to exclude companies from the scope of application of the article if the number of employees is lower than a certain threshold determined by law or national practice.⁵² 27.63

Neither the Community Charter nor the Charter of Fundamental Rights seems to take the scale of undertakings into account in the determination of the scope of application of rights. Title X of the TFEU refers to the right to information and consultation. Article 153(2) TFEU expressly states that such Directives shall avoid imposing 27.64

⁵⁰ Art 2(1)(f) EWC Directive.

⁵¹ Art 2(1)(g) Recast Directive (emphasis added).

⁵² In the same sense see also nos 44–46 of the Rapport Explicatif (n 29) 134.

administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

27.65 Most of the Directives scrutinised in this contribution have a minimum threshold of employment as *conditio sine qua non* for the actual enjoyment of the right to information and consultation. Some of these thresholds can be derived from the description of the substantive scope of application of these Directives. The threshold can mostly be derived from the stipulations describing the personal scope of application.

27.66 The definition of the term ‘collective redundancy’, for instance, implies that the Collective Redundancy Directive only applies to establishments (‘établissement’, ‘Betrieb’) normally employing more than 20 workers. This minimum threshold must relate to employment within this ‘establishment’.⁵³ The Court of Justice⁵⁴ has clarified that this term should be given an *autonomous* Community meaning. The Framework Directive prescribes a duty to inform and consult at the level of undertakings employing at least 50 employees in any one Member State or establishments employing at least 20 employees in any one Member State. Whether this duty to inform and consult should take place at undertaking or establishment level is a matter for the Member States.

27.67 It seems that the legislator has wanted to indicate that information and consultation procedures can be organised at the level of an entity with a certain form of independence (the undertaking) or at the level of a part of the undertaking (the establishment).

27.68 The Appendix to the Additional Protocol also refers to the distinction between ‘undertakings’ and ‘establishments’. In spite of the fact that Article 2 of the Additional Protocol mentions information and consultation at undertaking level, the Appendix clarifies that the Contracting States are equally considered as fulfilling the obligations by developing the right to information at the level of the establishments. The Explanatory Report clarifies that these are ‘production units economically and legally bound to a single management centre’.⁵⁵

27.69 The most prohibitive thresholds can be found in the EWC (Recast) Directive. The applicability of the Directive depends on a double condition regarding personnel thresholds. The effectiveness of this condition depends on whether it concerns a Community-scale undertaking or a Community-scale group of undertakings. In both cases, there must be at least 1000 employees within the Member States. The second condition is related to the transnational distribution of the work force. The second condition presupposes a ‘domestic’ work force threshold of 150 employees in at least two different Member States with at least 150 employees. The work force of 150 employees, however, is allocated differently, depending on whether it concerns an undertaking or a group of undertakings. In the first hypothesis the Community-scale undertaking must employ 150 employees in each of at least two Member States. Employment figures in different establishments of the Member State can be added up for the calculation of the threshold. In the second hypothesis, one undertaking with at least 150 workers must exist in at least two Member States. Adding up the number of workers of the undertakings in

⁵³ Art 1 of the Collective Redundancy Directive.

⁵⁴ Case C-449/93 *Rockfon A/S v Specialarbejderforbundet i Danmark* [1995] ECR I-4291. See also the analysis of C Barnard, *EU Employment Law* (Oxford, Oxford University Press, 2012) 490–92 and S Hennion-Moreau, ‘La notion d’entreprise en droit social communautaire’ [2001] *Droit social* 964.

⁵⁵ See no 69 of the Rapport Explicatif (n 29).

the same Member State is not allowed. A simple legal operation incorporating establishments could suffice to avoid the application of the Directive.

The Transfer of Undertakings Directive imposes the obligation to inform and consult on the transferor and transferee irrespective of the number of transferred employees, let alone the number of employees in the undertaking of the transferor and the transferee. Article 7(5), however, stipulates that Member States may limit the obligations to inform and consult to undertakings or businesses which, in terms of the number of employees, meet the conditions for the election or nomination of a collegiate body representing the employees. 27.70

In circumstances such as these, the requirement to inform the workers in good time of the date, the reasons and the implications of the transfer and measures envisaged still stands. 27.71

The Collective Redundancy Directive does not contain a similar provision. This Directive does, however, presume the existence of so-called ‘workers’ representatives’. In these circumstances, an employer will not be able to hide behind the fact that in that particular undertaking or establishment, the legal threshold for workers’ representation was not met. 27.72

The SE Directive is the only participation Directive in which the personal scope of application is completely irrespective of the number of employees. The personal scope of application is defined in function of the capital.⁵⁶ 27.73

Tendenzschutz—Religion or Belief?

In the Appendix to the Additional Protocol, the personal scope of application is related to ‘undertakings’. The provided definition has an implied limitation. It relates to a purely economic concept of undertaking.⁵⁷ Undertakings are referred to as only those entities producing goods or services for financial gain and with power to determine its own market policy. The aforementioned Appendix also leaves room for the so-called *Tendenzschutz*.⁵⁸ It states that religious communities and their institutions can be excluded from the application of Article 2 of the Additional Protocol. This exclusion is not primarily based on the assumption that these institutions have no economic activities. The Contracting States can also exclude tendency undertakings (*Tendenzbetrieb*)⁵⁹ from the scope of application as much as necessary for the safeguarding of the orientation of the undertaking protected by law. 27.74

⁵⁶ In this respect, see also the astonishment of F Fimmano, ‘Società Europea: ultimo atto’ [1994] *Rivista della Società* 1035.

⁵⁷ In the same sense see also no 37 of the Rapport Explicatif (n 29) 133.

⁵⁸ *Tendenzschutz* refers to the protection of the ‘tendency’ of ‘undertakings or establishments which pursue directly and essentially political, professional organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions’ (Art 3(2) Framework Directive 2002/14).

⁵⁹ The Appendix defines tendency undertakings as ‘Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation’. No 68 of the Rapport explicatif (n 29) 138 clarifies that this explanation was inserted in the Appendix to achieve more conformity between the German *Betriebsverfassungsgesetz* and the Additional Protocol. (Cf below section D.VIII.)

- 27.75 This presupposes that it will have to be proven how curtailing fundamental employment rights will actually be necessary to guarantee the ideological orientation of the company. This is not self-evident, since this information and consultation procedure does not affect the essence of the economic power of decision.
- 27.76 The European legislator seems to have concerned himself with the so-called *Tendenzschutz* only as regards the EWC Directive. Neither the Collective Redundancy Directive nor the Transfer of Undertakings Directive contains such provisions.
- 27.77 The sympathy for so-called ‘tendency undertakings’⁶⁰ in the EWC Directive, the EWC (Recast) Directive, the SE Directive and the Framework Directive is conditional. Member States may lay down particular provisions regarding the *Tendenzschutz* in their transposition law on the condition that, ‘at the date of adoption of [the] Directive such particular provisions already exist in the national legislation.’⁶¹ This rather conservative approach of the *Tendenzschutz* is in sharp contrast to the approach of the *Tendenzschutz* in Directive 2000/78 establishing a general framework for equal treatment in employment and occupation. Article 4(2) leaves room for maintaining national legislation as well as providing future legislation after the adoption of the Directive. In the latter hypothesis, such legislation must, however, incorporate national existing practice. At the end, the article stipulates in a positive way that the Directive shall not prejudice the requirement of individuals working for the ‘tendency organisations’ mentioned in it, to act in good faith and with loyalty ‘to the organisation’s “ethos”’.
- 27.78 The provisions regarding *Tendenzschutz* constitute a conflict of fundamental rights. Remarkably enough, this conflict affects two completely different collective freedoms. The collective freedom of information and consultation is weighed against the freedom of education, ideology and religion. A collective identity conditioned by labour is opposed to a collective identity conditioned by ideology or religion. The legislator does not really solve this conflict. He does, however, offer Member States the possibility to extrapolate their own assessment of this conflict of fundamental rights to the SE or the EWC and to maintain limitations of information and consultation inspired by *Tendenzschutz* at undertaking or group level. It seems that the concrete scope of ‘human rights’ deemed universal or fundamental, is in fact determined by cultural and national differences.

Seagoing Vessels

- 27.79 None of the traditional international declarations (Additional Protocol of the European Social Charter, Community Charter and Charter of Nice) with respect to the right to information and consultation exclude the crews of seagoing vessels or merchant navy crews from the scope of application.
- 27.80 The exclusion of ‘seagoing vessels’ from the scope of application of workers’ involvement Directives dates from the mid-1970s. The Collective Redundancy Directive and Transfer of Undertakings Directive exclude ‘the crews of seagoing vessels and seagoing

⁶⁰ G Dole, *La liberté d’opinion et de conscience en droit comparé du travail* (Paris, LGDJ, 1997) 128–42 and E Verhulp, *Vrijheid van meningsuituiting van werknemers en ambtenaren* (The Hague, SdU, 1996) 299–301, 327–28.

⁶¹ Art 8(3) EWC Directive; Art 8(3) Recast (EWC) Directive; Art 8(3) SE Directive; Art 3 Framework Directive.

vessels’ [*sic*] from their scope.⁶² Since both Directives were drafted expressly as minimum standards, there is room for Member States to extend the protection provided by these Directives to these categories.

The exclusion of ‘seagoing vessels’ from the scope of application is terminologically somewhat unfortunate. ‘Seagoing vessels’ are in themselves incapable of falling within the substantive, territorial or personal scope of these Directives. The situation is different when it comes to the crew of seagoing vessels and their employer, as well as company activities developed by means of seagoing vessels. **27.81**

In the proposal of the EWC Directive, the initial approach taken was different. In principle, the crew of seagoing vessels fell within the personal scope of application of this Directive. However, subject to the principles and objectives of the Directive, and as far as deemed necessary, the Member States had the possibility to adopt special provisions applicable to the crew of seagoing vessels and adjusted to the special circumstances under which these crews have to work.⁶³ The final version of the EWC Directive provided that the Member States can stipulate that the Directive shall not apply to merchant navy crews.⁶⁴ Neither the SE Regulation nor the SE Directive contains provisions regarding the issue of the merchant navy. **27.82**

In the Framework Directive, an analogous but more nuanced wording was opted for. Article 3(3) authorises Member State to derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas. In the original proposal, there were no exclusion or limitation grounds whatsoever regarding the merchant navy. **27.83**

(c) *Limitations Ratione Materiae: Secrecy and Confidentiality*

In exceptional situations, a conflict of interest can arise between the interest of workers being informed on the economic and financial situation of the undertaking and the interest of ‘the undertaking’ protecting itself against the risk of damage resulting from such information being distributed to third parties. **27.84**

This field of tension is recognised by the Additional Protocol of the European Social Charter. Article 2(1) under (a) states that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality. **27.85**

In the first hypothesis, this concerns ‘secret’ information which will only be known to the management. In practice, not only the content but also the existence of such information is a secret. Employees or their representatives might find out about the existence of this information at best when management refuses to answer certain questions, expressly referring to its ‘secret’ character. **27.86**

The question whether management is *obliged* to mention the existence of secret information is inevitable. The second hypothesis concerns confidential information. The wording of the Additional Protocol seems to indicate that management *must* indicate the confidential character of the information and the legal implication that this information must not be spread amongst third parties. The Additional Protocol does **27.87**

⁶² Art 1(3) Transfer of Undertakings Directive and Art 1(2)(c) Collective Redundancy Directive.

⁶³ Art 2(3) Proposal EWC Directive [1994] OJ C135.

⁶⁴ Art 1(5) EWC Directive.

not provide a single criterion to distinguish confidential from secret information. It is not clear whether management can judge at its own discretion whether or not the company's interests need to be protected by keeping information secret or informing workers on a confidentiality basis. An argument against this discretion is that confidentiality is a less far-reaching curtailment of the right to information and consultation.

27.88 Provisions regarding secret or confidential information can be found in the EWC (Recast) Directive, the SE Directive and the Framework Directive. Neither the Collective Redundancy Directive nor the Transfer of Undertakings Directive indicates that the confidential or secret character of certain information can be used as a legitimate reason to limit the information and consultation procedure described therein. This finding can lead to only one conclusion. Such limitations must be prohibited. General provisions of domestic law regarding secret or confidential information will have to be applied in compliance with the Directives. They certainly do not apply to situations of collective redundancy or transfer of undertakings.

V. Remedies

27.89 Rights regarding involvement without efficient and dissuasive sanctioning system are normally only respected by civilised employers. Informing and consulting workers is not unrelated to a general duty to treat them with respect.⁶⁵ Denial of information and consultation procedures is an undeniable sign of contempt.⁶⁶

27.90 Normally, the European legislator confines himself to the prescription of rights and obligations. When it comes to the sanctioning mechanism for violating these rights and obligations, he resorts to complete mutism. This can probably be explained by the mechanisms organised at Member State level. In practice, sanctions cannot be seen separately from sanctioning systems. The autonomous organisation of these systems is an emanation of the sovereignty of Member States. It is not surprising that the European legislator refrains from prescribing a certain type of sanction. The Court of Justice has stated repeatedly that Member States, when implementing Directives, must guarantee effective, proportionate and dissuasive sanctions.⁶⁷

27.91 The fact that the European legislator, completely redundantly, reminds Member States of this rule in the body of a Directive, shows the importance and the problems of sanctioning. The use of such wording in Article 8(2) of the most recent version of the Framework Directive is remarkable. This passage reminds us of similar wording used in anti-discrimination Directives.⁶⁸

⁶⁵ Cf Art 16 of the Belgian Employment Agreement Act.

⁶⁶ In this respect, see the qualification of such behaviour as a form of 'dédain' (contempt) in the criminal case against *Louis Schweitzer* (Renault): Corr Brussels, 20 March 1998, *Journal des Tribunaux de Travail* 281, *Chroniques de droit social* 1998, 379.

⁶⁷ In this respect, see the principle of 'effective enforcement': B Fitzpatrick, 'Development of the principle of effective enforcement' in J Malmberg (ed), *Effective Enforcement and EC Labour Law* (n 36) 43–58. This principle has been entered into the Framework Directive (Framework Directive 8(2)). The EWC Directive (Art 11(3)) only mentions appropriate measures in the event of failure to comply. Art 12(2) of the SE Directive is limited to appropriate measures in the event of failure to comply.

⁶⁸ Art 15 of Directive 2000/43 and Art 17 of Directive 2000/78.

The EWC (Recast) and SE Directives only indicate the necessity of ‘appropriate measures’ in the event of ‘failure to comply with this Directive’. The Collective Redundancy Directive and the Transfer of Undertakings Directive do not contain any provisions in that respect. It would, however, be wrong to state that the prescription of certain sanctions does not match with the choice for a Directive as legislative instrument. In the recent anti-discrimination Directives, for instance, traditional civil law sanctions had been included, such as the invalidity of contract clauses, of provisions in collective agreements and provisions in the articles of incorporation of professional organisations.⁶⁹ **27.92**

The Collective Redundancy Directive contains clear sanctions for failing to comply with the duty to inform and consult. Article 4 of Directive 98/59 states that ‘projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal’. This notification means a notification to the competent authorities of the intention of collective redundancy. This notification must provide proof that the employer has met the consultation requirement and how this was done. Without information and consultation procedure, the notification to the administrative authority will not be valid. The wording of Article 4 implies that breach of the administrative procedure and/or of the information and consultation procedure is sanctioned by the fact that the collective redundancy as legal transaction will produce no effect. **27.93**

The first proposal for a Framework Directive contained an analogous sanction. Article 7(3) of the original proposal read: **27.94**

Member States shall provide that in case of serious breach by the employer of the information and consultation obligations in respect of the decisions referred to in Article 4(1)(c) of this Directive, where such decisions would have direct and immediate consequences in terms of substantial change or termination of the employment contracts or employment relations, these decisions shall have no legal effect on the employment contracts or employment relationships of the employees affected. The non production of legal effects will continue until such time as the employer has fulfilled his obligations or, if this is no longer possible, adequate redress has been established, in accordance with the arrangements and procedures to be determined by the Member.⁷⁰

This sanction reminds us of the proposal for the SE Directive of 1991. In this proposal, a similar sanctioning mechanism was elaborated in the event of failure to comply with the information and consultation rights of the representative body.⁷¹ **27.95**

E. Evaluation

When the Charter of Fundamental Rights was adopted by the Convention, the Member States could already rely on a vast *acquis* covering information and consultation in recurring and extraordinary situation, though the Framework Directive 2002/14 had **27.96**

⁶⁹ Art 14 of Directive 2000/43 and Art 16 of Directive 2000/78.

⁷⁰ [1999] OJ C2.

⁷¹ Art 5(2)(5) Amended proposal for a Council Directive complementing the statute for a European company with regard to the involvement of employees in the European company [1991] OJ C138.

not yet been adopted. In sum, the Charter seems to consolidate and ‘constitutionalise’ a rich *acquis*. The reference to the Community Charter in the Agreement on Social Policy attached to the Protocol on Social Policy of the Maastricht Treaty is a prefiguration of this phenomenon of constitutionalisation. It reflects a classical paradigm of labour law as being based on the need to protect fundamental workers’ rights. The adoption of the ‘new’ EU Directives 1998/59 (collective redundancies) and 2001/23 (transfer of undertaking) referring in an innovative manner in their recitals to a right to information and consultation is consistent with this classical conceptualisation of labour law as well. Such a constitutionalisation might be beneficial to adopt a prudent approach towards attempts to attack the *acquis* on the basis of distinct paradigms of labour law where other considerations come into play (eg a discourse related to employability, employment policies and even—*horresco referens*—better or smart regulation).

27.97 The question arises whether the recognition of the right to information and consultation inside the Charter has only a retrospective value or whether it could serve as a tool for some judicial activism. This question is hard to answer. Though the CJEU is constantly forced to interpret this impressive body of EU Directives in the field of workers’ involvement, it has never referred to Article 27 to justify its interpretations. The latter certainly does not mean that the Court has not provided evidence of judicial activism in this field of EU labour law. However, the teleological method of interpretation has shown to be a sufficient technique to be on the offensive while interpreting these detailed EU Directives. One might state that there is no immediate *need* to build on the Charter to interpret the EU Directives in a progressive manner.

27.98 Article 27 might not be a perfectly adequate means to enhance a progressive interpretation of EU Directives, if an *effet utile* approach would not be sufficient to so. Indeed, the formula of Article 27 is not deprived of some major flaws. It does not reach the level of precision and clarity of the more ambitious formula of the RESC. An interpretation which is consistent with the RESC could be a way to overcome this loophole. At first sight, there are two major hurdles which complicate such an intertextual interpretation. First, the Charter does not in a general way preach such an intertextual canon of interpretation of other international human rights instruments. The only reference to such an interpretation is enshrined in Article 52(3) and refers to the European Convention on Human Rights. Neither has the Court of Justice pledged any commitment to this interpretation in a way which mirrors the Grand Chamber judgment in *Demir and Baykara*⁷² of the ECtHR. Secondly, Article 27 only recognises a right to information and consultation ‘under the conditions provided for by Union law and national laws and practices’. Insofar as it can be argued that the right to information and consultation results from constitutional traditions common to the Member States⁷³ and insofar as the RESC can be considered to be part of that tradition, that loophole could be overcome.

27.99 In a very strict reading, such a coda gives an unrestricted leeway to both the European Union and the Member States to modulate the attribution and the exercise of the right to information and consultation. In my view, such an unrestricted leeway amounts to an absurd contradiction with another major idea behind the transversal Article 52 of the Charter. Article 52(1) clearly prescribed that there is an essential hard core of the

⁷² *Demir and Baykara* (n 18).

⁷³ See Art 52(3) of the Charter.

rights and freedoms granted in the Charter. In sum, the leeway given to the European Union and the Member States in my view should respect that hard core. In absence of more precise and clear criteria laid down in Article 27, the Revised European Social Charter might come into plain to delimit that essential content. This will be helpful in my view, to provide more clarity on the timing, the form and the quality of information and consultation procedures.

The impressive list of limitations and derogations enshrined in EU Directives seeking to promote a right to information and consultation could be challenged as not sufficiently honoring such a hard core. Some of these provisions, in fact generate a differential treatment between workers as holders of such a right. The essential hard core might be helpful to overcome divergencies between EU Directives as far as the formulation of the right to information and consultation is concerned or they could urge the EU legislator to continue the work of recasting these Directives in order to favour more recent and ambitious formulations of that right. **27.100**

*The Second Collective Event
of this Project*
:
**Plenary Seminar
in
Belgrade
19th -20th -21st June 2019**



EUROPEAN PROJECT VS/2019/0016

implemented through the financial support of the EU Commission
- DG Employment, Social Affairs & Inclusion -

**THE EMPLOYEE INVOLVEMENT IN THE CHANGING WORK
WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS:
TRAINING and POLICY MAKING
FROM THE EU DIRECTIVES TO THE CURRENT PRACTICES**

FIRST PLENARY SEMINAR Belgrade, June 19th 20th 21st 2019

c/o Hotel Constantine the Great

Marta 12 27, Beograd 11000, Serbia

Setting our first plenary in Belgrade means an explicit message of our attention and concern towards the **accession countries** and their demand of a positive, genuine and innovative social dialogue and participation in a genuinely social Europe.

We have planned a 4 half days meeting, a Plenary one, which means to invite quite a number of participants (more than 40) representing:

- all the associate organisations that are off the Steering Group, therefore potentially 14 further participants, one or two each national union that has joined the Project.
- one additional participant from the 7 transnational EWCs (plus the Secretaries of the 5 Italian UNI Finance banking affiliates dealing with collective bargaining in Intesa SanPaolo, a group not yet represented in a EWC) to be chosen among those who are in charge of collective bargaining at national company level.
- The President of the Banking Committee for EU Social Affairs belonging to the European Banking Federation, as the main employers' representative for the EU sectoral Social Dialogue*
- The Head of Uni Finance, the Uni Finance Policy Officer and the Uni Finance Coordinator for Banking Social Dialogue

*unable to come for health reasons, but he made and sent his Presentation that was actually introduced in our working sessions.

AGENDA

Wednesday 19th June - 2,30pm/6.45pm

14,30: *Registration of Participants, logistic-organizational-administrative information*
(Cristiano Hoffmann- Direttore Organizzazione / Rita Diotallevi-Amministratrice Fisac-Cgil Nazionale)

14,45:

- *Welcome Intervention by SFOS, the national finance union in Serbia*
(Slobodan Mihailovic – Secretary for International Relations in SFOS)

15,00 – 16,00

- *Industrial relations, digital innovation and rights within the changing work*
+

- *State of play of the Project, its route, next steps and objectives.*
(Including check of all participants' availability for the next Plenaries **dates**)
(Mario Ongaro- Europe Sector Manager in ISRF-LAB)

- *Picture and framework of our 4.0 industry in Europe on the basis of the collected data and of the questionnaires analysis* (Nicola Cicala- ISRF-LAB Manager)

16,00 – 16,30

Summary of the analysis about the EU Directives, according to the Project Steering Group meeting on last 2nd April

(Prof. Filip Dorssemont- European Labour Right- Louvain University)

16,30 Coffee break

16,45 -18,00

Reports by the trade-unions representatives from the new EU member states and accession countries on:

relazioni Industrial relations and trade-union rights in their concerned countries, specifically focussing the main issues of the Project

(Hasan Shkalla from *Albania*, Svetomir Dichev and Nikolay Daskalov from *Bulgaria*, Sandor Toth from *Hungary*, William Portelli from *Malta*, Adrian Soare from *Romania*, Slobodan Mihailovic from *Serbia*, Svetozar Michalek from *Slovakia*, Tomaz Boltin from *Slovenia*)

18,00 – 18,45

The EWCs in the framework of the national rules, laws and practices in France, Spain, Italy and Belgium and of the relations with the national unions in the holding company home country:

synthetic information by the concerned national unions reps

18,45 End of working session

19,45 We all meet at the hotel lobby to go to a fraternal dinner in Belgrade old city.

Thursday 20th June 9.30am/1.00 pm – 2.00pm/5.45pm

9,30 – 10,50

***Fitness check of
the employee involvement EU Directives***

Analysis of the existing T.C.A. (Transnational Company Agreements) and of any relevant Collective Agreement (such as Italian National Collective Agreement, EWC Agreements, EWC Joint Declarations and at the EU Sectoral Social Dialogue level, etc.) from the point of view of their effectiveness and/or of their potential in terms of the EU legislation on the employee involvement. (Prof. Filip Dorssemont)

10,50 – 11,15

***Fitness check of
relevant cases of take-over/transfer of undertakings***

Analysis of the case of Banco Popular taken over by Santander to check up to what extent in particular the 2001/23 Directive has been effectively implemented.

(Susana Aranda Vazquez and Filip Dorssemont)

11,15-11,30 Coffee break

11,30- 13,15

Interactive Session

Participants' feedback, interventions and debate about the results of 19th June session & exercise on a possible T.C.A. Model Agreement

We mean to finalise this interactive session to some proposals of possible models of T.C.A. (also in the framework of the Uni Europa Guidelines and policies) and discuss such models with the participants, according to a genuine **training approach**. In this respect we are not planning structured reports/presentations, but a free and deepened exchange of ideas and proposals involving the participants and the Project staff, in the light of **Prof. Dorssemont's and Nicola Cicala's analysis**, and where **Uni Finance**, with **Angelo Di Cristo** and **Maureen Hick**, is reporting its own experience and its own point of view.

13,20 – 14,20 Lunch break

14.20 – 15,00 Interactive Session to be continued

15,00 – 16,30

Case study:

- *Intesa SanPaolo: industrial plan, effects on jobs and employment by technological innovation and redeployment policies*
 - *The "Protocol for Sustainable Development" in Intesa SanPaolo in 2017, in the light of this European Project issues* (Sindacati Italian Unions in Intesa SanPaolo)
- 16,30 – 16,45 Coffee break

16,45 -18,00

Intesa SanPaolo unions in Italy, Serbia, Slovakia, Hungary, Slovenia, Albania: exchange of information and experiences

Friday 21st June (9.30am -1.10pm)

9,30 – 10,10

- *The changing work in the 4.0 development: Italian trade-union experiences in our industry*
(Gabriele Poeta Paccati- Fisac-Cgil General Secretary in Milan and Daniele Quiriconi- Fisac-Cgil General Secretary in Tuscany)

10,10 – 11,10

ROUND TABLE COORDINATED BY MARIO ONGARO

- *This European Project from the employers' point of view and in the framework of Uni Europa Finance policies*
- *Possible contributions from this Project to the EU Banking Social Dialogue*
- Jens Thau -European Banking Federation – Head of the Banking Committee for EU Social Affairs
 - Angelo Di Cristo – Head of Uni Finance
 - Maureen Hick – Uni Europa Finance Policy Officer
 - William Portelli – EU Banking Social Dialogue Coordinator
- Adrian Soare – EU Banking Social Dialogue Uni Finance Working Group
- Claudio Cornelli – Fisac-Cgil National Secretary

11,10- 11,25 Coffee break

11,25 – 12,25

ROUND TABLE 2nd PART

12,25 – 12,40

- *The route of the Project in the outlook of its following dates and steps in 2019 and 2020: dates, commitments, timing of the work to be done, questioni organizational, logistic and administrative issues.*
(Megale, Ongaro, Cicala, Diotallevi)

12,40 – 13,10

Conclusive intervention (Claudio Cornelli, Fisac-Cgil National Secretary)

FIRST PLENARY WORKSHOP Belgrade, 19-20-21 June 2019

The first of the three plenary meetings planned in the framework of the European Project took place in Belgrade from the afternoon of 19 June to the morning of 21 June. It was a very intense meeting, both for the complexity and in-depth discussion of topics and for the active participation of speakers and attendees during the four half-day sessions.

In this report we will do our best to summarize this extraordinarily intense exchange. Of course, it will not be possible to report all of its contents in detail. At the end of the Project, we will draw up a comprehensive report, which will be based on the systematic collection of the ideas and proposals submitted during the 5 collective events (3 Plenaries + 2 meetings of the Steering Committee) and in preparation for them.

First of all, it is important to mention **the attendees** who took the time to come to Belgrade, worked hard for 3 days and contributed to the success of the first Plenary:

- representatives of the national trade unions of the financial sector from 6 of the so-called "new EU Member States" (Hungary, Slovenia, Slovakia, Romania, Bulgaria, Malta) and from 2 EU Candidate Countries (Serbia and Albania)
- representatives of the national trade unions of France, Spain and Belgium: these are the countries where the parent companies of 6 of the 8 transnational groups involved in the Project are based (the 2 remaining groups – Unicredit and Intesa SanPaolo – are based in Italy)
- EWC representatives of the 7 transnational groups in which workers are represented in EWCs (Unicredit, Santander, Groupama, Société Générale, Crédit Agricole, Bnp-Paribas, KBC)
- trade union representatives involved in collective bargaining within the Intesa SanPaolo group. This group has yet to set up a EWC, but the procedure to create one has just been launched
- Fisac-Cgil staff in charge of the management and implementation of the Project, together with the National Secretary for International Policies. (Agostino Megale, President of ISRF LAB and former Secretary-General of Fisac, was not able to attend the meeting because of post-operative convalescence. I collected some of the observations he would have made and I included them in my introductory remarks)
- the Head of UNI Finance and the Policy Officer of UNI Europa Finance
- the Secretaries-General of Fisac-Cgil in Milan and in Tuscany, who have specific experience in the fields of Finance 4.0 and changes in work organization
- the academic expert who is supporting us in the analysis of Directives on employee involvement and their actual implementation in the transnational groups involved in the Project.

These 8 categories of participants will also be involved in the following 2 Plenaries, which will take place next November and in June 2020. During these upcoming meetings, we will also involve another 2 categories which we consider essential for the purposes of our Project:

- **employers' representatives** from the European Federation of the banking sector and from some – if not all – of the 8 transnational groups
- a **representation of MEPs** to discuss with them proposals for the revision of some of the EU Directives on employee involvement

We have been in touch with both of these categories for some time. In particular, in Belgrade we received a message from the European Banking Federation, whose representative could not attend our meeting.

But let us go back for a moment to the location where we organized this Plenary, i.e. Belgrade, and let us focus on the countries of this European region which take part in this Project:

Belgrade is the capital of the most important Candidate Country destined to join the EU (Turkey is obviously larger and more significant from all points of view, but it is clearly destined to remain a Candidate Country for a longer period of time).

Slobodan Mihajlovic, Secretary of SFOS, the Serbian union of finance industry workers affiliated with UNI, made an explicit reference to the past and to the berated Socialist regimes. Slobodan reminded us that Yugoslavia distinguished itself from other Socialist regimes for the self-management of factories – and of production facilities of goods and services in general – by workers. I would like to reflect upon Slobodan's notable remarks. He expressed his bitterness about the dismemberment and destruction of Yugoslavia (which was – in his own words – “brutally killed”) and about the advent of a liberalist capitalism that has been far less radiant than what propaganda publicized in the past decades.

One may certainly disagree – even strongly – with this uncommon approach. Yet, Slobodan should be given credit for lifting the dusty veil of hypocrisy from the social and political evolution of Candidate Countries and of **the so-called “new” EU Member States (most of which joined the EU 15 years ago, some 12 years ago and the latest – Croatia – in 2013)**. There, the trade union movement has had to tackle very difficult organizational, cultural and political challenges. Still today, it is faced with obstacles and refusals to recognize the role of trade unions in collective bargaining. The most common aspect in these countries is indeed the lack of national, industry-wide collective bargaining. Yet, this kind of negotiations did exist in some of these countries until some years ago and Romania is about to implement it. A notable exception is Malta, the smallest of the “new” Member States. However, it is also geographically distant from the other 7 countries that take part in this Project and its political history is much closer to the one of Western Europe.

There are two important reasons why this Project has decided to highlight the role of trade unions in the countries of this geographical area:

first, the production cycle of the European financial system – and, more specifically, of the 8 groups involved in the Project – relies on extensive and well-rooted branches in all of these countries, whose main strength from a corporate point of view is the combination of low labour costs, flexibility and productivity;

the **second** reason – partly intertwined with the first one – is the political need for our trade unions to include in a European Project on changing work within the 4.0 finance industry representatives of countries where industrial relations are very different. Indeed, the trade unions of parent companies and EWCs are faced with the key challenge of reducing – if not closing – the gap between Western Europe and Central and Eastern Europe in terms of union rights, workers' rights, collective bargaining and related legislation within the same transnational group (these geographical definitions may sound obsolete, but they are clearer than the terms “new EU Member States” and Candidate Countries).

In my introduction, also in the light of the exchange of views I had had with Agostino, I presented our Project in the new framework that emerged after the European elections of 26 May. Populist and sovereigntist parties did not win, but the European left lost ground and had mixed results across the continent (collapse of the SPD, victory of Pedro Sanchez's Socialist party in Spain, victory of the Danish left, which combined welfare state policies with a strong attention to security issues and the control of migratory flows). The European Parliament now has a potentially wide and complex – if not unstable – majority. Trade unions must now be able to find political common ground and to adapt their

organization to focus specifically on the impact of technological innovation and the changing work environment. All this in an international scenario in which US policies on customs duties and Chinese reactions relegate Europe to a passive role in the middle, with lower growth rates.

In the EU, Italy's growth is more and more sluggish. Despite narrowly avoiding an excessive debt procedure, the policies of the current government have led to worsening inequalities and to Italy having a more marginal role in the EU's strategic decisions. In Italy, the finance industry is going through a period of uncertainty, which is linked to the change in the ECB presidency and the ongoing discussion on the banking union, the revision of bail-in rules and the effects of bank resolution measures.

In this framework, our Project is aimed at making a realistic analysis of the impact of digital innovation on employment and at elaborating proposals to maximize the effectiveness of European legislation on employee involvement. We intend to pursue the latter without changing the mission of EWCs as information and consultation bodies into negotiating bodies. However, we would like to introduce some instruments that could help EWCs to govern change (and not so much to anticipate it, considering that we are already experiencing change).

In this regard, it is important to underline **3 fundamental elements of this Project:**

1) speed of change in the 4.0 era in the finance industry, i.e. speed of change in work organization and in the workplace(s) which companies create for their employees;

2) speed of change in the nature of the employment relationship: from typical employees to parasubordinate workers (i.e. formally self-employed but dependent on a single employer for their income);

3) speed of change in working hours, in two directions. On the one hand, working hours are more flexibly distributed across the day, the week, or the year. This has led to an extension in the time period between the beginning and the end of work, so much so that Italian trade unions have claimed the workers' right to disconnect from the tools (phone, email, etc.) which employers can use to contact them.

On the other hand, flexibility is combined with a sort of self-management of working hours which is functional to the achievement of production and sales targets.

However, in my opinion there is an underlying trend to the speed of change, which is pushed by the digitization of the production process of banking and financial services.

To understand this trend, it is helpful to make reference to the old and bearded **Karl Marx**, who – in this respect and in many others – proves to be more modern than many presumed modern economists and sociologists.

I am thinking about the **rapidity of rotation of working capital**, i.e. the money out of which banks must be able to make a profit as quickly as possible. At the same time, they also need to dispose of growing shares of fixed capital, fixed assets like facilities, buildings, obsolescent machinery, offices and branches. These fixed assets have an impact on what Marx called the organic composition of capital and they lead to the tendency of the rate of profit (in this case for the bank) to fall.

After all, what is the open, smart branch about? What is the process of divestment and sale of huge real estate assets about? It is just about banks getting rid of costly fixed assets for years, albeit with mixed results.

And, after all, what is digitization about? It is about the possibility of offering banking services with the least possible amount of fixed assets, using working capital and making it rotate more and more quickly.

This **whirlwind and radical reorganization of the production cycle in banks** is pushed by the need to radically change what Marx called the organic composition of capital and to increase the rate of profit **in two ways**:

first, the aforementioned drastic reduction in fixed capital, together with the exponential growth of the rapidity of rotation of working capital;

second, the strong increase in work productivity through quality improvement and the readiness of workers to accept different working hours, schedules and targets. This acceptance is then rewarded through increased independence, less hierarchy, more opportunities of professional growth and pay rises.

In this framework, trade unions have taken an approach which **Nicola Cicala**, Director of ISRF LAB, defined as "constructive". He identified this approach as the evolution of the approaches which prevailed in the past decade, which were based on the acquisition and defence of workers' rights.

This constructive approach was further analyzed by **Roberto Errico**, from ISRF LAB. According to him, the strategy of the European banking system in the past decade (in terms of employment, number of branches, number of companies, etc.) can be summarized with the phrase "Less for More". While there are cuts in fixed and variable costs at all levels, as well as cuts in interest rates, the formidable push of technological innovation is determining such an increase in work productivity that it even compensates for falling interest rates and helps banks to make profits. However, there is also the looming power and size of Big Tech (Facebook, Amazon, Apple Card and others), which offers financial services that are in direct competition with banks.

The Belgrade Plenary focused on the connection between the analysis of material processes carried out by IRFS LAB (in collaboration with the national trade unions, the trade unions represented in Intesa SanPaolo, and the Fisac sections of Milan and Tuscany) and what we called the **legal pillar of the Project**. By that, we mean the "**fitness check**" on the implementation and effectiveness of European Directives on **employee involvement**, on which we will continue to focus also after the Belgrade meeting for several months. In particular, we want to assess the past and current results of European Directives in terms of employee involvement through EWC Agreements and European Social Dialogue.

Filip Dorssemont, Professor of European Labour Law at the Catholic University of Louvain, presented his analysis of EWC Agreements in the light of relevant European Directives. Later, there was an intense exchange of views with EWC delegates, who replied to Professor Dorssemont's observations and explained the various contexts in which EWC Agreements are implemented.

Professor Dorssemont also gave us a very useful suggestion, i.e. to check if the existing EWC Agreements in our 7 groups contain an explicit reference to the **subsidiary requirements of Directive 2009/38**. More specifically, the Directive establishes that the information and consultation of the European Works Council shall relate in particular to the *substantial changes concerning organisation, introduction of new working methods or production processes*. This wording cannot be disputed and it would allow EWC representatives to demand information and consultation on everything that is related to changes in work organization.

A fundamental observation for the purposes of our Project concerned the meaning of the expression *Fitness Check* for the European Commission. From our point of view, assessing the implementation of the Directives on employee involvement should logically lead to re-writing them or to adopting better implementation measures, if we conclude that they are not effective. However, Professor Dorssemont warned us that, from the point of view of

the European Commission, the rules which would turn out to be ineffective should not be re-written nor accompanied by alternative implementation measures, but – with a typically deregulatory approach – they should simply be abolished.

This radical criticism further encourages us to continue with our collective analysis and to deepen it with the EWC representatives involved in the Project.

Angelo Di Cristo (Head of UNI Finance, but also past President of the EWC of Unicredit) gave a very useful reply to Filip Dorssemont's presentation, which he essentially organized in **3 points**:

the first one concerned the role of TUAs (Trade Union Alliances), the transnational alliances which UNI Europa and UNI Finance in particular have been building for some years "around" existing EWCs or in the groups where it is necessary to encourage their creation (such as in the case of Intesa SanPaolo). Without going back to previous discussions on the role of TUAs which took place in other meetings and in past Projects, Angelo pointed out that TUAs can effectively support the action of EWCs by strengthening their role and dynamism. This is quite the opposite of those who feared an improper interference and overlapping with the prerogatives assigned to EWCs by the Directive;

the second point made by Angelo highlighted the extraordinary potential and opportunities which EWCs and the trade unions of transnational groups are offered by this European Project led by Fisac-Cgil. Indeed, the Project gives us the opportunity for an exchange of experiences of different trade unions, companies, information and consultation procedures and to learn from each other about possible solutions to common problems and challenges. These are opportunities which these representative bodies do not normally have during their activities, given that they necessarily have to focus on their internal problems and dynamics. Instead, the managers of different companies and groups have more of these opportunities and they exploit them to exchange information;

the third point was about the need for constant and persistent monitoring to assess the actual implementation of Agreements and Joint Declarations. In this respect, Angelo mentioned the possibility of considering a collaboration between EWCs and TUAs with regard to Transnational Company Agreements. We are going to get back to this point in view of the next Plenary, which is scheduled for 13-14-15 November in Rome.

We intend to **achieve, together with UNI Finance, the central objective of the first Plenary, i.e. the elaboration of some proposals** (not guidelines, which are typically the prerogative of management) for the stipulation of TCAs. These agreements can be an important evolution for the protection of the rights of workers of transnational groups, who have to deal with the challenges of change in the 4.0 era. In this area there are no guidelines nor specific proposals like the ones which we intend to draw up through this Project. Rather than our right, it is our duty to do so, at least to demonstrate that we can make an effective use of the financial resources which the DG Employment allocated to our Project.

Another very interesting presentation on the Fitness Check was the one by **Susana Aranda Vasquez from the trade union Servicios/CcOo in the Santander group. She talked about the acquisition of Banco Popular by Banco Santander back in 2017, an example of best practice also for the effective implementation of Directive 2001/23** on transnational mergers and acquisitions. The group was indeed able to minimize job cuts and to preserve workers' rights, prerogatives, conditions and classifications in grade, as well as the rights of union representations. The group also has an interesting, extensive and comprehensive system of social guarantees, which bears many similarities to the Italian fund for redundancies of the financial sector.

Filip Dorssemont highlighted an alarming risk of transfers, mergers and acquisitions. Transferees may circumvent their obligations under Directive 2001/23 concerning the employees of the transferor and related legal restrictions and classifications in grade simply by letting the acquired company go bankrupt. This would eliminate all the guarantees contained in Directive 2001/23 concerning workers' rights. In the case of the Santander group, this risk did not materialize, also because the bankruptcy of a company in this sector would imply a systemic instability that could not be compared with a bankruptcy in other sectors.

Filip analyzed the connections between Directive 2001/23 (with its provisions on the right of information and consultation), with the "mother" Directive 2002/12 and the one on collective dismissals (transposed into national law in Italy through Law no. 223 of 1991). In the end, he expressed a very positive judgement about the Santander/Banco Popular case.

Another paradigmatic case of transnational merger which we discussed was the one between Unicredit and the German bank HypoVereinsBank. There is indeed a gap in the level and timeliness of access to information between the German workers' representatives (who benefit from the German law on co-determination) and the Italian ones – and of other countries – who do not have access to the same information.

This gap is present not only in the cases of transnational merger, but in general in all the EWCs having a German representation. This causes major contradictions, which are often impossible to solve within a EWC. These points were raised by **Angelo Di Cristo and Claudio Cornelli** respectively.

At this point, I mentioned the need and urgency to renegotiate all the surviving EWC Agreements based on art. 13 of Directive 94/45. It is indeed very easy to disprove the typical objection of managers who consider the so-called voluntary Agreements signed between 1994 and 1996 as "immortal".

After this observation, there was a fruitful exchange of views among attendees about the items on the agenda. We took the opportunity to give the floor to **the Italian unitary trade union representation of Intesa SanPaolo. In particular, we asked them to inform us on:**

1) the 2018-2021 Business Plan

2) the Agreement on Sustainable Development

Silvia Boniardi, Claudia Fumagalli and Caterina Dotto took the floor on behalf of Uilca, Fisac-Cgil and First-Cisl respectively (the three unions in the unitary representation).

Their speeches were perfectly in line with the key points of the Project and, in particular, with one of its fundamental political pillars, i.e. **the new composition of the workforce of banks following the evolution towards the 4.0 industry.** Change is causing major employment issues in the entire traditional segment of the production cycle. Most standard jobs with none to little added value have been outsourced or completely automated. However, some still exist, as is the case in traditional branches and in the back office of Central Departments. These segments of the production cycle employ relatively old workers, who can hardly be redeployed to tasks with a higher added value. As trade unions, I think we can only negotiate a number of guarantees that can protect the income and the pensions of these older workers. This has been the case, for instance, in Italy in recent decades.

However, at the same time **industry 4.0 change leads to the emergence of a new workforce in banks**, or to the renewal of part of the existing workforce. Through smart working, digitization, teleworking, new jobs which combine the characteristics of employees with time management schemes and tasks more typical of self-employment,

this new workforce is necessarily more flexible when it comes to working hours and place of work. However, the added value of this new workforce is based on specialist professional skills, which can open up important opportunities of career advancement and pay rise.

The role of trade unions at a national level and, even more so, at a company level is **to represent both types of workers**: the traditional workforce and the “smart” one of industry 4.0. In other words, trade unions must protect the former from the repercussions of marginalization and expulsion from the production cycle. At the same time, they must meet the needs and expectations of the new workforce. If trade unions fail to do so, this new workforce would only have management (up to the top levels) as its only interlocutor.

The unitary trade union representation of Intesa SanPaolo has accepted these formidable challenges and it is addressing them through constant collective bargaining. In this way, it is somehow governing the inevitable job cuts. Redundancies are not traumatic, thanks to a more or less immediate transition towards retirement. Furthermore, workers who have yet to reach their retirement age are gradually retrained and redeployed. Finally, the demand for qualified workers, with the new skills required by innovation 4.0, attracts young and motivated people. Now the key challenge for the future of trade unions is to effectively represent these young workers. These segments of workers are changing the internal labour market towards an Anglo-American model – albeit with a major difference. Within Intesa SanPaolo, the unitary trade union representation keeps on playing a key role in collective bargaining and for the protection of individual rights.

The so-called Mixed Contract described by Claudia Fumagalli on behalf of the unitary representation is a completely new tool that bears testament to the courage of trade unions, which took up a difficult and unpopular challenge. The unions came up with an **example of best practice** in terms of collective bargaining for these hybrid forms which combine the characteristics of employees and self-employed. Otherwise, management would have unilaterally controlled relations with these workers, thus excluding trade unions not only from collective bargaining, but also from the possibility of effectively representing these more dynamic, younger and more qualified workers. The latter are the first wave of a new, changing workforce, which requires trade unions to change at the same speed.

<p>Intesa SanPaolo now has more than 91,000 employees, 68,000 of whom in Italy: almost 6,000 of them are financial advisers, i.e. purely self-employed. Furthermore, according to the Business Plan, 70% of activities will be digitized by 2021. The 23,000 employees working outside Italy account for 11% of the group profits, i.e. almost 1 billion Euro. The Business Plan foresees growing revenues in particular in foreign subsidiaries.</p>

It is in this framework that procedures for the setting up of the EWC of Intesa SanPaolo were officially launched. The letter drawn up in accordance with Directive 2009/38 and with the Italian transposing act was signed by 11 trade unions from 7 European countries.

In Belgrade we specifically dedicated some time to the exchange of views and information among all the union representatives of the group from the 7 signatory countries. This interaction somehow anticipated the future preparatory meetings for the setting up of the EWC.

The room we have given to Intesa Sanpaolo unions had two main meanings:

➤ Taking advantage of the Belgrade location to gather union delegates representing as many countries as possible, where Intesa Sanpaolo group employs workforce. As a matter of fact, we had delegates from Slovenia, Hungary, Slovakia, Albania, Serbia (among the most relevant countries for this group apart from Italy) and of course delegates from Italy representing the five main unions holding industrial relations with the central management. Therefore, this wide group of Intesa Sanpaolo union delegates was a sort of embryo of the T.U.A (Trade Union Alliance) which we finally created in October 2019, as already pointed out in the box about the goals of the project.

➤ This was the first opportunity to have an articulated exchange of information and experience in the matter.

The fourth and last session of the Belgrade Plenary began with the speeches by **Gabriele Poeta Paccati** and **Daniele Quiriconi**, the Secretaries-General of Fisac-Cgil in Milan and in Tuscany.

Their presentations were extremely relevant to our European Project. They informed us of the results of two field surveys carried out among 1,000 workers of the financial sector who are experiencing the changes brought about by industry 4.0 in their daily work.

First, **Gabriele** explained the survey methodology. The study was carried out in collaboration with a specialized research institute which made sure that everything was scientifically and statistically correct. The workers were interviewed directly by union representatives, in order to help trade unions independently acquire information to be used during dialogue with the social partners. In this way, trade unions would no longer have to rely on information pre-packaged by others (including by external research institutes) and would be more autonomous for analysis tasks.

The fact that we are experiencing a change which we wanted to anticipate is due to its speed. The finance industry is a sector in which digitization has advanced more pervasively than in others and with a stronger and sharper impact on employment. Hence, trade unions are now inevitably called to strongly improve their ability to listen to workers, in such a way to improve their organization and to be able to represent the demands of this new workforce segment. The training of union officers is a fundamental aspect of the survey carried out by the Fisac-Cgil section of Milan. The goal of training is to empower union officers to represent both the workers worried of being marginalized by digital

innovation and the workers who are positively motivated by innovation. As we have been saying since our presentation of the Project to the European Commission more than one year ago, this innovation is promoting an increased autonomy in time management and work goals, richer work contents, more flexible borders between the typical employee and the self-employed, fewer space and time constraints compared to traditional workplaces, and more prospects and opportunities of pay rises linked to performance. However, contradictory elements to what is listed above surprisingly remain: more controls on workers, excessive bureaucracy, as well as more intense working patterns, combined with strong pressure on sales results.

Daniele Quiriconi, Secretary-General of Fisac-Cgil in Tuscany, presented the results of two surveys carried out by his section. In particular, he highlighted the following points: the impact of change on stress at work, the negative consequences for workers' health, the subjective perception of workers, with a prevalence of feelings of insecurity, precariousness and sales pressure, which leads them to ask for more protection – both of their current working conditions and of future work prospects. Therefore, the key point is to use collective bargaining to make the most of the flexibility of smart working. While innovation responds to the workers' need for increased independence and work-life balance, it is also necessary to build new forms of protection (including for individuals) and new forms of workers' representation. However, during negotiations, we must be able to establish the workers' right to disconnect as quickly as possible. It is only in this way that trade unions will be able to meet the new demand for protection and to respond to the isolation of workers, the flip side of the increased autonomy given by smart working.

The participants of the concluding Round Table on the possible proposals of this Project to the Agenda of European Social Dialogue in the Banking sector were: Angelo Di Cristo (Head of UNI Finance), William Portelli and Adrian Soare (respectively the Coordinator for UNI Finance Banking Social Dialogue committee and a member of the working party on Banking Social Dialogue) and Claudio Cornelli (National Secretary of Fisac-Cgil).

Because of a sudden health issue, **Jens Thau, President of the Banking Committee for European Social Affairs of the European Banking Federation**, was not able to attend the meeting. However, he sent us a presentation which we are going to share together with all the other presentations of the Belgrade Plenary. It is important to underline at least one point of his presentation, i.e. that the biggest European Federation of employers in our sector seems open to a constructive dialogue on our proposal for the Agenda of Banking Social Dialogue.

In the Round Table – albeit indirectly – we replied to Jens Thau's presentation.

Angelo Di Cristo pointed out that European Social Dialogue in the Banking sector cannot address collective bargaining. However, it can at least lead to the elaboration of Joint Statements and Guidelines, which will be effective in so far as they are implemented in National Agreements. Giving continuity to, monitoring and evaluating the actual implementation of the results of Banking Social Dialogue is fundamental to assess its effectiveness and substance.

I deemed it important to underline that, in the framework of Banking Social Dialogue, the sense of this Project lies in the involvement of transnational groups. This is indeed where change happens and where dialogue should occur first. It is in transnational groups that European Social Dialogue in the Banking sector must be concretely implemented – of course keeping in mind the different roles and levels of representation of both parties. All the participants in the Round Table agreed with this approach.

Adrian Soare, on behalf of the Romanian trade unions, stressed the battle which trade unions of Central and Eastern Europe must wage to counter the anti-European attitude of corporate managers and of national employers' associations, as well as to demand the full implementation of the results of Banking Social Dialogue in their national companies. Claudio Cornelli highlighted the contradiction between the constructive attitude of the European Banking Federation and the actual behaviours of multinational companies, which have ignored workers' and trade unions' rights, especially in Central and Eastern Europe. In this regard, political institutions – starting from the newly elected European Parliament – must take the responsibility of making these rights and the procedures laid down in Directives binding.

In our Fitness Check we are going to directly involve MEPs who are willing to collaborate with us, as well as employers' representatives from major transnational groups. **Angelo Di Cristo, on behalf of UNI Finance, immediately expressed his willingness to work with Fisac-Cgil to have this conversation at the next Plenary, which will take place in Rome on 13-14-15 November.**

Claudio Cornelli, on behalf of the National Secretariat of Fisac-Cgil, closed the Belgrade Plenary. In his closing remarks, he highlighted the value and potential of this European Project, which will require our trade unions – including Fisac-Cgil – to work hard and to seek the collaboration of the European political institutions. Of course, our work must be supported by UNI, UNI Europa and UNI Finance. Furthermore, we need to constantly insist in order for the role of European and international trade unions which have received a transparent and democratic mandate from their affiliates to be acknowledged in negotiations with employers.

Claudio also proposed another two points to work on:

- to fight in all the EWCs which are still stuck on voluntary Agreements based on art. 13 of Directive 94/45 to adapt them to the provisions of the current Directive 2009/38;
- to constantly promote cohesion in every transnational group, in such a way to have homogeneous rights, guarantees, working conditions and industrial relations. Of course, homogenization should strive for higher – not lower – common standards.

Both points have been contemplated in the drawing up of our Project and we have committed ourselves to working on them also in the contract we signed with the European Commission, which funds the Project.

Mario Ongaro
European Project Director
ISRF-LAB

AGAIN ON THE *FITNESS CHECK*

We have been able to take advantage of Prof.Dorssemont lessons, but also to build up our own analysis, in order to draw our own proposals to contribute to the Fitness Check of the Directives concerning the Employee involvement.

The crucial issue about the **FITNESS CHECK** is however what the EU Commission really meant with it:

Was the Fitness Check a way to check whether or not the Employee Involvement is actually working through the concerned Directives, up to what extent it is working, what the points in these Directives should be reviewed and possibly amended?

Or was it a way just to simplify/deregulate a number of prescriptions provided for by those Directives? Or both ways, depending on the individual Directive and/or on the political balances within the Commission and the EU Parliament?

When we introduced this Project almost 3 years ago, our answer to the first question here above was YES and we had no more questions. The other two questions, nevertheless, have been the outcome of our analysis about what has actually and concretely been done in terms of the Fitness Check. This Project was anyway meant to contribute to the Fitness Check and this contribution will be explained later, when we get to the outcomes of the Project Events that took place in Rome.

Goal VI of this Project

Find out the common denominator among the TCAs made (or under way) by the participating EWCs in order to build up possible draft TCAs concerning the main issues of the Project through the contribution both of the participating EWCs and of the national/company unions involved;

TCA (Transnational Company Agreement) & Joint Declarations

we had planned to write a sort of Model TCA on the basis of the guidelines that Uni Europa approved in its 2016 Congress. However we were then able to discover that the various TCAs (or more precisely Joint Declarations) that the EWCs participating in the Project had delivered to us, Project staff, were very much tailored on their own specific context as transnational group. **The Uni Europa guidelines actually were motivated by two main concerns:**

1) No EU Directive actually rules TCAs so that (and this is the

2nd concern)

a number of EWCs have made a kind of negotiation activity off their own institutional mission (information/consultation) and off any trade-union control and role. As a matter of fact however all Joint Declarations in all the seven EWCs participating in the Project were made and led by genuine trade-unions reps, therefore actually meeting the Uni Europa demand.

Triad: TCAs, EWCs, TUAs (Trade-Union Alliances): On the basis of the concern here above mentioned about an improper negotiating role of EWCs vs. a marginalization of EU trade-union federations in TCAs, **this triad may well work as an effective practice to go forward with transnational company agreements** by meeting the European trade-unions' concerns about an activity that EWCs are not entitled to, but at the same time by enabling the national unions allied "around" a specific EWC to join the unionised members of that EWC in a kind of negotiating activity.

We here have to explain that the T.U.A. is a network either cooperating with a EWC or fostering the setting up of a new EWC.

The T.U.A. is made of trade-union officers from the national unions that are indirectly represented in a EWC through its unionised members.

In this respect therefore UNI EUROPA gets a relevant result: it implements a practice to meet the 2009/38 article 12 LINK between transnational level and national levels of information and consultation.

On top of that it provides a concrete political coverage to the unionised members of the concerned EWC whenever an opportunity to negotiate a T.C.A. is envisaged.

Such negotiation would not be made by the EWC but by a recognised trade- unions' negotiating body, the T.U.A., which gets EWC members and their respective national unions reps together. **We got this innovative procedure through an in-depth**

exchange of views with Angelo Di Cristo, Head of Uni Finance, therefore one qualified representative of the UNI guidelines mentioned above.

JOINT DECLARATIONS:

they are at a bit lower level than the agreements (TCAs), but they can be effective when the social partners at national level introduce the content of such Joint Declarations into their concerned National Sectoral Collective Agreement, or when the same work is done in the framework of Group Collective Agreement. Joint Declarations are a stepping stone, their form is not juridical but their content is, as long as it provides for rights and obligations This should be the case of the Joint Declaration on Telework and the right to disconnect which has been introduced in the National Collective Agreement for bank workers in Italy. This can be the case of the one on Digitalization in banking and insurance industries (two different EU Sectoral S.D.tables).

TRANSFER OF UNDERTAKINGS, INTERNATIONAL MERGER, SOCIAL PLAN FOR THE TRANSFEREE, SURVIVING "VOLUNTARY" EWC AGREEMENTS

An important reflection, also in terms of international merger, has been the outcome from the Presentation of the case **Banco Santander/Banco Popular, where the transferees from Banco Popular were strongly protected through a Social Plan** negotiated by the Spanish unions in 2017.

Actually neither the 2001/23 nor the 98/599 Directives provide for such a Social Plan. From this point of view our 4 points Document has to be read also in order to fill a possible gap in these Directives too, beyond the 2009/38.

THE ABOVE MENTIONED RESULTS CONCERNING OUR ORIGINAL GOALS II. and III, already mentioned talking about the outcomes from **SOFIA, have strongly and deeply increased** the awareness of all our participants namely the EWC reps ones, their ability to manage the Agreements ruling their own EWC and to distinguish between the limits and potentials of such Agreements on the one hand, and the current + past practices and relationship with the Management in their own EWC, so that it has become definitely clear what the distance (and sometimes the contradiction) is between the Agreement quality and those practices on the other hand.

I mean that on the one hand **we got a confirmation** about our original statement of practices undermining and misusing the rights provided for by the Agreement and by the Directive, **but on the other hand** sometimes we found that practices were/are good in spite of the poor quality of the Agreement, often negotiated under the infamous article 13 of the 94/45 Directive. The latter situation is just due to the a union friendly or open minded **contact person from the Management** of that transnational group who was/is in charge

of the EWC, therefore we are talking about a necessarily rather temporary than steady situation. **The most balanced situation** is probably the one of Unicredit Group and of Crédit Agricole EWCs, where both the concerned Agreements and the good practices of

information and consultation show a correct implementation of the Agreement itself and an alive/proactive attitude by both the social partners.

Having analysed all what reported here above has been **a clear incentive to renegotiate obsolete EWC Agreements** in those groups where they were still made under the infamous article 13 has definitely come from our Project, even if the renegotiation of a EWC Agreement is always an issue very much depending not only on the employer's willingness but also on the different members/nations/unions which are represented in the concerned EWC.

HOWEVER, the so called Voluntary Agreement ex article 13 of the 94/45 Directive can be modified under the provision of the 2009/38 one by using 2 arguments:

- 1) the company for which that Voluntary Agreement was signed no longer exists in terms of geographical area and in terms of transnational group, this is almost always the case
- 2) being the definition and procedure of information and consultation the real core of the current Directive, such definition at least can be incorporated in the old Voluntary Agreement even if formally it is not modified.

AGAIN ON NEW MEMBER STATES AND ACCESSION COUNTRIES:

We have got reports from **Slovenia, Croatia, Hungary, Slovakia, Albania, Romania, Bulgaria, Turkey and Malta.**

All countries seem to have in common quite a high **GDP increase rate** compared to most of the western EU countries, they of course have been and still are suffering from the economic and social consequences of the pandemic emergency but again they seem to be recovering quite well.

The grey zones and the dark zones of such a comfortable picture are again the industrial relations where the right to collective bargaining is too often denied, especially at the level of national/sectoral collective agreements.

But again among the various countries **we can distinguish relevant differences** from this point of view, when for instance we understand that in **Slovakia** the national collective bargaining in finance industry has been denied since 2016 in spite of all the trade-union campaigns including the Uni Finance ones, while in **Romania** they have obtained this negotiation level and have been able to sign their own national collective agreement for finance industry employees. EWCs will have to work as effective tools able to help overtaking these serious shortcomings, but one big issue from this point of view remains the **Intesa SanPaolo Group** which controls a lot of banks all over that region and whose central management **still refuses to open the negotiation to set up a EWC.**

We, as concerned unions for this groups, have already built **our Trade-Union Alliance, under Uni Finance umbrella**, involving all of us representing Intesa SanPaolo group employees all over Europe. Now the time has come to decide whether or not it would be worthwhile to impose the EWC through the Subsidiary Requirements of the 2009/38 Directive.

Another two points deserve to be stressed concerning this goal IV dedicated to these EU Countries:

one point is:

EWC national laws: trade-union role is strongly recognised in Italy, Spain, Belgium, France, also in Germany and Scandinavian countries even if through the dual channel of employees' representatives.

another point mainly concerning new Member States and accession countries is:

Representativeness national laws conflicting with information/consultation rights when they prevent a union with less than 50% unionised employees to be recognised: An infringement procedure was opened years ago for UK in this respect. Similar procedures should be opened towards quite a number of other EU countries in similar conditions.

In conclusion:

Our action has been a further contribution to increase and deepen the inclusive cooperation and solidarity with the finance unions of the entire region where the new member states and the accession countries are. **This action indeed has to be framed in a policy that we started in 2004 towards the unions from these countries, i.e. at the time of the first phase of the Enlargement of the EU.** These unions are aware that a number of major problems and issues need of course a much more powerful process too be faced and possibly solved, but they do enjoy a very reliable and solid support by a union like Fisac-Cgil about their day-by-day engagement to represent and organise the concerned employees in their country and implement collective bargaining on behalf of them, within their national contexts which are definitely much more challenging than ours in terms of union rights and facilities.

Mario Ongaro

4.0 Banking in Europe

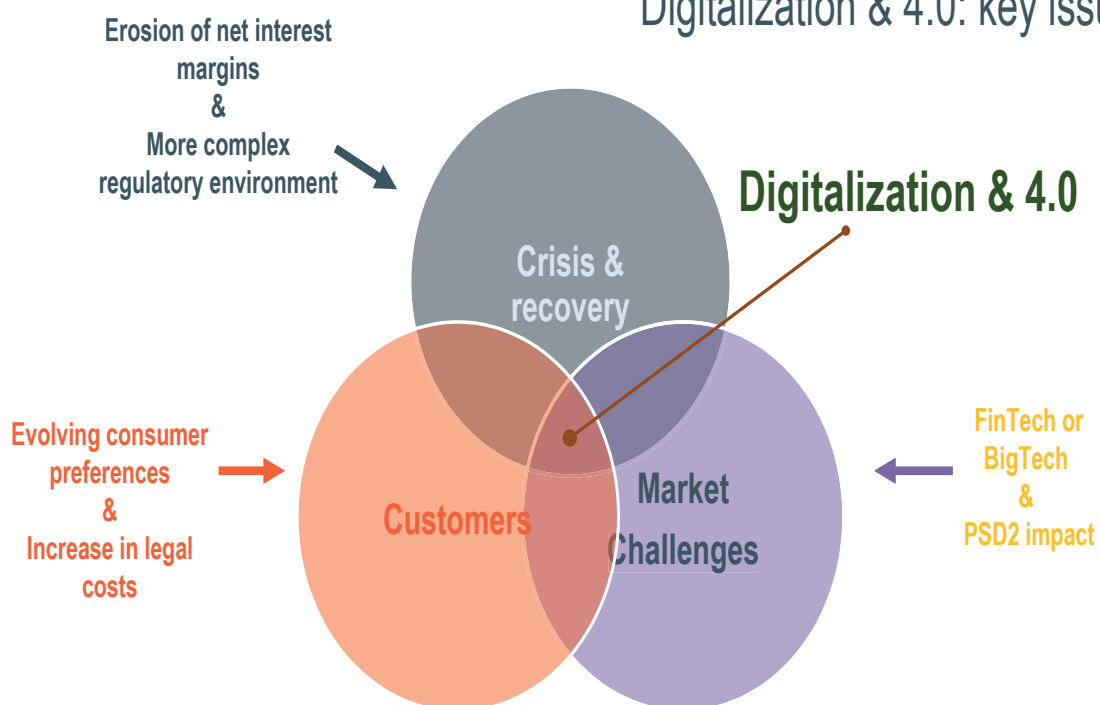
Beograd, Republika Srbija 06/19/2019

Nicola Cicala
ISRF LAB, Director

Roberto Errico
ISRF LAB, Researcher

www.fisaccgil.it/lab

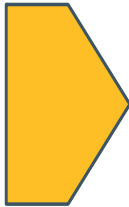
Digitalization & 4.0: key issues



www.fisaccgil.it/lab

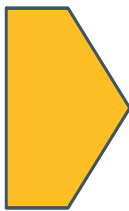
Summary

1



EU Banking Sector recovery: the «Less4More» strategy

2

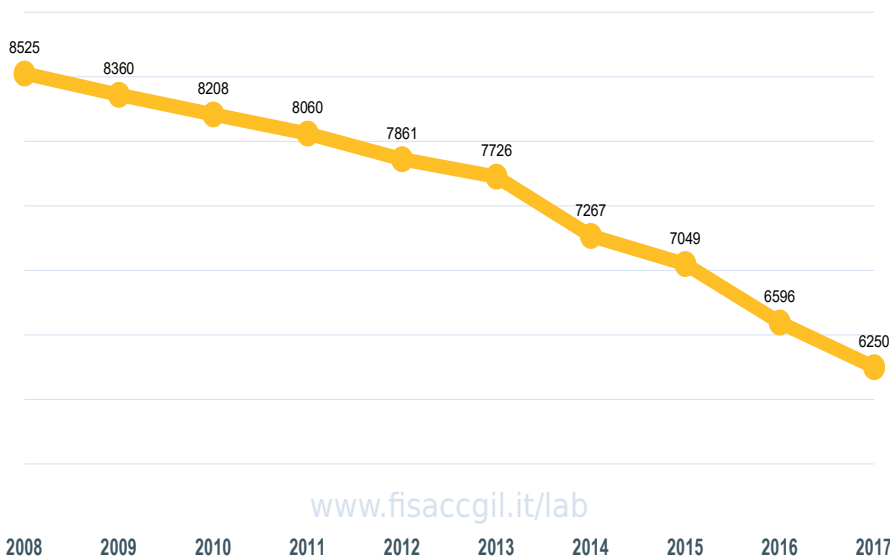


The role of digitalization & 4.0

www.fisaccgil.it/lab

Number of Banks – EU 28

Source: EBF

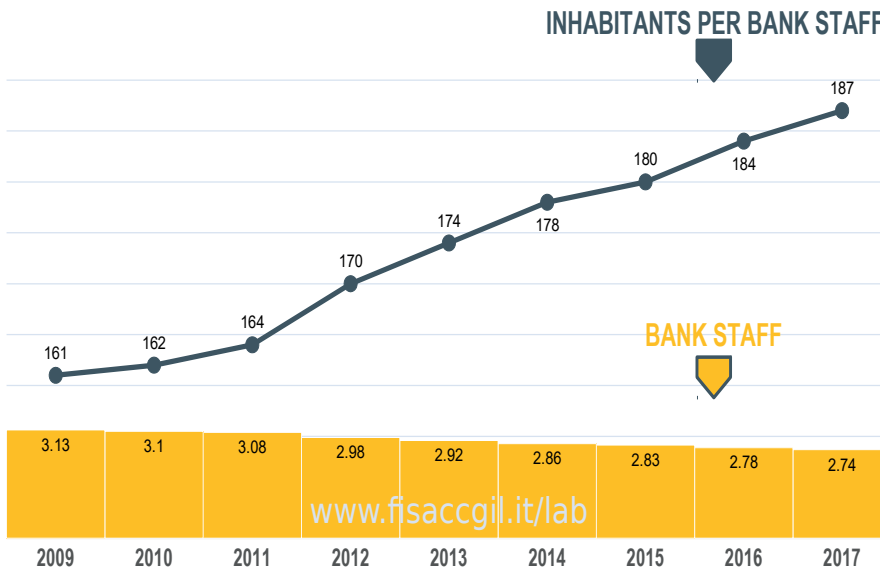


- 2.275 banks in 10 years
- -27%

www.fisaccgil.it/lab

Bank Staff – EU 28

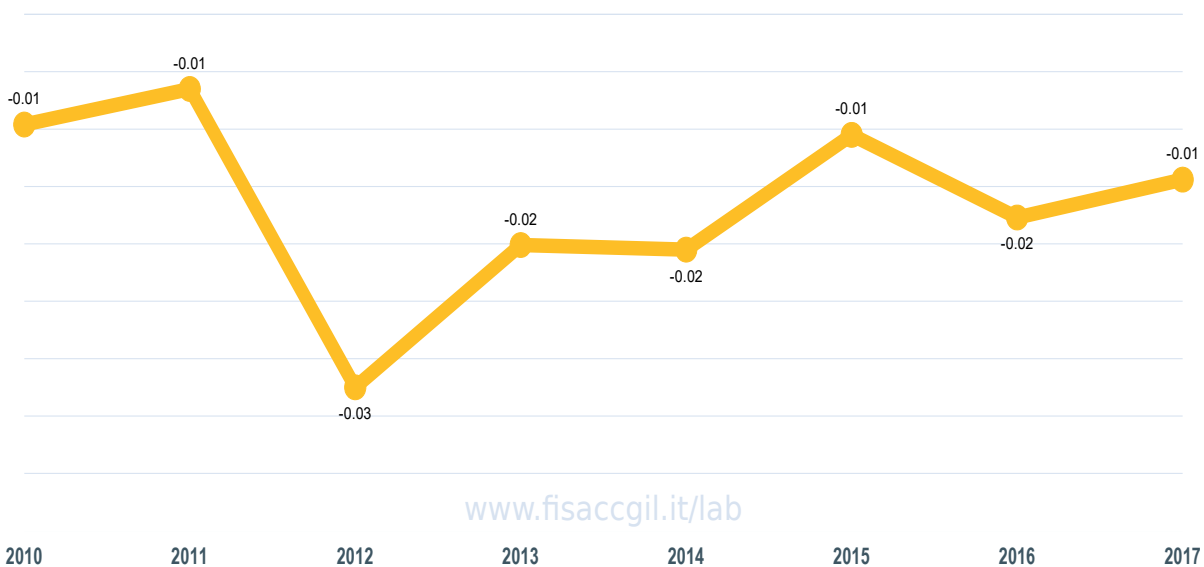
Source: EBF, millions of unit



- - 12,5% overall
- Including EFTA countries, the number of staff employed in the banking sector at the end of 2017 was about 2,9 million

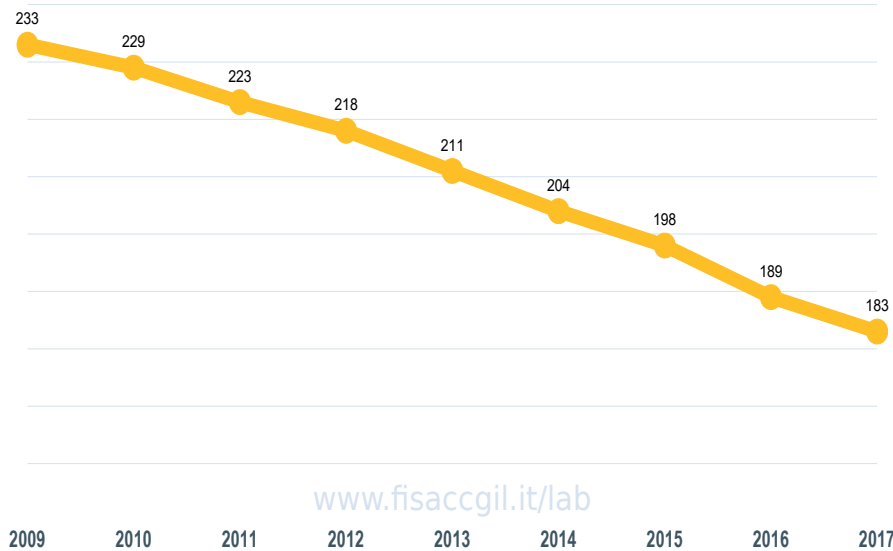
Bank Staff: YtoY Changes – EU 28

Source: ISRF LAB calculation



Number of domestic bank branches – EU 28

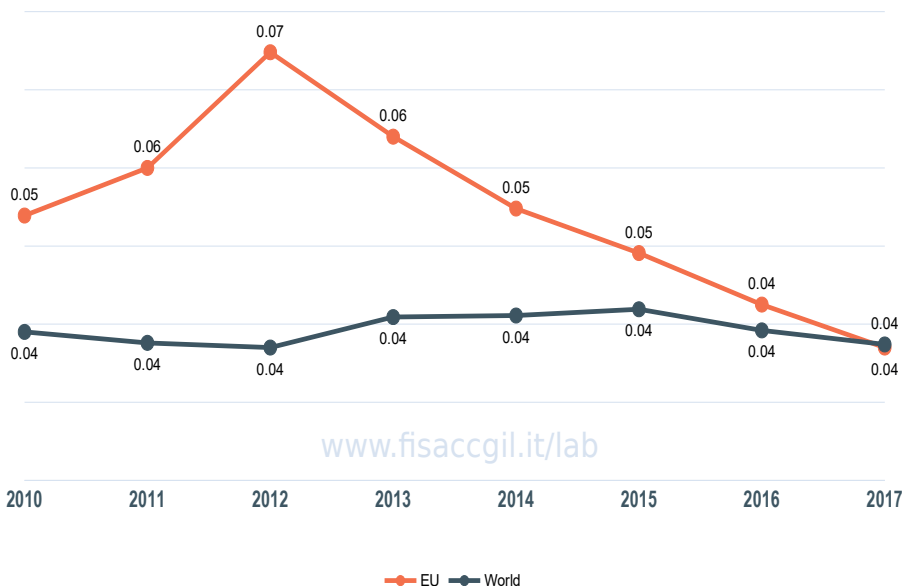
Source: EBF, thousands of unit



The number of branches has fallen by 21% since 2009. At the end of 2017, there are 50.000 less branches than in 2009

NPLs to gross loans Ratio

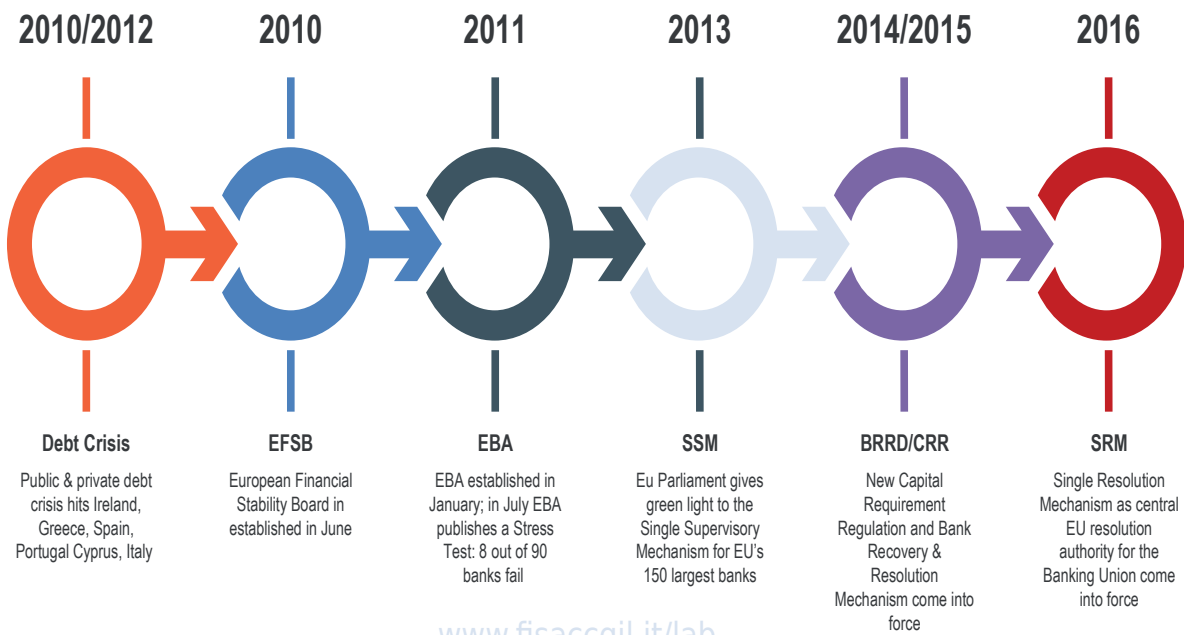
Sources: EBF and ECB



■ NPL stocks have decreased considerably in recent years

- 2014: 1,17 trn
- 2018q3: 714,3 bn

A new Regulation framework



The recovery strategy: «Less4More»

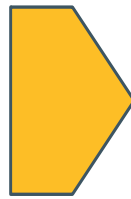
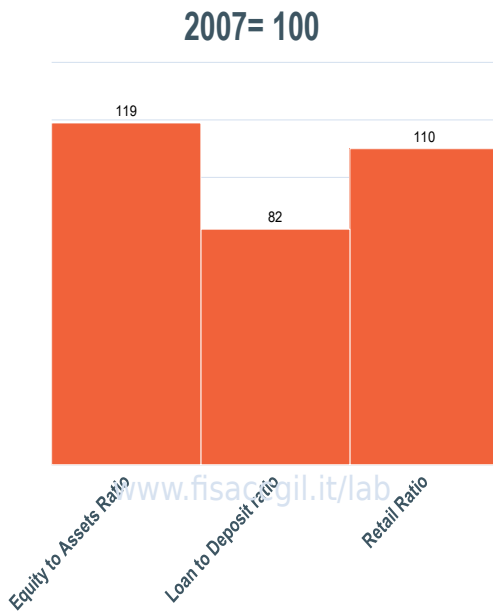
Source: EBA and EBF

	Jun 2011	Jun 2017
Core Equity Tier 1 Capital	5,3%	13,8%
Tier 1 Shortfall (Eur. Bn)	411	0
Liquidity Coverage ratio	71%	143%

In 2017, for the first time, all EU-28 banks met the liquidity coverage ratio above the minimum

The recovery strategy: A new paradigm

Source: ECB



Lower Leverage



Reduced reliance on wholesale funding

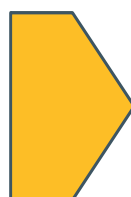
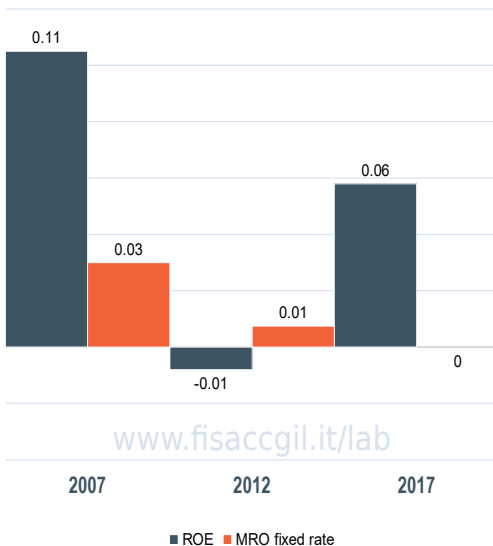


Higher reliance on retail activities

The recovery strategy: ROE

Source: EBA and EBF data

Return on Equity & ECB's MRO



2007: 10,50%



2011/2012: Banking crisis in particular in Spain & Greece affects balance sheets of EU banks



2017: A significant increase in profitability despite the negative impact of net interest income

«Less4More»: digitalization & 4.0

Less...

Less banks (M&A), less branches, less employees



4

Digitalization & 4.0

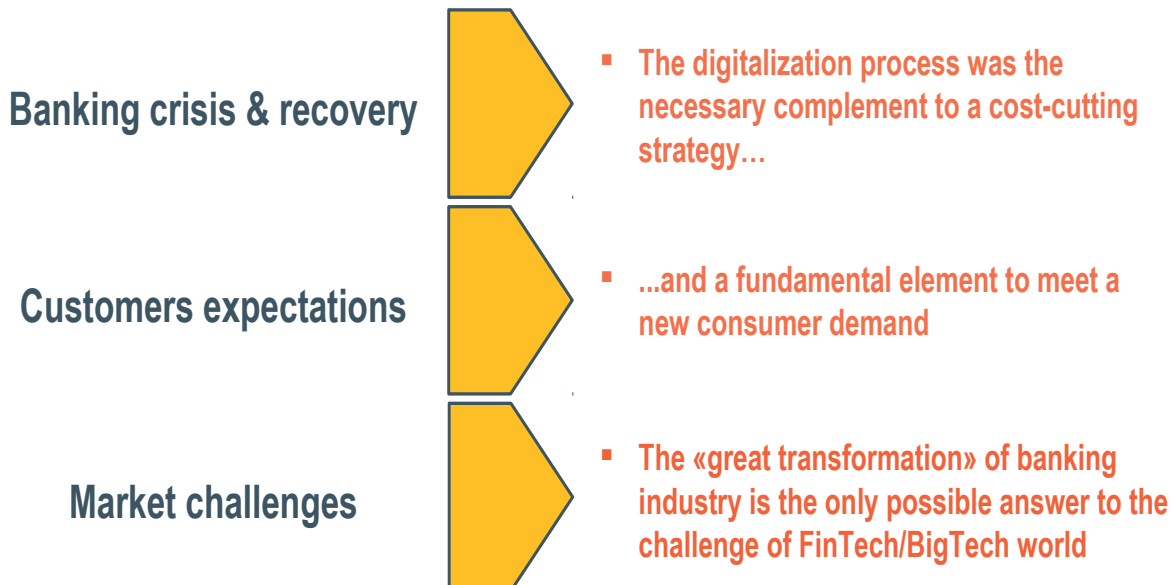


...More

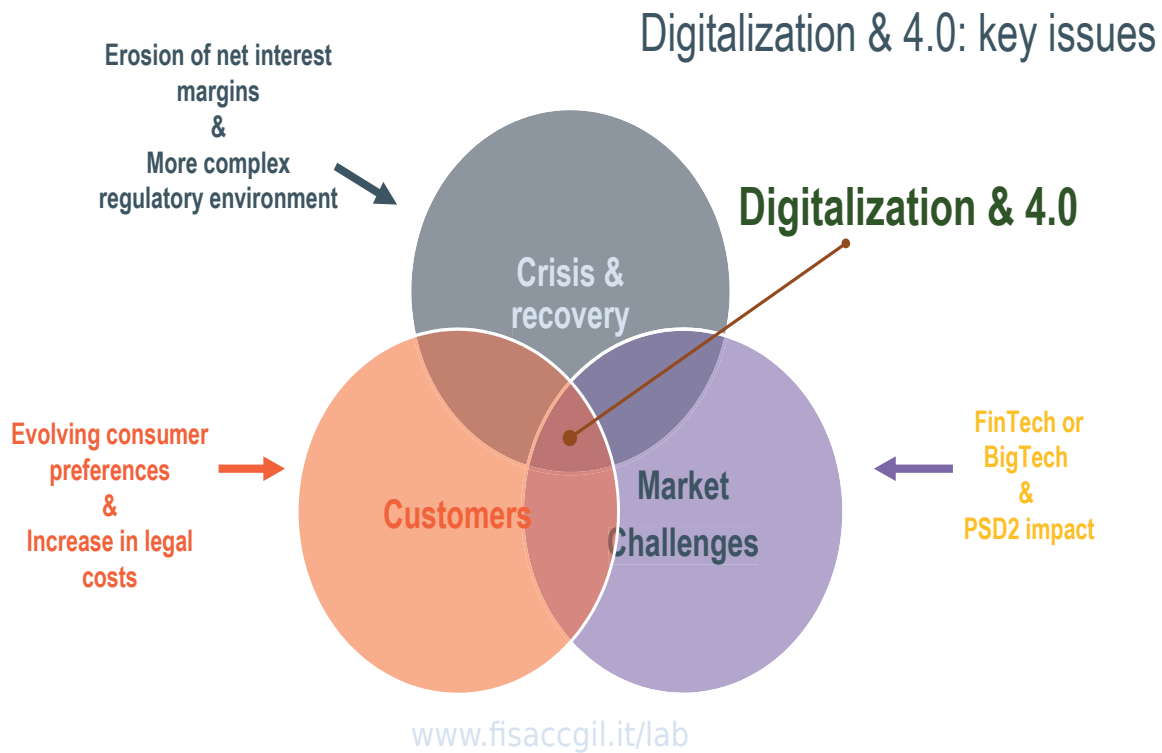
Profits with a Zero/Negative interest rates

www.fisaccgil.it/lab

Digitalization & 4.0: key issues



www.fisaccgil.it/lab



Digitalization & 4.0: a cost-cutting strategy

«Promising opportunities seem to arise in commercial banking. This is possibly due to the potential benefits of the new technology-based propositions such as aggregator models, use of robo-advice and application of better data analytics. This can be also seen as possible explanation of banks' growing appetite to address costs through increasing automation and digitalization»

EBA REPORT ON THE IMPACT OF FINTECH ON INCUMBENT CREDIT INSTITUTIONS' BUSINESS MODELS, 2017, page 12

Digitalization & 4.0: a capital intensive commitment

Investments in IT



- The global IT spending of the financial sector will grow from the expected \$ 440 billion in 2018 to almost \$ 500 billion in 2021 (Worldwide)

Average Growth rate



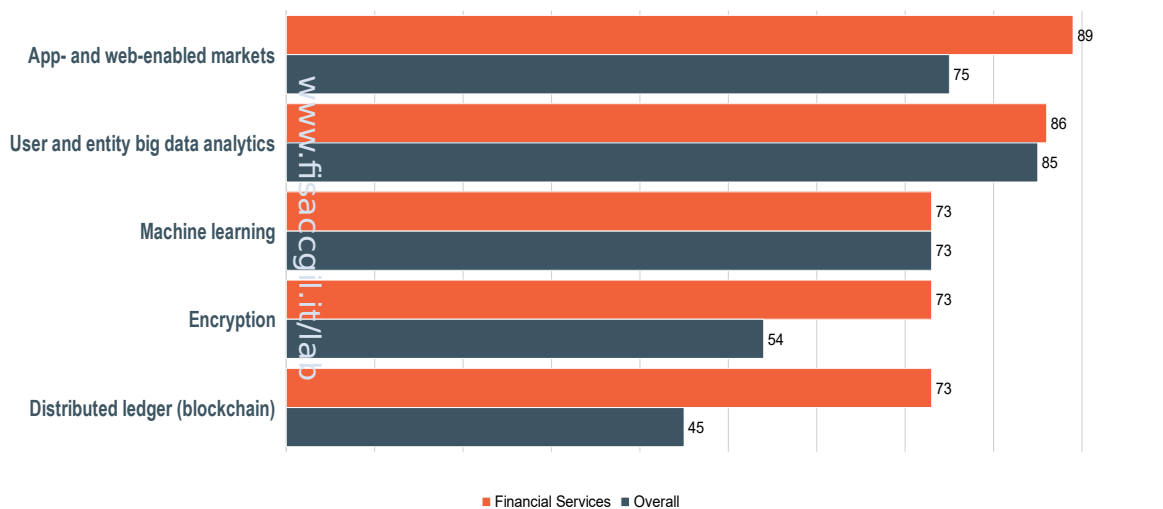
- + 5,1% for banks
- + 4,3% for insurance

www.fisaccgil.it/lab

Digitalization & 4.0: which kind of technology?

Source: WEF «the Future of Jobs Report», 2018

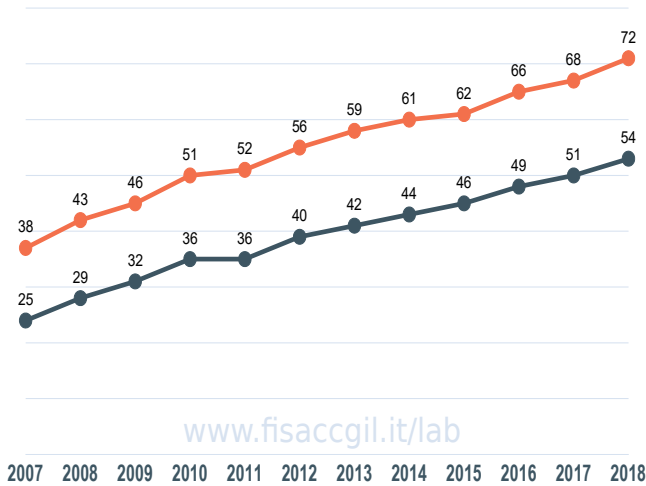
Technology adoption by industry and share of companies surveyed, 2018–2022 (%), Top five for Financial Services



Digitalization: consumer preferences

Source: EBF and Eurostat

% of individual using Internet Banking in EU-28, total and 25/34 yo range



www.fisaccgil.it/lab



54%

Of individuals in EU-28 use Internet Banking (25% in 2007)



3 billions

bank customers in the World will be able to access retail banking services through their electronic devices by 2021



72%

Of individuals from 25 to 34 yo in EU-28 use Internet Banking (38% in 2007)

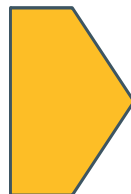


1.9 Billions

bank customers in the World will use biometrics and e-id to access financial services by the end of 2020

Digitalization & 4.0: FinTech?

Before Financial Crisis



- "RACE FOR INNOVATION" VS SMALL NEWCOMERS (FINTECH)

After Financial Crisis



- Banks can "buy" innovation quickly than FinTech can acquire new customers

www.fisaccgil.it/lab

Digitalization & 4.0: or BigTech?

The BigTech challenge



- **BigTech's competitive impact on financial institutions may be greater than that of FinTech.**
- **This should not be surprising given that BigTech "usually have large, established customer networks and enjoy name recognition and trust.**

They don't want become a bank in traditional terms, but integrate financial services in their core business

www.fisaccgil.it/lab

BigTech: examples

Source: Forbes

	Alibaba	Tencent	Baidu	Google	Amazon	Facebook	Apple	Samsung	Microsoft	Vodafone	Mercado Libre
Payments	Alipay (largest mobile payments platform in China)	Tenpay (#2 mobile payments platform in China)	Baidu Wallet – cooperation with PayPal	Google Pay – layers over existing card network	Amazon Pay – layers over existing card network	Messenger Pay – layers over existing card network	Apple Pay – layers over existing card network	Samsung Pay – layers over existing card network	Microsoft Pay – layers over existing card network	M-Pesa (32 million active users in East Africa and India)	Mercado Pago (offered in 8 markets in Latin America)
Lending and short-term credit	MYBank (SME lending for rural areas and online merchants)	WeBank (Personal micro-loans)	Baixin Bank (financial products and small loans)	Collaboration with Lending Club	Temporary financing in Amazon Lending; direct lending to merchants	Pilot in collaboration with Clearbanc	n/a	n/a	n/a	Offered through M-Shwari mobile banking service	Mercado Crédito (small loans to retail and SME clients)
Current accounts	Offered through MYBank	Offered through WeBank	Offered through Baixin Bank	n/a	Reports of talks with banks	n/a	n/a	n/a	n/a	Offered through M-Shwari	n/a
Asset management	Yu'e Bao (world's largest MFM)	License to offer mutual funds	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Pilots ongoing in 2018
Insurance	60% stake in Cathay Insurance China, founding stake in Zhong An Insurance	Online insurance service in life and property insurance	Joint venture with Allianz and Hillhouse Capital announced	Insurance on Google Compare (discontinued)	Partnership with JPMorgan Chase and Berkshire Hathaway on health insurance	n/a	Cooperation with Allianz on cyber insurance discounts	n/a	n/a	n/a	Pilots ongoing in 2018

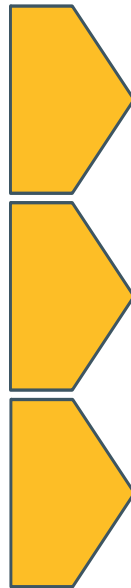
www.fisaccgil.it/lab

BigTech & PSD2: a possible «market disruption»?

What is PSD 2

Article 29 - Access to Accounts

The end of Banking monopoly on payment service



- PSD2 is a wide-ranging directive, covering 117 Articles including mandatory encryption and strict controls on merchant charges for transactions
- This opens up consumers' account information to third parties. These third parties can offer payment services but they won't have to be banks.
- At the end of December 2018, Amazon obtained a banking license from the monetary authority of Luxembourg. A few days later Facebook did the same thing in Ireland and Google in Lithuania

www.fisaccgil.it/lab

4.0 Banking in Europe Beograd, 06/19/2019

Nicola Cicala
ISRF LAB Director

Roberto Errico
ISRF LAB Researcher

www.fisaccgil.it

@fisac_cgil



www.fisaccgil.it/lab

@Isrflab



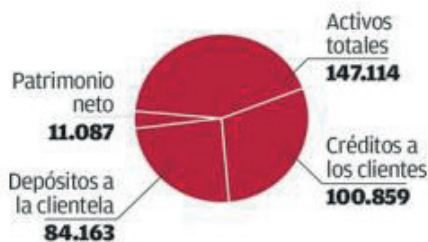
BANK MERGERS SANTANDER-POPULAR & PASTOR

A process with guarantees?

TRANSPPOSITION OF EUROPEAN DIRECTIVE 2001/23 CE

¿Quién es quién en la operación?

DATOS EN MILLONES DE EUROS
Primer trimestre de 2017



CET 1
10,02%

Número de oficinas
1.779

Resultado
-137,050

Número de accionistas
305.152

Número de empleados
11.911

Capitalización bursátil
1.330,4

CET 1
10,6%

Número de oficinas
12.117



Resultado
1.867

Número de accionistas
3.957.838

Número de empleados
188.182

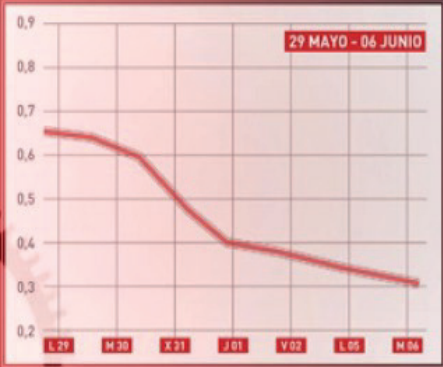
Capitalización bursátil
82.711,04

THE BANK UNION PREMIO ITS POWERS

- **MAY 2017:** Banco Popular starts the merger process, which could not end
- **JUNE 2017:** The bank's securities lost more than 38% of their value, a loss of more than 1,000 million capitalization
- The ECB decides that Banco Popular's liquidity situation leads unequivocally to insolvency and acts through the MUS (sole supervisory mechanism)
- The mechanism is activated so that the JUR takes control few days before the intervention
- **June 7 :** Banco Santander acquires 100% of the Popular for one euro



BANCO POPULAR



AYER

VALOR EN BOLSA

50% **1.300**

millones de euros

HOY

1€

COMPANY AND TRADE UNIONS HANDS TO THE WORK

Unemployment framework among the template

RTL

COLLECTIVE NEGOTIATION

SOCIAL DIALOGUE

OBJECTIVE

GUARANTEE A RESTRUCTURING IN THE COMPANY TAKING NON-TRAUMATIC MEASURES FOR WORKERS



MERGERS IN BANCO SANTANDER

	DATE	AGREEMENTS
MERGE BANCO SANTANDER/BANCO CENTRAL HISPANO	24/2/2003 first great bank merger in Europe of the euro	2003.07.17 Early Retirement Agreement.
MERGE BANCO SANTANDER/BANEST O/BANIF	Dec 17, 2012 Santander's board approves the transaction	01/15/2013 Banesto Merger Protocol to Santander 3/15/2013 Santander Banesto Merger Agreement 7/18/2013 voluntary redundancy agreement
MERGE BANCO SANTANDER/POPULAR/PASTOS	19/4/2018	26/6/2018 Work agreement in the framework of the merger process of Santander, Popular and Pastor for the Homologation of conditions and Schedules Smart Red Offices 11/21/2018 Merger Protocol





**DIRECTIVA 2001/23 EC
COUNCIL .**

**TRANSPOSITION OF THE
PROCESS OF MERGE BANCO
SANTANDER POPULAR**



**1.- MAINTENANCE OF LABOR
CONDITIONS**

EC DIRECTIVE	SPANISH LEGISLATION	SANTANDER BANK
CHAPTER II Article 3 .1 and 3.3	STATUS OF WORKERS. ART. 44	Merge Protocol and Merge Labor Agreement
<ul style="list-style-type: none"> ✓ Transfer of rights and obligations, as well as the employment relationship 	<ul style="list-style-type: none"> ✓ Non-extinction of labor relations ✓ Subrogation of the new employer in the rights and obligations of the former, including social security 	Banco Santander is subrogated in all rights and obligations that employees and employees in assets from Banco Popular have recognized.
<ul style="list-style-type: none"> ✓ Maintenance of working conditions (the possibility of agreeing modifications with RTL is recognized) 	<p><i>1st Recognition Subrogation</i></p> <p><i>2º Homologation conditions to Banco Santander</i></p>	<p>The working conditions and social benefits of these professionals have been defined in Collective Agreement of June 26, 2018, which was configured a single framework for application to all professionals of Banco Santander</p>



AGREEMENT APPROVAL CONDITIONS

MODIFY

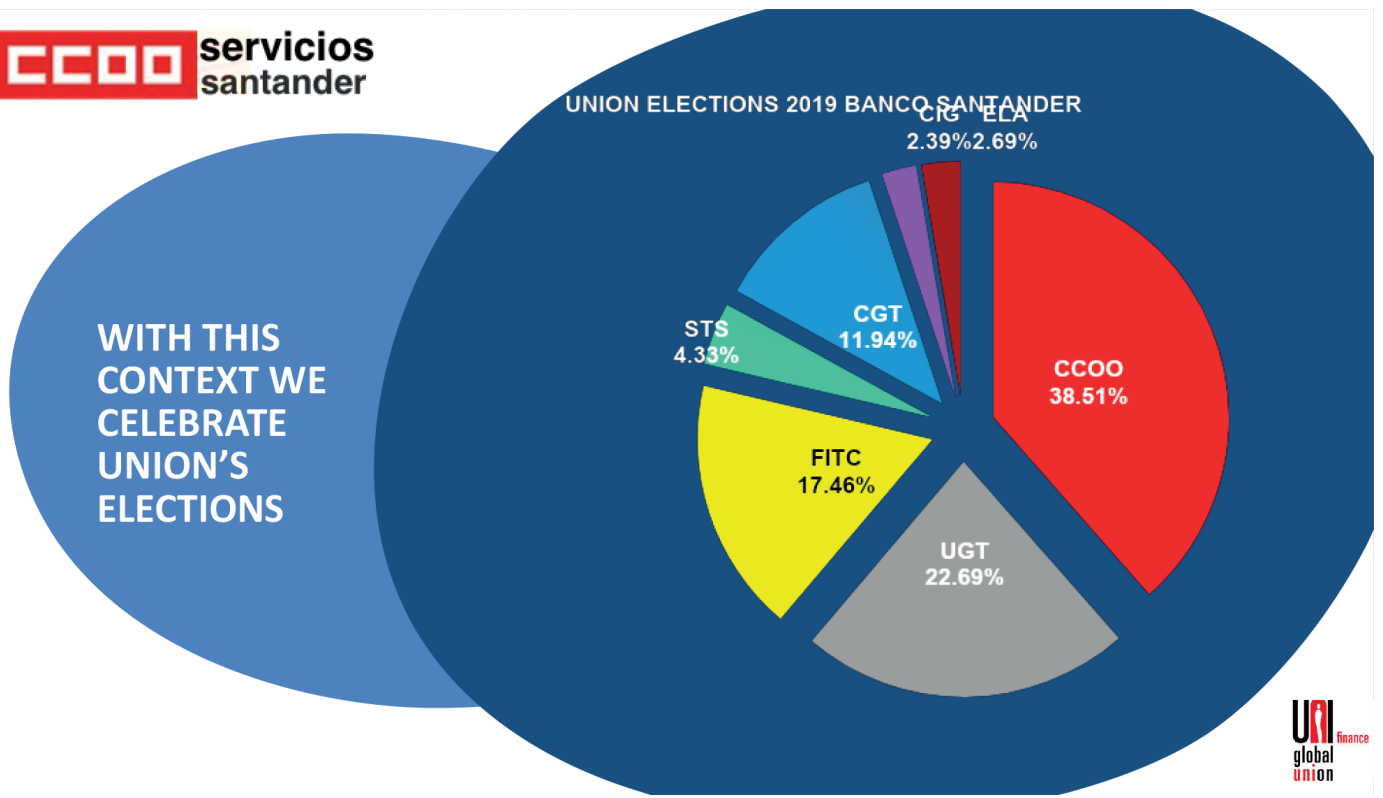
- Conference and hours for employees of Popular and Pastor
 - Financial conditions
 - Equality Plan
 - Life insurances
 - Loyalty Award
 - Additional License Day
 - Retirement plan.
- **IT INCLUDES**
 - Payment of benefits
- Social benefits, the absorbed staff is included
 - Special aids to disability
 - Holidays
- **RIGHT TO DIGITAL DISCONNECT**

2 - BENEFITS OF RETIREMENT, INVALIDITY AND SURVIVAL

EC DIRECTIVE	SPANISH LEGISLATION	SANTANDER BANK	
CHAPTER II ArtíCLE 3.4	Artículo 44 STATUS WORKERS	Merge Protocol and Merge Labor Agreement	
DO NOT it is contemplated beyond the benefits derived from Social Security	YES Obligation of the transferee to maintain the obligations for complementary social benefit	YES	
		PENSION PLAN SANTANDER	LIFE INSURANCE SANTANDER

3.- LEGAL REPRESENTATIVES OF THE WORKERS

EC DIRECTIVE	SPANISH LEGISLATION	SANTANDER BANK
CHAPTER II Artículo 6	Article 44 STATUS OF WORKERS	Merge Protocol and Merge Labor Agreement
<p>The subsistence of the company, <i>Retaining its autonomy</i></p> <p>=></p> <p>Subsistence of union representation</p>		<p>Banco Santander does not recognize the autonomy of the acquired company</p> <p>=></p> <p>Cessation of unión representation</p> <p>↓</p> <p>Provide 100% hour credit facilities to the union representation of the company transferred</p>



4.- INFORMATION RIGHTS / COMMUNICATION OBLIGATION

EC DIRECTIVE	SPANISH LEGISLATION	SANTANDER BANK
CHAPTER III Article 7	Artículo 44 STATUS OF WORKERS	Merge Protocol and Merge Labor Agreement
<p>CEDENTE → RTL BEFORE</p> <p>CESIONARIO → RTL AFTER</p>		Send to the RTL information about the process and delivery of documentation

5- ADOPTION OF MEASURES IN RELATION TO WORKERS

EC DIRECTIVE	SPANISH LEGISLATION	SANTANDER BANK
Chapter III Article 7.2	Article 44 STATUS OF WORKERS	Merge Protocol and Merge Labor Agreement
<p>QUERIES RTL</p>		<p>TODAY</p> <p>COLLECTIVE DISMISSAL FILE IN BANCO SANTANDER</p>
	<ul style="list-style-type: none"> ✓ STATUS OF WORKERS ✓ BANKING COLLECTIVE AGREEMENT 	

CCOO servicios santander sección sindical banco santander

1º REUNIÓN PRELIMINAR ERE BANCO SANTANDER

EL 23 DE MAYO DARÁ COMIENZO EL PERIODO DE CONSULTAS DEL ERE

El Banco ha dado por concluida la reunión de hoy el periodo fijado en el artículo 12 del Convenio Colectivo de Banca como paso previo a la apertura de un periodo de consultas al amparo de lo contemplado en el Estatuto de los Trabajadores, fijando la fecha para el inicio del periodo de consultas, que marca el artículo 31 del Estatuto para el próximo 23 de mayo.

En el momento de hoy el Banco ha presentado a CCOO y al resto de organizaciones, parte de los argumentos que justifican las causas técnicas y organizativas con carácter técnico de cumplimiento de las obligaciones de la ley.

PERSONAS	3.713	12%
OFICINAS	1.150	26%

El Banco Santander ha informado de la necesidad de una reorganización de la estructura organizativa de desarrollo, soporte y apoyo para revalorizar el patrimonio de desarrollo y distribución de los recursos humanos y tecnológicos que el Banco necesita para el crecimiento de su negocio.

Un segundo argumento que el Banco utiliza es la revalorización de los recursos humanos y tecnológicos de la organización para hacer frente a la reducción de los costes operativos que se han planteado a través de los nuevos canales digitales.

CCOO, ante el análisis de los datos antes mencionados, así como de las causas técnicas y organizativas, reafirma su postura de que el Banco debe revalorizar el patrimonio de desarrollo, soporte y apoyo para revalorizar el patrimonio de desarrollo y distribución de los recursos humanos y tecnológicos que el Banco necesita para el crecimiento de su negocio.

REORGANIZACIÓN DE LA ESTRUCTURA ORGANIZATIVA DE DESARROLLO, SOPORTE Y APOYO PARA REVALORIZAR EL PATRIMONIO DE DESARROLLO Y DISTRIBUCIÓN DE LOS RECURSOS HUMANOS Y TECNOLÓGICOS QUE EL BANCO NECESITA PARA EL CRECIMIENTO DE SU NEGOCIO.

CCOO MIRA POR TI

CCOO servicios santander sección sindical banco santander

ERE BANCO SANTANDER ADELANTA LAS CONDICIONES PROPUESTAS

¡ASI NO!

El Banco Santander ha presentado hoy a CCOO y al resto de la mesa que negocia el expediente de regulación de empleo que el Banco ha presentado para próximos de 1.150 oficinas y 3.713 personas. Los paquetes propuestos por Banco Santander hacen muy difícil la adopción voluntaria de las medidas y contrarrestan el espíritu del Acuerdo de Futuro de la liquidación de las oficinas no transaccional a esta propuesta. CCOO no puede aceptar esta propuesta bajo ningún concepto. Con condiciones así, que no concuerdan con el nivel de CCOO.

VALORACIÓN DE CCOO

El Banco Santander ha presentado hoy a CCOO y al resto de la mesa que negocia el expediente de regulación de empleo que el Banco ha presentado para próximos de 1.150 oficinas y 3.713 personas. Los paquetes propuestos por Banco Santander hacen muy difícil la adopción voluntaria de las medidas y contrarrestan el espíritu del Acuerdo de Futuro de la liquidación de las oficinas no transaccional a esta propuesta. CCOO no puede aceptar esta propuesta bajo ningún concepto. Con condiciones así, que no concuerdan con el nivel de CCOO.

PAQUETES INDEBIDAMENTE

El Banco Santander ha presentado hoy a CCOO y al resto de la mesa que negocia el expediente de regulación de empleo que el Banco ha presentado para próximos de 1.150 oficinas y 3.713 personas. Los paquetes propuestos por Banco Santander hacen muy difícil la adopción voluntaria de las medidas y contrarrestan el espíritu del Acuerdo de Futuro de la liquidación de las oficinas no transaccional a esta propuesta. CCOO no puede aceptar esta propuesta bajo ningún concepto. Con condiciones así, que no concuerdan con el nivel de CCOO.

CON COMISIONES, TÚ ERES MÁS FUERTE

CCOO MIRA POR TI

CCOO servicios santander sección sindical banco santander

ERE BANCO SANTANDER

SE PRODUCEN AVANCES AUNQUE AÚN SON INSUFICIENTES PARA CCOO

Banco Santander en la cuarta reunión del Expediente de Regulación de Empleo que está negociando con CCOO y el resto de organizaciones, ha realizado algunos avances sobre la propuesta inicial, reduciendo la cifra final de personas afectadas en 208 personas y mejorando algunos aspectos de los paquetes indemnizatorios, incluyendo al colectivo de 52 años dentro del tramo superior y eliminando la movilidad propuesta entre las compañías CCOO. Para CCOO estos avances son una buena señal pero aún son insuficientes para garantizar la voluntariedad en las oficinas.

PROCESO REALIZADO HOY POR BANCO SANTANDER

Banco Santander ha informado de la necesidad de una reorganización de la estructura organizativa de desarrollo, soporte y apoyo para revalorizar el patrimonio de desarrollo y distribución de los recursos humanos y tecnológicos que el Banco necesita para el crecimiento de su negocio.

CON COMISIONES, TÚ ERES MÁS FUERTE

CCOO MIRA POR TI

CCOO servicios santander sección sindical banco santander

ERE BANCO SANTANDER

UNA DESASTROSA EVALUACIÓN DEL DESEMPEÑO NO PUEDE SER UNA HERRAMIENTA PARA EL ERE

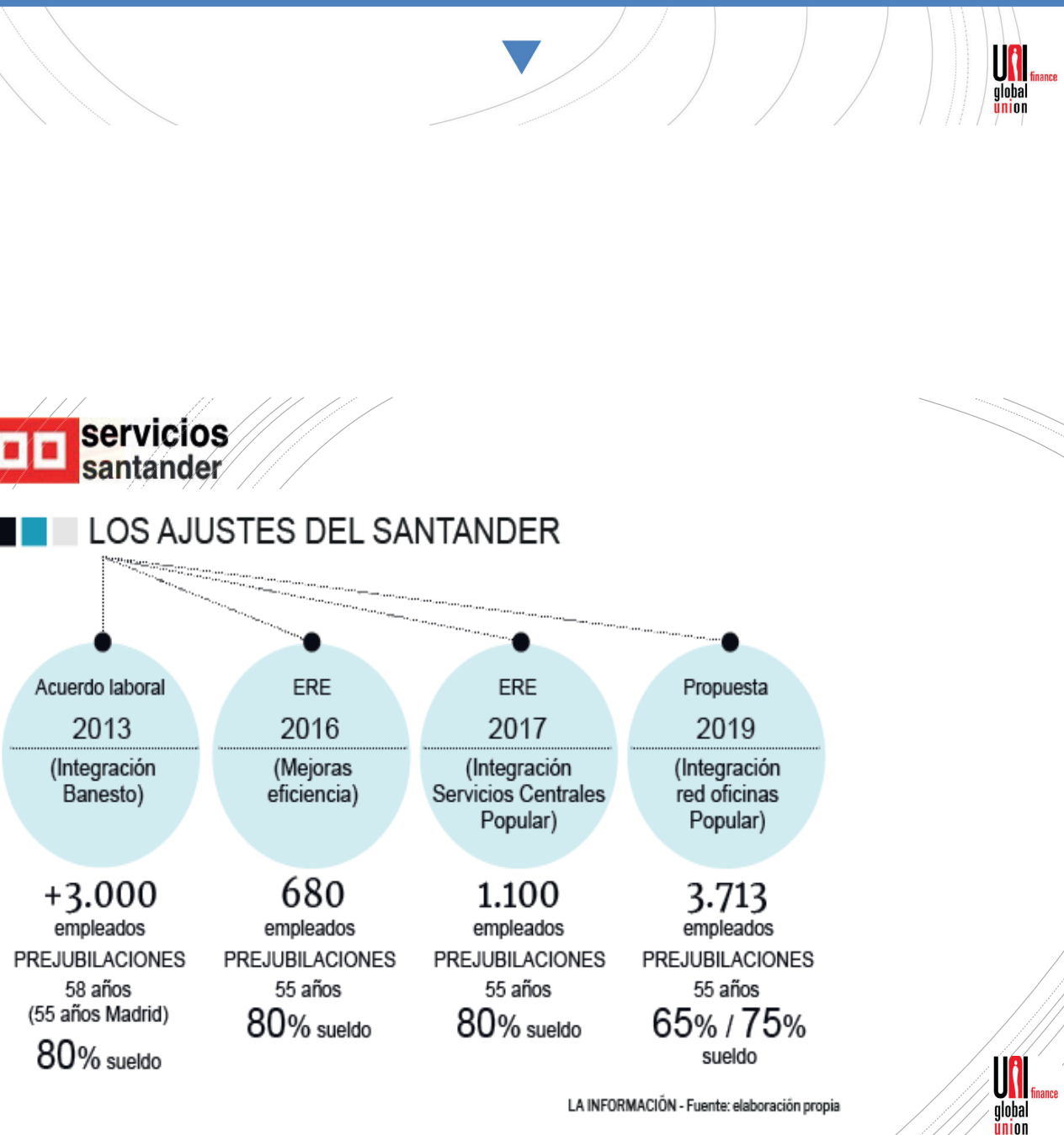
La Evaluación del Desempeño de 2018 es un resultado de un desastre pagado de incidencias con fechas que no modifican un proceso de selección de superiores y personas evaluadas fuera de los puestos de trabajo formando o aprendiendo en el proceso de integración tecnológica. A esto se añade un ERE propuesto por Banco Santander que propone que sea evaluado con un elemento más a la hora de determinar las personas que puedan verse incluidas en el expediente.

El Banco Santander ha informado de la necesidad de una reorganización de la estructura organizativa de desarrollo, soporte y apoyo para revalorizar el patrimonio de desarrollo y distribución de los recursos humanos y tecnológicos que el Banco necesita para el crecimiento de su negocio.

CON COMISIONES, TÚ ERES MÁS FUERTE

CCOO MIRA POR TI

COMMUNICATION TO WORKERS IN THE COLLECTIVE REDUNDANCY FILE PROCESS





EWC's facing Digitalization

Filip Dorssemont

EWC's facing digitalization

- Are the EWC agreements digitalization proof, submitting digitalization to prior information and consultation ?
- How have EWC's adressed the issue in « texts » they have produced?

EWC agreements digitalization proof?

- “The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to **the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes**, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies. (SR Recast EWC Directive)”

EWC agreements digitalization proof?

- “Where there are **exceptional circumstances or decisions affecting the employees’ interests to a considerable extent**, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted. *“(SR Recast Directive)*

EWC’s agreement digitalization proof?

- Do EWC’s agreements adress the issue of the introduction of **new working methods or production processes**?

BNP : no

Credit Agricole:” les changements substantiels concernant l’organisation , l’introduction de nouvelles méthodes de travail ou de nouveaux procédés de production”

KBC : no

Santander: no

Société générale : no

Unicredit : no

How have EWC's addressed the issue in « texts » they have produced?

- Unicredit (Dichiarazione congiunta su conciliazione vita-lavoro, 2017:

Identification of Digitalization as an important area :

Leave work at work

Create your free tech zone

There is a work life balance outside of your inbox

- Santander (Joint Declaration about workforce reordering processes in Europe)

Context : solid , sustainable and agile transparent companies
(promoting a culture of learning and continuous training)

The European Social Dialogue facing Digitalising

Filip Dorssemont

The European Social Dialogue

- **Definition**

European social dialogue refers to discussions, consultations, negotiations and joint actions involving organisations representing the two sides of industry (employers and workers). It takes two main forms:

- *a tripartite dialogue involving the public authorities,*
- *a bipartite dialogue between the European employers and trade union organisations. This takes place at cross-industry level and within [sectoral social dialogue committees](#).*

<https://ec.europa.eu/social/main.jsp?catId=329&langId=en>

The European Social Dialogue

- Two levels of Dialogue
- A variety of outputs

The interprofessional level

- Relevant interprofessional agreements :
-*Framework agreement on Telework* (2002)

TELEWORK is a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employers premises, is carried out away from those premises on a regular basis. (reversibility, equipment, health and safety, equality, data protection, privacy, workers' representation)

- Framework Agreement on Work related Stress* (2004)

The interprofessional level

- Prospects

Social Partners Work Programm **2019-2021**

1. Digitilization

*In the world of work, digitalisation can be an opportunity and a challenge. The whole world, and particularly Europe, is currently facing a fundamental transformation in the world of work. Many aspects of the ongoing digitalisation process are not yet clear or understood. The European social partners will organise a joint **fact-finding seminar** where they will explore different experiences relating to issues, such as the **acquisition of digital skills, work organisation, including possibilities and modalities of connecting and disconnecting, and working conditions**. They will negotiate an **autonomous framework agreement on digitalisation***

The interprofessional level

3. Skills

*A skilled workforce is one of the main assets of the European social and economic model. Rapid labour market changes such as the industry 4.0 revolution, digitalisation, social, demographic and environmental transitions and global challenges require joint actions on improving education and training systems in a way that fosters innovation and enhances employees' re-skilling and up-skilling. Social dialogue and collective agreements play an important role in the governance of training systems, in creating training opportunities and in improving the relevance and provision of employee training. In this context the European social partners, building, amongst others, upon their joint work in the framework of actions for the lifelong development of competencies and qualifications, will undertake a project on innovation, skills, provision of and access to training. **A fact-finding seminar** will be organised in 2019 and a **research report** will be prepared by end of 2021.*

- See also :
- https://www.etuc.org/sites/default/files/publication/file/2019-04/2019_new%20trade%20union%20strategies%20for%20new%20forms%20of%20employment_0.pdf

The interprofessional level

- BOTH agreements are autonomous in view of their genesis and implementation
- COM (2008) 421 final

Autonomous agreements cannot guarantee uniform outcomes, binding status and full coverage in all countries; they simply provide an overall framework and cannot enforce minimum labour standards or fundamental social rights

Not part of the *acquis communautaire*, no CJEU case law

The sectoral level

- Two relevant sectoral committees :
 - a) Insurance
 - b) Banking
- Two topics :
 - a) Telework
 - b) Digitalisation
- One type of document : *Joint declaration*

The sectoral level

- *In liminis* : Joint Declaration
- Suggestion of an analysis by social partners, of a description rather than of a set of prescriptive provisions, reflections
- Joint Declaration on Telework (insurance) sector refers to Annex 2 COM (2004) 557 final
- **Joint opinions** This category includes the majority of social partner texts adopted over the years such as their joint opinions and joint statements, which are generally intended to provide input to the European institutions and/or national public authorities. These include texts which respond to a Community consultation (green and white papers, consultation documents, Communications), which adopt a joint position with regard to a given Community policy, which explicitly ask the Commission to adopt a particular stance, or which ask the Commission to undertake studies or other actions.
- **Declarations** This category refers to texts which are essentially declarations – usually directed at the social partners themselves - outlining future work and activities which the social partners intend to undertake (e.g. the organisation of seminars, roundtables, etc).
- Joint Declaration on the social effects of digitalization (“intends to frame potential further dialogue at national level and stimulate public debate”)

The sectoral level

- BUT :

Some of the analyses are legal analyses

Some of the instruments contain commitments for signatory partners and describe rights and obligations for employers and workers

- NONE of these instruments has been implemented by a directive

Issue 1 : Telework

- Follow up of the Interprofessional Agreement (2002)

Insurance : 2015

Banking : 2017

- Definition :

Tasks performed from home or in satellite offices or any other fixed location on a continuous basis (outside a locally fixed employer environment), with exclusion of smart work (B)

Or

Reference to Telework Agreement (2002) (I), including in-house employees working at distance and ùmobile sales workers and loss adjudicators

Telework I

- Voluntary and reversible (if not part of initial description)
- Recognition of managerial prerogative to accept demands for telework
- Working conditions should be clarified and equivalent
- Health and Safety concerns can be specific, but access to telework needs to be guaranteed

Telework B

- Voluntary and reversible (employer and employee)
- The employee has a right to demand
- Working conditions should be clarified and equivalent
- Health and Safety concerns can be specific, but access to telework needs to be guaranteed

Telework I

- Very precise provisions on equipment :
 - employer's or employees?
 - support facility
 - compensation of costs of employee's equipment
- There is an issue of Privacy , Data protection (GDPR) versus monitoring and cybersecurity
- A right to training

Telework B

- Less prolific on equipment (just rules stated in advance)
- There is an issue of Privacy , Data protection (GDPR) versus monitoring and cybersecurity
- A right to training (including how to deal with isolation)

Telework I

- Collective rights
- No limits on communication with reps
- teleworker is technically assigned to an establishment
- they can stand and vote
- they count for the sake of thresholds
- Introduction of telework needs to be made subject to INFO and CONS

Telework B

- Collective rights : less substantiated
- they can stand and vote
- they count for the sake of thresholds

Issue 2 : Digitalization

- No reference to previous intersectoral social dialogue, but perhaps a source of future inspiration?
- Insurance Sector (2016) more prolific
- Banking Sector (2018)
- The joint declarations are much less legalistic than the instruments on telework
- No genuine definition of digitalization
- Digitalization is linked to the introduction and the recourse of platforms and eco-environments, AI

Issue 2 : Digitalization

- Labour law Issues linked to Digitalization :

- Data protection and Privacy (cf GDPR) : a joint responsibility to uphold the GDPR

- there is a huge responsibility for the employers to uphold the employability of their workforce through (re) training, including managers (I)

- Digitalization is disruptive for the Time and Place of Work : a balance is needed between interests of customers, workers and employers

- a) More work outside business hours and outside work premises

- b) Working time regulations need to be respected

- Digitalization is a challenge to the organization of the workforce



Dr. Jens T. Thau, M.C.J.
Chairman, EBF-BCESA

EWC – Sectoral Social Dialogue Items Background and Outlook



- FISAC-CGIL Project is supported by EBF-BCESA (letter of support)
- EWCs are state of the art in European Banking Industry
- EWC are consulted and involved in observance of legal rules, company agreements on their participation and according to each groups heritage of employee involvement on the supranational level
- Current Project follows up results of project 2015/0359, dealing especially with EWCs role in the situation of anticipation of change
- Exchange of Good Practises among EWC
- Exchange of Good Practises between Social Partners, EWCs and Employers
- Stabilising and expanding network to exchange practises and solutions, especially regarding the increasing relevance of smart working, scrum (project work) including in a more and more digitalized environment and across classic lines of teams (teams comprised of of employees, self-employed, external specialists etc.)
- Explore possibility for joint steps ahead

2

EWC – Areas to explore and to demonstrate how value was added to process and result



- In the ares adressed in the following 3 slides:
- EWC – Key Issues: General
- EWC – Key Issues: EWC Self Perception
- EWC in Sectoral Social Dialogue

3

EWC – Key Issues: General

EWCs as a tool to strengthen employee involvement regarding information on important strategic cross-border issues

Collaboration between EWCs and (national/International) Unions and Employer Organisations

Analysis of current TCAs and their input to EWC information

Opportunities to more effective information: language barriers, specialization, training etc.

4

EWC – Key Issues: EWC Self Perception

EWCs self perception

Strategic Vision vs. Project Orientation

How to deal with/solve conflicting priorities

Is there added value to involve European Social Partners (Unions/Employers)

Collaboration between unions/shop stewards, (non-unionized) works councils

5

EWC in Sectoral Social Dialogue



Explore possibilities for joint positions

Joint Social Partner Approach vs. TCAs

Analysis of current TCAs and their input to EWC information

Can European Social Partners New Approach (as finalized in Telework and Digitalisation Joint Declarations) provide a Basis for Thoughts on possible Sectoral Framework for EWCs

6

No One Way Street: Do SSDB Key Areas 2017-2020 impact EWCs agendas?



1. Joint Declaration on **Telework** in the European banking sector (2017)
2. Joint Conclusions of EU-funded project "**The Impact of Regulation on Employment in the Banking Sector**" (Pillar I - 2018) mapping overview of the current state of play of employment in the banking sector. The study describes four key reasons to explain "internal restructuring" and the job cuts from 2007 to 2016: financial crisis, market forces, digitalisation and regulation.
3. Joint Declaration on the **Impact of Digitalization on Employment in the Banking Sector** (Nov 2018)
4. Impact of Regulation on Employment (**Pillar II** – 2019/2020) aimed at, e.g.:
 - analyzing the results of Pillar I;
 - good practices on reactions to increasing regulation;
 - developing and presenting a joint European Social Partners' approach
5. **Employment Aspects of Providing Financial Services** (topic agreed, exploration in progress)
6. **Impact of Standardisation on Social Partners** (pending, esp: ILO, ITUC/IOE , letters to ISO)



Questions?

Jens T. Thau
Chairman, EBF-BCESA

Groupama EWC signs up to ensure good quality of life at work in the age of digitalisation

Monday 2 July 2018



DIGITALISATION FINANCE MULTINATIONALS AND EWC

The social partners of the Groupama SA European Works Council (EWC), represented by the EWC Secretariat and its President, Director General Thierry Martel, signed a joint declaration on 1st July 2018 committing to developing innovative approaches and common strategies to promote a quality life in a changing workplace, a key issue for the insurance sector in the age of digitalisation.

This joint declaration is part of the renewal of the EWC's 15th February 2013 joint declaration – which applies to all companies within the group – and the 12 October 2016 joint declaration on the social impact of digitalisation, signed by the EU insurance social dialogue at the initiative of UNI Europa Finance.

The Groupama Group social partners aim to overcome the threats created by the multiple and rapid transformations created by digitalisation, as well as other issues such as customer satisfaction in the context of increasingly globalised activities.

These developments have had consequences on the activities, careers and organisation of the company. In this context, and convinced of the close link between economic and social performance, the signatories underline the importance of ensuring a good quality of life at work whilst putting in place the workplace transformations needed to maintain competitiveness.

The company and all its economic sectors are facing transformations linked to the development of information and communication technology (ICT), and the signatories aim to anticipate these and take into account their human impact.

Putting in place the right conditions to take advantage of these changes is crucial in order to maintain and develop tight-knit teams, a collective dynamic and a enhance the meaning of work. The companies in the group, together with the worker representatives – and especially those dealing with workplace health and safety – and the workers themselves, must look into what practices are needed to guarantee a positive use of ICT tools.

New forms of communication are at the root of multiple demands on workers which risk undermining their work/life balance. We must therefore urgently take into account the rapid development of new digital and information technologies in order to regulate their use.

These company-level principles take into account job specificity and promote work/life balance, especially as regards connectivity and good practice in the use of emails.

The company or its workplace representatives can bring any queries regarding the application of this joint declaration to the Bureau, which can then take action under the same means that have been allocated to the EWC (credit time, budget, etc).

In negotiation with management, the EWC Bureau will include, once a year, in its meeting agenda, an item on the follow up and application of this joint declaration. This could also include an exchange with management on the recommendations made by the Bureau.

Le CEE de Groupama signent une déclaration conjointe sur la qualité de vie au travail dans l'âge de la numérisation

Les partenaires sociaux du Comité d'Entreprise Européen de Groupama SA, représentée par son Secrétaire et le Président le Directeur Général Thierry Martel, ont signé le 1 Juillet 2018 une déclaration pour traduire l'engagement des signataires de promouvoir une démarche innovante et un vocabulaire communs en matière de Qualité de vie au travail comme voie pour accompagner la conduite du changement, enjeu stratégique pour les métiers de l'assurance à l'ère du numérique.

La Déclaration Conjointe s'inscrit dans le prolongement de la Déclaration Conjointe du 15 février 2013 signée au niveau de CEE, qui concerne toutes les entreprises du groupe, et de la Déclaration Conjointe du 12 octobre 2016, signée notamment à l'initiative d'UNI Europa Finance au sein du Comité de Dialogue Social Sectoriel des Assurances (ISSDC), et portant sur les impacts sociaux du numérique

Les partenaires sociaux du Groupe Groupama souhaitent relever les défis des transformations multiples et rapides qui résultent principalement de la digitalisation des activités, mais également d'autres facteurs tels que les attentes des clients, dans un contexte de globalisation des activités.

Ces évolutions ont des conséquences sur les activités, les métiers et les organisations des entreprises. Dans ce contexte, les parties signataires, convaincues du lien étroit entre performance économique et performance sociale, soulignent l'importance de la qualité de vie au travail comme levier dans la conduite des transformations nécessaires à la compétitivité des entreprises.

A l'heure où l'ensemble de la société et tous les secteurs économiques connaissent une phase de transformation liée au développement des technologies digitales d'information et de communication (TIC), les parties signataires entendent anticiper et prendre en compte les impacts humains de ces transformations.

Les conditions d'appropriation de ces changements, dans le temps notamment, sont indispensables pour maintenir et développer la cohésion des équipes, l'adhésion à la dynamique collective, le sens

donné au travail. Les entreprises du groupe, en lien avec les institutions représentatives du personnel, notamment celles qui représentent les salariés en matière de santé et sécurité au travail, et les salariés, doivent examiner les dispositifs et pratiques à mettre en place pour garantir un bon usage des outils de communication digitaux.

Les nouveaux modes de communication sont à l'origine de sollicitations multiples, susceptibles d'entraîner une certaine porosité entre la vie professionnelle et la vie privée. Il est donc nécessaire de prendre en compte l'essor rapide des nouvelles technologies de manière à favoriser une bonne régulation de l'usage des outils digitaux et de la gestion des flux d'information.

Les modalités définies au niveau de l'entreprise, qui prennent en compte les spécificités des métiers, visent à favoriser l'équilibre vie professionnelle et vie privée, au regard notamment de la connectivité, portent par exemple sur le cadre d'accompagnement et les bonnes pratiques dans l'usage des mails.

Sur toute sollicitation de la part des entreprises ou de représentants des salariés du Groupe, qui souhaiteraient porter à la connaissance des membres du Bureau tout point relatif à l'application de cette Déclaration dans les entreprises du Groupe, les membres du Bureau peuvent dans ce cadre utiliser les moyens attribués au Comité d'Entreprise Européen (crédit d'heures, budget...).

En concertation avec la Direction, le Bureau du Comité d'Entreprise Européen intégrera une fois par an, à son ordre du jour, un point sur le suivi de l'application de la présente Déclaration. A cette occasion, un échange avec la Direction pourra porter, le cas échéant, sur les recommandations que les membres du Bureau souhaiteraient formuler.

Contact

***The third
collective event of this Project***

:

PLENARY SEMINAR

in

ROME

13th -14th -15th

November 2019



**EUROPEAN PROJECT
VS/2019/0016**

**carried out with the financial support of the European Commission
- DG Employment, Social Affairs and Inclusion -**

***EMPLOYEE INVOLVEMENT IN THE CHANGING WORK
WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS
TRAINING AND POLICIES
FROM EUROPEAN DIRECTIVES TO CURRENT PRACTICES***

**SECOND PLENARY
Rome, 13 -14 -15 November 2019
Centro Congressi Frentani**

Accommodation at the Ateneo Garden Palace or other hotel from 13 to 15 November

WEDNESDAY, 13 NOVEMBER – 2:30 p.m. - 6:20 p.m.

2:30 p.m. Registration

2:45 p.m. Introduction to the Plenary:

Digital innovation and employee participation in EWCs
- Agostino Megale (President of ISRF LAB)

3:15 p.m. *Update on the Project, goals of this Plenary and next steps*
- Mario Ongaro (Project Director)

3:30 p.m. *Checking the materials and documentation collected from and distributed to participants, their actual use and their helpfulness for the overall Project.*
- Project staff -

3:45 p.m. *The production of materials, teaching aids, studies and proposals from the kickoff meeting to the Belgrade Plenary, with a specific focus on the scientific production of ISRF LAB: summary of past activities and follow-up*
- Stefano Di Dio and Roberto D'Errico (ISRF LAB)

4:15 p.m. Coffee break

4:30 p.m. *EWCs in the legislative frameworks and practices of France, Spain, Italy and Belgium and their relations with the trade unions of the countries of the parent company:*
-short remarks by the various national trade unions

5:00 p.m. *Update on the trade-union context in the finance industry in Turkey with a focus on the main issues of our EU Project*
Meral Gunenc – Basisen National Secretary

5:15 p.m. Update on:

- *activities and priorities of this phase, in particular with regard to the governance of change and digitization*
- *GFA*
UNI FINANCE + the EWCs CONCERNED* (to be continued on Thursday 14 in the morning)

***CREDIT AGRICOLE, SOCIETE GENERALE and BNP-PARIBAS**

6:00 p.m. *Current situation and future prospects of the finance industry in Italy and in Europe*

-Claudio Cornelli – National Secretary of Fisac-Cgil

6: 20 p.m. End of session

THURSDAY, 14 NOVEMBER – 9:30 a.m. - 5:00 p.m.

9:30 a.m. *Update on:*

- *activities and priorities of this phase, in particular with regard to the governance of change and digitization*
- *GFA*
UNI FINANCE + the EWCs CONCERNED* (continued from Wednesday 13)

***UNICREDIT, KBC, SANTANDER, GROUPAMA and INTESA SANPAOLO**

10:30 a.m. *European Directives on employee involvement in the experience and practices of the EWC of Unicredit*

Monica Carta (Unicredit group EWC coordinator)

11:00 a.m. *Governing digitalization:*

the journey towards concrete experiences in local settings after the initiatives on the changing work environment in the 4.0 finance industry

Gabriele Poeta Paccati (Secretary-General of Fisac-Cgil Milan)

11:15 a.m. Coffee break

11:30 a.m. *Co-determination in Germany: experiences, practices and perspectives in the German finance industry*

Jens Thau (AGV Banken)

12:00 p.m. *European Directives on employee involvement:*

from the Fitness Check to the identification of critical aspects to propose possible revisions or REFIT 1st part

Professor Filip Dorssemont (KU Leuven)

12:45 p.m. Lunch break

2:00 p.m. *European Directives on employee involvement:*

from the Fitness Check to the identification of critical aspects to propose possible revisions or REFIT 2nd part

Professor Filip Dorssemont (KU Leuven)

2:30 p.m. *Discussion of trade union representatives on the lecture of Professor Dorssemont, with a specific focus on existing practices in the various EWCs*

3:00 p.m. *Discussion of employers' representatives on the lecture of Professor Dorssemont*

Jens Thau-FBE / Monica Carta-Unicredit Group / Benedicte Crété -Groupama

- 3:30 p.m. *Identification of possible points of convergence between the social partners on the above discussion outcomes*
Professor Dorsemont + Project staff
- 4:15 p.m. Coffee break
- 4:30 p.m. *Identification of possible points of convergence (cont.) and discussion*
- 5:15 p.m. End of session
-

7:30 p.m. Meeting in the lobby of the Ateneo Garden Palace hotel for the social dinner

FRIDAY, 15 NOVEMBER – 10:00 a.m. - 1:00 p.m.

ROUND TABLE

Moderator: Mario Ongaro

***How to support day-to-day operations
and improve the effectiveness of EU legislation on employee involvement
in the 4.0 finance industry and the changing work environment;***

The anticipation of change:

- ***from***
 - ***information/consultation at the decision-making stage***
 - ***to***
 - ***participation***
- GIULIANO CALCAGNI, General Secretary of Fisac-Cgil
 - ANGELO DI CRISTO, Head of Uni Finance
 - JENS THAU, Chairman of the
European Banking Federation's Banking Committee for European Social Affairs
 - EMANUELE RECCHIA, Head of Labour Policies, Industrial Relations and Welfare at
Unicredit Group
 - ALFIO FILOSOMI, Responsible for Trade-Union affairs and Labour Policies at
Intesa SanPaolo
 - BRANDO BENIFEI, MEP – Employment and Social Affairs Committee

Conclusions by Giuliano Calcagni

Mario Ongaro
Project Manager
ISRF-LAB EUROPEAN SECTION DIRECTOR

07.11.2019

Up-to-date foreword to this Plenary in Rome

Goal V of this Project

:

Involve relevant social partners (top management in the participating transnational groups and EU Employers' Federations) + Union institutions reps (such as EU Parliament members) in our analysis' findings in order to strengthen transnational cooperation and support the effectiveness of EU law on employee involvement.

We have been able to involve the **EBF (European Banking Federation)** as far as its **BCESA** (Banking Cttee for European Social Affairs) is concerned, with its President Jens Thau and ts member Giancarlo Ferrara also representing **ABI** the Italian Banking Association . We have also been able to involve the **top Management of Unicredit Group and of Intesa SanPaolo** Group. The other groups' management were not available in spite of the efforts made by Uni Finance too in this respect, but we have to take into account that this Project is not a Joint one, it is just a trade-union Project where the employers' participation can't be binding at all. In this respect therefore the quality and high level of employers' participation we have been able to count on did mean a genuine and substantial support to the Project and to its final objectives.

On top of that **the E.B.F. had formally endorsed the Project since its very beginning by subscribing and sending us their own engagement letter.**

At the same time we ensured the support to our Project by the MEP Brando Benifei who supported past Projects of ours as well.

AGAIN ON THE INVOLVEMENT OF SOCIAL PARTNERS

Even if Intesa SanPaolo responsables for Industrial Relations participated in one of our Plenaries, **we have No Intesa SanPaolo EWC as yet**, which clearly shows a stubborn resistance by this Group Management against the opportunity to set up the EWC.

However through this Project, as already remarked, we have been able to set up the Trade-Union Alliance of the Group and **we sent the letter to open the procedure to negotiate the setting up of the EWC as per the procudure provided for by the 2009/38 Directive.**

This letter has been **signed by the unions from ALL the EU countries where Intesa SanPaolo has got employees.**

In this respect through this Project we have given a strong political input to the setting up of this very EWC.

Time will tell whether we should use the Subsidiary Requirements to impose this EWC, or we will be able to remove that stubborn resistance and open a normal negotiation.

Mario Ongaro.

EUROPEAN PROJECT VS 2019/0016

EMPLOYEE INVOLVEMENT IN THE CHANGING WORK WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS: TRAINING AND POLICIES FROM EUROPEAN DIRECTIVES TO CURRENT PRACTICES

**State of play
and follow-up
Rome, 13-14-15.11.2019**

***by ISRF-LAB
Research Institute in Fisac-Cgil***

DIGITIZATION: BETWEEN MYTH AND REALITY

The reflection on digitization in the finance industry started from an analysis aimed at understanding its role – possibly also in a historical perspective – in the framework of the wider process of “Great Transformation” occurring in this sector. Free from any marketing-oriented approach – supported and promoted by large international strategy consulting groups – we believe that digitization, automation and technological innovation are the only possible ways to tackle three major challenges.

In the first place, digitization has been (and still is) the natural ally of the strategies based on cutting branches and staff which all European banks have adopted in response to the crisis. ISRF LAB, a partner to the Project, has – a bit provocatively – described this strategy as “Less4More”. Basically, while the finance industry was reorganizing, digitization made up for the laying off of 12% of employees and the closing down of 21% of branches in the EU. Therefore, digitization helped finance groups regain profitability. Together with NPL management, digitization actually played a decisive role in going back to acceptable profit rates for investors and management – in spite of an expansive monetary policy and of the creation of a comprehensive and centralized European model of regulation and supervision.

Like the reorganization process, digital innovation has had – and will increasingly have – an impact on another two elements. Firstly, new technologies, new apps and new access tools are three of the most significant demands of new, “hyperconnected” consumers. Even if it is obvious that consumers’ demands are in part influenced by the aggressive and pervasive marketing techniques used by digital ecosystem enterprises, it is also true that functionality, ease of use and convenience are three fundamental goals for any advanced service company striving to stay competitive.

Secondly, the market challenge posed by Big Tech companies (Google, Facebook, Amazon, the Chinese giants Tencent and Alibaba, etc.) is certainly a key test case for the finance industry. The strategy of Big Tech companies – integration in existing platforms, decentralization and disintermediation – can hardly be reconciled with a heavily regulated sector which would actually require more rules on issues like derivatives, safeguards for clients and employees, transparency. This is the challenge of the future, which should not be tackled merely with a market-based approach. On the contrary, it requires all stakeholders – businesses, trade unions, political institutions and regulatory authorities – to work together to prevent the “creative destruction” process of Big Tech companies from

overwhelming the finance industry and sweeping away all employment guarantees, workers' rights and consumers' rights.

EUROPEAN DIRECTIVES ON EMPLOYEE INVOLVEMENT

The analysis of professor Dorssemont, an expert in EU law involved in the Project, focused on the critical aspects of EWC Directives and ensuing "pararegulatory" instruments (Global Framework Agreements and Joint Statements).

First and foremost, the instruments provided for by the European Directives are inherently weak. In the daily practices of EWCs, this has translated into an excess of information and insufficient consultation. This means that trade unions have often been involved only at a late stage, when the strategies of a business plan or reorganization process have already been decided and are about to be implemented. As a result, within EWCs – not only in the banking sector – the behaviour of management has often undermined the workers' right to consultation, replacing it with one-way communication. Furthermore, practices change considerably from one EWC to the other and participation in EWCs has also been "artificially" restricted in several ways, in particular for representatives of companies owned for less than 50% by large European banks (EWC Directives may not be applied under this percentage).

The difficulties in the interpretation of EWC Directives have had an impact on the "pararegulatory" instruments elaborated at a supranational or EWC level in the last twenty years. The analysis of professor Dorssemont highlighted that the definitions used by the European legislator with regard to social dialogue are inherently ambiguous. The Fitness Check, i.e. the process defined at the EU level to assess whether the regulatory framework for a policy sector is fit for purpose, actually opens the way to deregulation and, speaking of legislation on workers' rights and trade union rights, it could further weaken the role of EWCs in the future.

In this respect, through this Project we want to make our contribution to the Fitness Check by providing some elements of analysis and proposals to improve the effectiveness and applicability of Directives on employee involvement in the changing work environment within the 4.0 finance industry.

With the help and expertise of professor Dorssemont, we analyzed relevant Directives, as well as related regulatory and social dialogue instruments created within the EWCs involved in the Project and in the framework of industry-wide and general European Social Dialogue.

During the second Plenary (Rome, 13-15 November), with the help of professor Dorssemont, we would like to identify the critical aspects in the implementation of the Directives, in order to elaborate detailed proposals to rewrite or integrate specific parts of the Directives, or proposals for an implementing regulation of the Directives.

THE DEBATE AND THE INVOLVEMENT OF SOCIAL PARTNERS AND EUROPEAN PARLIAMENT

The first point emerging from the debate is diversity across countries, both in terms of labour and trade union law and in terms of participation in strategic decisions. In particular, the disparity between Eastern and Western Europe is still very serious. Eastern European countries keep on having difficulties deriving from a legislation which makes it much harder to protect workers and to set up negotiating bodies. These problems then

affect EWCs, whose hardships cannot be attributed to the willingness of trade unions to represent workers with different rights, different salaries and different working conditions.

With respect to EWCs, the issue of national differences was discussed by the representatives of all the countries involved in the Project. In particular, the debate highlighted that there are some inequalities in access to information between workers' representatives from different countries, especially as far as the German co-determination model is concerned.

With respect to digitization, the debate emphasized that, through their role and their actions, trade unions should help take the opportunities opened up by this force of transformation. In other words, modernity should not be detrimental to workers, but it should become a springboard for strengthening the role of trade unions and for improving workers' conditions. However, trade unions must first analyze more in depth certain elements. Firstly, it is necessary to have a more structured view of the changes brought about by digitization in the world of work. For instance, the disappearance of some jobs is balanced by the emergence of new jobs, new activities and new professional skills. All in all, modernization alone does not completely eliminate the need for the human factor. Especially in the banking sector, the more simple operations at the counter disappear, the higher the need is for professional advice in the management of increasingly complex financial products. Therefore, workers need to acquire new professional skills. To this purpose, they need help with retraining, continuing professional development and training (which should be seen as an investment). This would also promote a more effective collaboration between the older generations of bank workers, who acquire new skills and reorganize their professional lives, and the digital natives, who are already familiar with new technologies and have an open mindset towards them.

In this regard, it is of paramount importance to govern the digitization process effectively with a view to rebuilding a joint governance of change in the finance industry. In order to anticipate – and not to suffer – change, Agostino Megale, President of ISRF Lab, put forward a proposal for a “Regulatory-Institutional Sequence” bringing together the needs for a Europe-wide information activity and for “macro” social plans and the national dimension through industry-wide coordination units. At the national company level, efforts for employee involvement and participatory democracy should strive to engage the trade unions and workers' representatives of the various countries before the launch of business plans, in order to discuss and assess their effects and consequences in advance and to take pre-emptive actions together.

Another element of discussion concerned the internal yet strategic issue of generational replacement in trade unions. Even if with some differences from one country to the other, all participants emphasized that it is extremely difficult to involve young generations of bank workers in trade unions, as well as – and even more so – to select future union officers capable of bringing the added value that is necessary to manage digitization processes in the finance industry. This key problem is also related with the issue of the skills needed for collective bargaining in a profoundly changed environment. During negotiations, companies adopt a more and more technical approach. This certainly poses a threat, because technicalizing is an attempt to keep more genuinely political and social issues off the table. However, it is clear that re-skilling is truly necessary also for union officers and trade unions as a whole.

The second Plenary (Rome, 13-15 November) will include a discussion with representatives of the employers' side. Some of them participate in some of the EWCs involved in our Project, while others are active in the European employers' association of the banking sector. In addition, we will host a Member of the European Parliament, elected on 26 May, who sits in the Committee on Employment and Social Affairs.

First of all, with our social partners we would like to elaborate joint proposals for the Fitness Check of the EWC Directives and link them with our more general request for joint discussions aimed at anticipating and governing change.

Then, we would like to ask the Member of the European Parliament what opportunities we have to work with the current European Parliament and Commission for the adoption of our proposals and to support us in this long journey.

INTRODUCTORY REPORT Rome, 13th November 2019

by Mario Ongaro

Welcome!

Good afternoon to all of you! It is very nice to be back together after the Belgrade Plenary and to see some new faces. In particular, I would like to give a warm welcome to Monica Carta, Head of International Social Dialogue for the Unicredit group.

Jens Thau will join us later this evening in his double capacity of President of the Banking Committee for European Social Affairs of the European Banking Federation and of Representative of the German Banking Association.

During the Round Table of Friday morning, we will also be joined by Emanuele Recchia and Patrizia Ordasso, Heads of Industrial Relations for Unicredit and Intesa SanPaolo respectively.

The participation of several highly qualified social partners and employers' representatives from our sector bears testament to the importance and usefulness of what we are trying

to do through this European Project. It is also a distinctive trait of our Second Plenary, which I am going to talk about later in my speech.

I would also like to give a warm welcome to the trade union representatives who either were not able to join us last time or who participate for the first time in our Project: Elena Cherubini, member of the Secretariat of the Central Coordination Unit for Fisac-Cgil in Intesa SanPaolo; Bianca Cuciniello from the Groupama EWC Secretariat; Meral Gunenc from the National Secretariat of Basisen, the Turkish trade union of the financial sector (with whom we have been good friends for 25 years already); Ana Herranz from the National Secretariat of Servicios CcOo; Agostino Megale, President of the research institute ISRF LAB of Fisac-Cgil and former Secretary-General of Fisac-Cgil; Marcello Carcereri from the Santander EWC; and Stefano Di Dio.

I do not intend to illustrate the stages of the Project up to now, as I think that Roberto Errico and Stefano Di Dio will give you a systematic and comprehensive overview.

Employment perspectives in the 4.0 change

I would like to focus on a couple of central elements for this Project. First, the Project was elaborated with the idea in mind that industry 4.0 change can be seen both as a problem – a very serious one in some regards – and as an opportunity for positive developments. The key point is to understand to which extent it is a problem and to which extent it is an opportunity.

Very schematically, the issue for us is to quantify the number of jobs which have already been lost and which will be lost in our sector in the next 5 years.

Furthermore, we have to disaggregate the overall figure to analyse more specific elements: the number of jobs lost in the various segments of the banking production cycle; the workforce segments who have been and who will be most affected by the digitization trend; the organization of banks across different geographical regions; and disintermediation – all this in a phase in which work productivity in banks is increasing and can only increase through job cuts.

But is that really so?

We believe that this is not true.

We actually believe that changes in work organization also bring about some interesting opportunities, which trade unions must be able to grasp, examine and organize.

A new segment of 4.0 workforce

I am referring to the workforce segments that, thanks to innovation, can now combine skills and productivity with a relative independence in the management of working hours and of ways to reach production targets (which they certainly cannot decide on their own, but which are imposed on them).

In this situation, the borders between the typical employee and the self-employed are blurred.

New forms of flexibility emerge in which, in my opinion, the subjective, individual dimension of employees plays a key role (especially for women).

Their age, determination to experiment something new and to pursue professional growth and an increased remuneration (with a significant – even if not decisive – variable portion) are important factors.

Equally important are their relational skills, as they are asked to build trust with clients. This trust is constantly tested in the light of the results obtained by clients through their investments. And an important aspect is that clients trust the person representing the bank even more than the bank where this person works.

In this Project we decided to focus on these new professional figures, also to promote (and I am saying it explicitly) **a best practice** in terms of negotiations with management, i.e. the internal Agreement of Intesa SanPaolo. The Agreement was presented by our colleagues from the unitary trade union representation of Intesa SanPaolo during the Belgrade Plenary last June.

But our focus is more on trade unions as a negotiating party than on the training needs of union representatives, who must be able to organize and effectively represent this innovative, highly-skilled segment of the banking workforce.

In this regard, during this event I will repeatedly remind you that, in view of the March 2020 deadline, in your capacity of EWC representatives, you will have to select a worker to accompany you to Rome on the third weekend of March. On that occasion, we will be glad to listen directly to their stories and experience at work in the 4.0 era.

I am aware that this may not be an easy task. However, I am confident that, thanks to your experience and network of links with trade union affiliates, you will be able to find someone willing to come to Rome for a couple of days on a weekend (without necessarily having to take leave) and to tell us about their experience. Their input will give us some food for thought and some valuable elements for our work. Of course, in accordance with our budget rules, we will bear all the costs arising from their participation, i.e. travel, accommodation and interpreting (only between English and Italian).

I will repeat this request also in the coming days.

The employers' reps' participation in our Project

I am also aware that some of you may be thinking that I am repeating several things, such as the distinction between obsolescent workforce and a more forward-looking workforce...While this may be true, the key point at this stage of the Project is not only to raise these issues among union officers, but to discuss them with our social partners, i.e. the representatives of transnational groups and European employers' associations.

This is something that should be added to the information and consultation procedures we have at a group and at a European level and to the topics discussed in the framework of industry-wide social dialogue.

After the meetings we organized in Sofia last April and in Belgrade last June, this is the first time that we have employers' representatives with us (with some of them we have already had a fruitful exchange for many years). Let us try to have a conversation on the management of changes in work organization and on European legislation (Directives on employee involvement).

These are two different, yet intertwined levels that must be combined together. It is indeed only through an effective, joint implementation by the social partners of the European legislation we are discussing that we can govern change, adapt to the speed of change and – to a certain extent and for some strategic aspects – anticipate it.

Capitalism to be reformed?

A few days ago, Corrado Passera took an interview in which he argued that capitalism must imperatively change to better protect and promote the common good and abandon neoliberalism once and for all. Failure to do so would lead to worse disasters than the ones we experienced in the past decade. Corrado Passera also pointed the finger at the growing and unbearable inequalities and irrational concentration of wealth and power which the free market – if seen as an absolute – and politics – if they support it and become subordinate to it – have brought about.

I am quoting him not only because he was a very important manager and entrepreneur in our sector, but also because I think that his is a very useful, concrete and not at all ideological approach. In this regard, I think that our Project – albeit on a small scale – will provide some valuable arguments.

Thirty years after the fall of the Berlin Wall and the ensuing implosion of the Soviet Union, on the one hand, I think that we all agree that it would be foolish to go back to the juxtaposition of social and economic models (today, I believe that, while we need to distance ourselves from real socialism, the analysis of Karl Marx deserves to be rediscovered).

On the other hand, it is also evident that the ideological and propagandistic infatuation with deregulation and the free market has actually led the whole world to an oligopolistic and monopolistic concentration. This concentration has not only reduced the income and rights of an increasing share of workers, but it is also gradually destroying freedom of enterprise and free competition, i.e. the founding values of capitalism which the current economic and political developments are increasingly and concretely threatening.

Therefore, as social partners we must discuss industry 4.0 changes and find joint instruments, negotiation and legislation tools at a European level to try to govern the impact of change and control its direction. We must also encourage MEPs to propose a reform of the European Directives on employee involvement. To this purpose, we are going to carry out our own fitness check, so as to contribute to the fitness check recently launched by the European Commission. We may also be openly critical, if we conclude that Professor Dorssemont is right to warn us that the fitness check is actually a way to propose deregulation and to dismantle the Directives. According to him, if the fitness check demonstrates that the Directives are not as effective as expected, the European Commission will simply try to drastically simplify them and to abolish some of their provisions.

We will make our contribution during the **Round Table on Friday morning**, but tomorrow we will already start to work in that direction. We will have speeches by Monica Carta and Jens Thau. They will be followed by the lecture of Filip Dorssemont, who unfortunately will not be here with us, but connected from the University where he works. Nonetheless, I am confident that his lecture will be just as effective as if he was here in person.

Tomorrow afternoon we will have an exchange of views on **Professor Dorssemont's** lecture (by the way, you have already received an email with a draft version of his lecture, with the main points he will address). He will continue to follow us remotely during our open discussion. This will be the first opportunity for us to work together on reform proposals we may agree on with our social partners. We will then have other opportunities for a more in-depth discussion as we approach the conclusive Plenary of the Project in June 2020.

Today, in the afternoon, we will take stock of our progress in the Project. After my speech, we will not just check the materials and documentation we have collected so far. We certainly have an impressive amount of high-quality data, presentations, studies and speeches on the Drive folder of our Project. However, all this material should be fit for use and be used by all of you. Today, we will also check if this the case and we will try to fix any flaws and take any other necessary measures to favour usage of the documentation.

This check will be followed by the speeches of Roberto Errico and Stefano Di Dio on the state of the art of the Project and its immediate prospects.

Today we will also briefly talk about an item we had on the agenda in Belgrade, but which we did not have time to discuss. We will talk about the role of trade unions in EWCs according to the combined provisions of Directive 2009/38 and national legislations on

company-level workers' representation in the 4 countries where the 8 groups involved in the Project are based. This presentation will integrate the training/legal part of our Project with some elements drawn from the concrete experience of trade unions.

We will also be glad to listen to Meral's presentation about Turkey, which will complete the round of presentations we had in Belgrade (where no one from Basisen was able to attend) about the new EU Member States and Candidate Countries.

Before the conclusions of Claudio Cornelli, National Secretary of Fisac-Cgil in charge of International Affairs, we will have an update on the EWCs – and more in general the transnational groups – represented here by the union officers who chair and/or coordinate them. We will start later this afternoon with Credit Agricole, Société Générale and Bnp-Paribas and we will continue with the others tomorrow morning.

The goal of having this item on the agenda is to constantly stay up-to-date on the priorities and changes occurring in the transnational groups represented here. This is necessary in order to better coordinate our actions in the framework of the Project on the basis of our experience on the ground.

13 proposals for the revision of the

Directives to improve employee involvement

***by Prof. Filip Dorssemont* -
University of Louvain - legal expert
for our European Project***

(*coordinated with the Fisac Staff of the Project)

1) Generalizing the wording "with a view to reaching an agreement" to the EWC Directive 2002/38 in case of information and consultation

concerning proposed decisions which affect the employees' interests under exceptional circumstances

from:

art.4.4.e) of Directive 2002/14 on the information and consultation of employees

art.7.2 of Directive 2001/23 on the transfer of undertakings art.

2.1 of Directive 98/59 on collective redundancies

2) Generalizing the wording "The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express" (Directive 2009/38 on information and consultation) to the other Directives on employee involvement.

3) In case of restructuring, the Directives on employee involvement must include an obligation to information and consultation, instead of a simple "right" for workers to be informed and consulted.

4) The EU Directives on employee involvement should include corporate strategies and economic policies in the right to information and consultation, and not only their implementation.

5) The wording "information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1)" (Art.4.2.c of Directive 2002/14 establishing a general framework for informing and consulting employees) is preferable to the wording "Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed" (subsidiary requirements of Recast Directive 2009/38).

6) We need to have information and consultation procedures at all levels: -establishment -undertaking -group of undertakings -Community-scale group of undertakings

7) Representatives of Community-level trade unions can serve as experts for the special negotiating body. This provision should be extended to their role as experts in EWCs as well.

8) Granting the right to training for workers' representatives not only at the EWC level, but also at the establishment or undertaking level.

9) Stating clearly that the costs of this training should be borne by the local and central management. Workers' representatives should also be left free to choose their training path, provided that they communicate the summary of training activities to the local and central management.

10) Generalizing the role of experts at the local as well as central level.

11) Ensuring that, if there are no workers' representatives, there is a default scenario not only in the case of transfer of undertaking, but also

in the case of collective redundancies. Furthermore, making sure that, if there are no workers' representatives, a generic system for employee involvement is put in place.

12) *In case of **collective redundancies**, Member States can choose between **two different definitions**. Ensuring that there is information and consultation in both scenarios or definitions of collective redundancies. **Extending the definition of collective redundancies over a period of 90 days to 6 months.***

SEE THE FOLLOWING concerning the above point 12.

Article 1 - Directive 98/59

1. For the purposes of this Directive:

a) 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, **according to the choice of the Member States**, the number of redundancies is:

➤ either, over a period of 30 days:

at least 10 in establishments normally employing more than 20 and less than 100 workers,

at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers,

at least 30 in establishments normally employing 300 workers or more,

➤ or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

13. *Establishing an explicit sanction in case of violation of information and consultation procedures, such as the suspension of the restructuring process.*

QUESTIONS FOR THE ROUND TABLE OF FRIDAY 15.11, 10 – 13 a.m.

- On the basis of your experience in your company, how would you judge the impact of European legislation on the activity of your EWC and/or more in general on industrial relations in your transnational group? (Please refer in particular to the Directives on employee involvement, but without excluding other Directives which you consider relevant in this regard)

Emanuele Recchia and Patrizia Ordasso

- On the basis of your experience of European Social Dialogue in the Banking Sector, how would you judge the impact of European legislation on European Social Dialogue in the Banking Sector so far? (Please refer in particular to the Directives on employee involvement, but without excluding other Directives which you consider relevant in this regard)

Has it been a valuable support tool?

How would you judge the role of the European Commission in European Social Dialogue in the Banking Sector?

Angelo Di Cristo and Jens Thau

- On the basis of your experience in the previous legislature and now, how would you judge the Fitness Check on the Directives on employee involvement proposed/promoted by the European Commission?

Brando Benifei

- What are your impressions on Professor Dorssemont's proposals on these European Directives?

Angelo Di Cristo, Jens Thau, Emanuele Recchia, Alfio Filosomi

- Do you think it is possible for your Federations to find common ground and to work together on Professor Dorssemont's proposals on these European Directives?

Angelo Di Cristo, Jens Thau

- *Anticipating change: from information/consultation during decision-making to participation.*

In your opinion, how can we manage this process and with which tools – both within your EWC and, more in general, in industrial relations in your transnational groups (starting for instance from business plans and without prejudice to confidentiality clauses)?

Emanuele Recchia, Patrizia Ordasso

- Which consequences can the time/era of shrinking financial intermediation margins (active and passive rates), of increasing capital requirements (Basel, etc.), of the drive towards digitization have on the transnational structure of your groups, in terms of geographical extent and growth and/or reorganization prospects?

Emanuele Recchia, Patrizia Ordasso

- After this round table, what can you do within the Committee on Employment and within the European Parliament to make European legislation more effective in promoting employee involvement? Considering the current majority and, more in general, the distribution of seats in the Parliament elected on 26 May, as well as the Agenda of the new European Commission, which alliances can you envisage on the issue of employee involvement?

Brando Benifei

Before opening our discussion and dialogue with the employers' reps attending the seminar, we had distributed to them and all participants the 13-point document that Prof. Dorssemont had presented to the Plenary.

Such a background was meant to manage the **final round table** that we called:

"How to support day-to-day operations and improve the effectiveness of EU legislation on employee involvement in the 4.0 finance industry and the changing work environment; the anticipation of change: from information/ consultation at the decision making stage to participation".

This round table was **attended by:**

- Mr Jens Thau, chairman of the European Banking Federation's Banking Committee for European Social Affairs,
- Mr Emanuele Recchia, Head of Labour policies, Industrial relations and Welfare at Unicredit Group,
- Mrs Patrizia Ordasso, Responsible for Trade Union affairs and Labour policies at Intesa Sanpaolo,
- and on behalf of the trade unions,
- by Mr Angelo Di Cristo, Head of Uni Finance and
- Mr Giuliano Calcagni, at that time FISAC-CGIL General Secretary.
- The European Parliament was represented by Mr Brando Benifei, MEP, from the Employment and Social Affairs Committee.

Our realistic expectations from this first discussion and exchange of points of view, namely with the employers' reps, **were fulfilled**, since their feedback to our proposals showed their willingness to develop and to deepen the dialogue even if of course they did not agree about certain specific points and requested a convenient amount of time to reflect upon the proposals.

MEP Brando Benifei about Dorssemont's 13 points

Question by Mario Ongaro:

It was also thanks to the initiative we took with Brando Benifei at the end of our previous European Project VS/2015/0359, which led the Employment Committee of the European Parliament to submit a question on a possible reform of the EWC Directive, that the Commission decided to carry out a fitness check, i.e. to assess the state of implementation of Directives on employee involvement.

That was a very significant result. However, we are bit worried about the approach that seems to prevail in this fitness check (as our expert, Filip Dorssemont, warned us). The Commission seems to think that, if these Directives are not being effective, it is because they are too prescriptive, so they need to be simplified, dismantled, deregulated.

I would like to ask Brando Benifei what he thinks about it.

Brando Benifei

In the case of the EWC reform, which is what we are discussing here in connection with the fitness check, already in 2016 we expected a report from the European Commission. However, this did not happen.

During one of the meetings in which I took part, I asked the European Commission when they would perform their task. Then, also thanks to the involvement of some colleagues, the Commission decided to launch the fitness check – albeit late.

However, we are not very happy. Many of us believe that the European Commission did not consider the main critical aspects of current EWC legislation. It also failed to define a clear position on the need for a reform. Under these circumstances, a reform even risks being worse than what we already have, whereas we want to make the rules more effective.

In particular, I agree with several colleagues that there is a negative aspect in the report of the Commission, i.e. its failure to address the inconsistency between the objectives listed in the EWC Directive and their actual implementation (mostly with respect to the timeliness and completeness of information and consultation procedures). This is indeed a crucial point and any failure to address it would make the existence of EWCs useless.

I would also like to add that the approach of the European Parliament – at least of a majority of MEPs – is more in line with the approach summarized by Mario Ongaro.

The European Pillar on Social Rights, which was approved and solemnly presented in 2017 (in the final stages of the discussion which led at last to the fitness check), expressly mentions the need to promote dialogue between social partners and employee involvement in the recommendations contained in Chapter II par. 8: “workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies.”

In its accompanying report to the approval of the Pillar, the European Parliament stated very clearly that it is necessary to better monitor the actual implementation of relevant legislation in existing EWCs. Furthermore, it also highlighted the need for effective measures for an increased social responsibility in industrial reorganization processes. In my opinion, this is also one of the goals we set ourselves when we create these information and consultation mechanisms. The European Parliament also asked for a better coordination among the local,

regional, national and European levels. This is necessary in order for EWCs to be able to express their opinions in good time at the various levels, in such a way for effective actions to be taken.

Then, it is also necessary to discuss the abuse of confidentiality clauses and to better define under which circumstances and for how long management can withdraw sensitive information.

All these issues require us to work with the new European Commission to discuss a possible revision and reform of Directive 2009/38.

I believe that it is now time to reopen the discussion we had with the outgoing Commissioner with the new one.

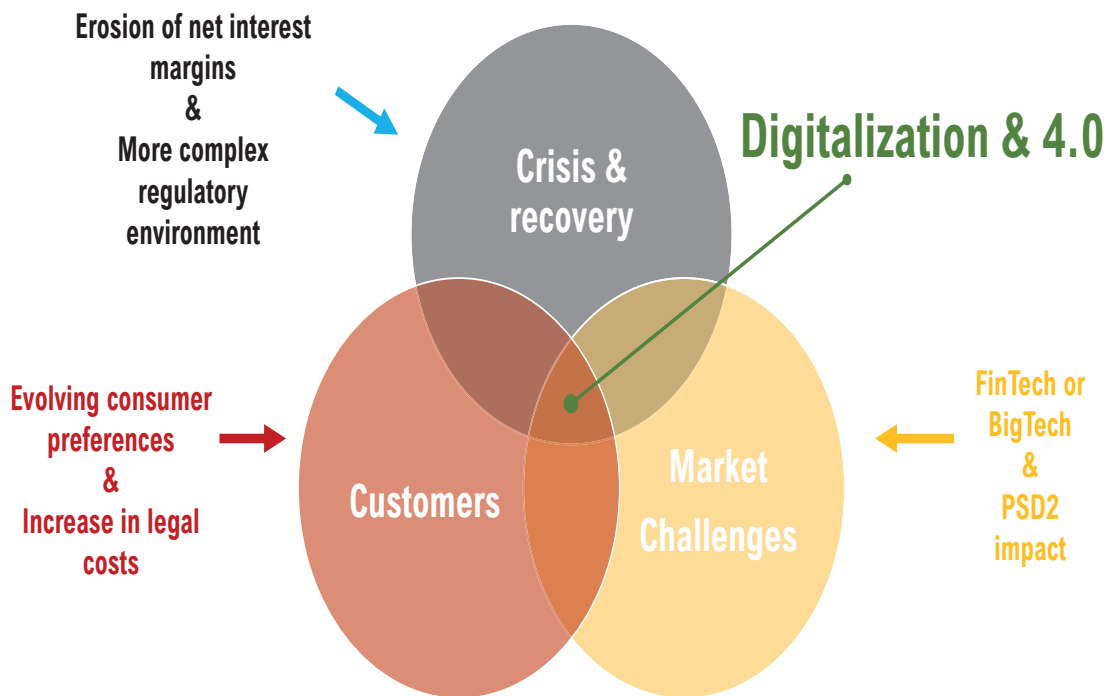
Digitalization, Restructuring Strategies & EWCs in Europe

www.fisaccgil.it/lab

Digitalization & Restructuring processes: an overview

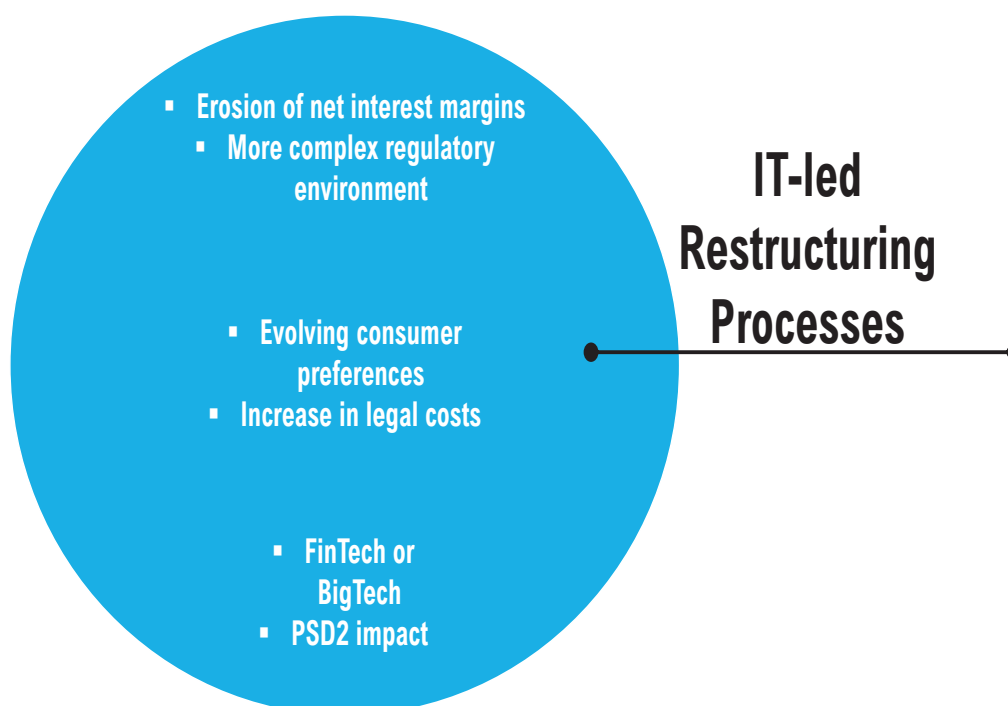
www.fisaccgil.it/lab

Digitalization: Key issues



www.fisaccgil.it/lab

Digitalization & Restructuring processes



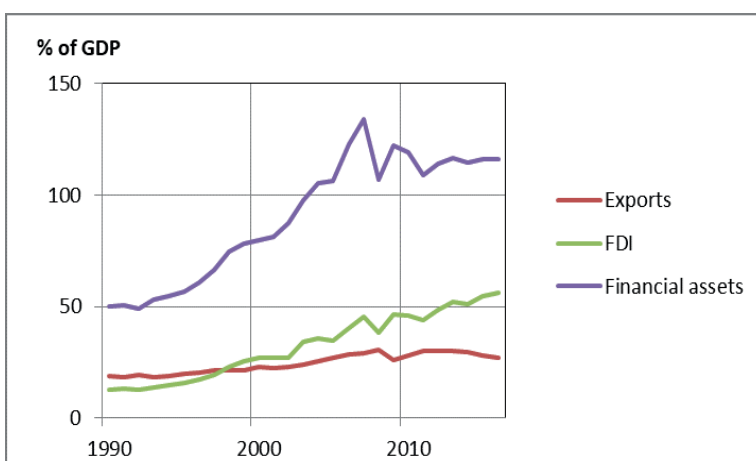
www.fisaccgil.it/lab

Restructuring processes

- A pervasive feature of the global market.
- Is now part of the ordinary tool of organizational or business strategy
- No longer necessarily associated with organizational decline and failure
- Very often restructuring continues to lead to a reduction in the number of employees, even in companies with high profitability

www.fisaccgil.it/lab

Restructuring processes & Financial sector



- Global Financial Assets value is higher than FDI + Exports
- Financial Sector is leading a deeper Global market integration



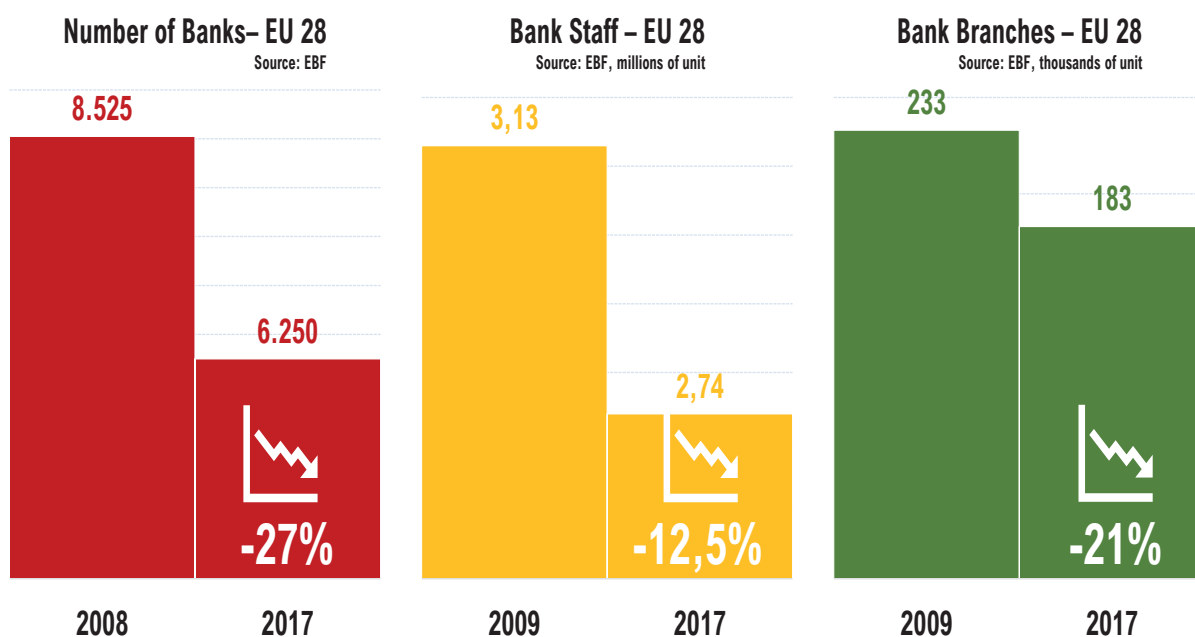
Finance & Technology are the greatest driver of the restructuring processes of Agroindustry, Manufacturing and Services on the Global scale.

www.fisaccgil.it/lab

4.0 Banking in Europe: the «Less4More» strategy

www.fisaccgil.it/lab

4.0 Banking in Europe: A «Less4More» Strategy

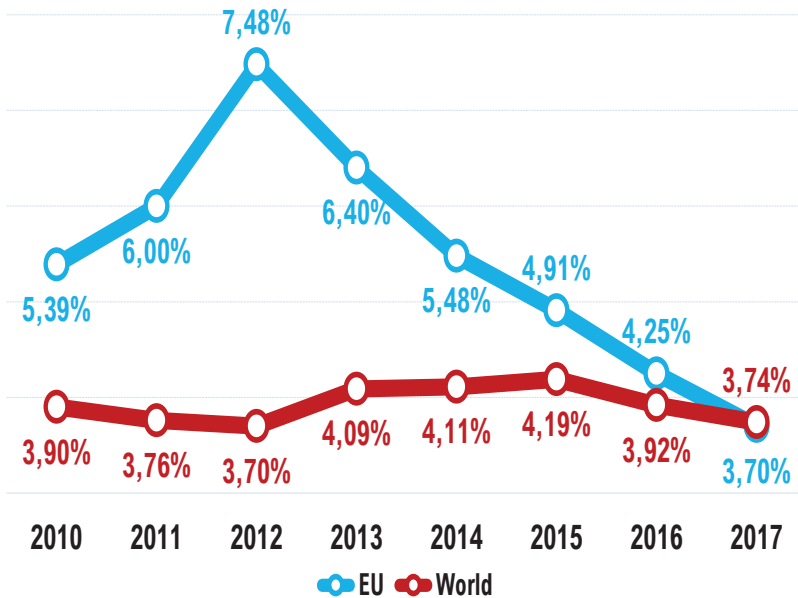


www.fisaccgil.it/lab

4.0 Banking in Europe: A «Less4More» Strategy

NPLs to gross loans Ratio

Sources: EBF and ECB



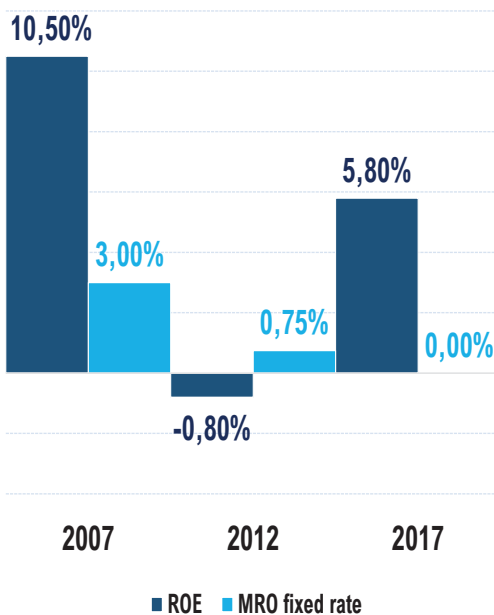
NPL stocks have decreased considerably in recent years (-40% between 2014 and 2018)

www.fisaccgil.it/lab

4.0 Banking in Europe: A «Less4More» Strategy

Return on Equity & ECB's MRO

Source: EBA and EBF data



- 2007: 10,50%
- 2011/2012: Banking crisis in particular in Spain and Greece affects balance sheets of EU banks
- 2017: A significant increase in profitability despite the negative impact of net interest income

www.fisaccgil.it/lab

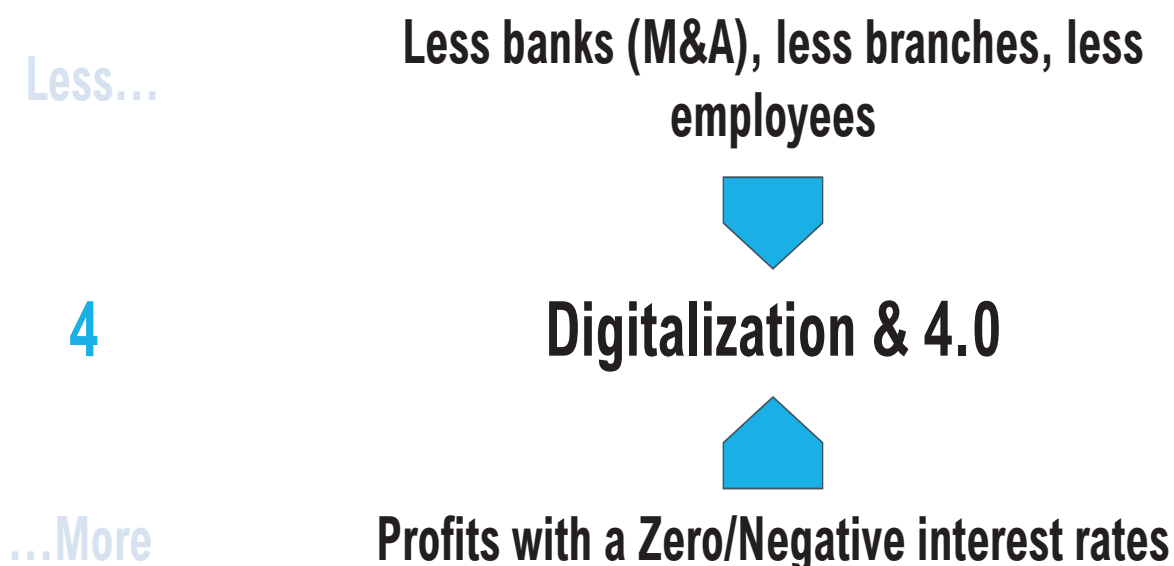
Digitalization & 4.0: a cost-cutting strategy

«Promising opportunities seem to arise in commercial banking. This is possibly due to the potential benefits of the new technology-based propositions such as aggregator models, use of robo-advice and application of better data analytics. This can be also seen as possible explanation of banks' growing appetite to adress costs trough increasing automation and digitalization»

EBA REPORT ON THE IMPACT OF FINTECH ON INCUMBENT CREDIT INSTITUTIONS' BUSINESS MODELS, 2017, page 12

www.fisaccgil.it/lab

4.0 Banking in Europe: A «Less4More» Strategy



www.fisaccgil.it/lab

Restructuring: Crisis Years (07/12)

EU-28 Annual average growth rate: -0,10%

Sectors	N.	GAIN-LOSS	% OF RESTRUCTURING PROCESS WITH JOB LOSSES	RESTRUCTURING JOB RATIO
PA, defence & education	376	-471.281	87,23%	10,48
Agriculture	28	-8.986	75,00%	7,24
Manufacturing, Mining&Quarring, Construction	5.092	-589.790	69,15%	2,04
Utilities	153	-10.073	64,71%	1,26
Services (without Financial)	2.764	-69.201	51,77%	1,24
Financial Services	588	-237.696	72,62%	4,44

Source: Eurodad

www.fisaccgil.it/lab

Restructuring: Recovery Years (13/18)

EU-28 Annual average growth rate: 1,80%

Sectors	N.	GAIN-LOSS	% OF RESTRUCTURING PROCESS WITH JOB LOSSES	RESTRUCTURING JOB RATIO
PA, defence & education	219	-14.063	61,64%	1,19
Agriculture	31	-902	48,39%	1,44
Manufacturing, Mining&Quarring, Construction	3.870	-164.965	57,49%	1,35
Utilities	172	-51.804	78,49%	2,9
Services (without Financial)	3.662	298.607	38,13%	0,74
Financial Services	584	-243.930	70,89%	6,44

Source: Eurodad

www.fisaccgil.it/lab

EWCs & IT-led Restructuring Processes

How did it go?

www.fisaccgil.it/lab

EWCs: the discussion in Sofia & Beograd...

Ongoing
Restructuring
Processes

Digitalization &
IT-led
transformation



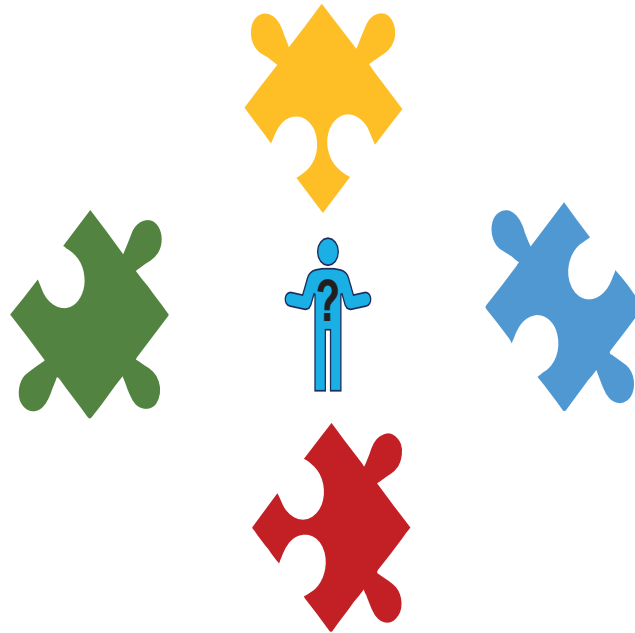
EWCs: what role?

New professions,
new skills, new
needs

www.fisaccgil.it/lab

... & 2 main issues emerged

**EWCs & EU
legislation: a
critical approach**



**Banking 4.0 vs.
Unionism 1.0?**

www.fisaccgil.it/lab

EWCs: Information and Consultation Rights

INFORMATION



**Data transmitted by the
employer to the
workers'
representatives to
enable them to take
note of an issue and
examine it.**

CONSULTATION



**Exchange of views and
establishment of a
dialogue between
employee
representatives and the
employer.**

www.fisaccgil.it/lab

EWCs: Information or Consultation in practice

- More “information” than “consultation”
- Enterprise behaviors that undermine the concept of the right to consultation by workers, replaced by unidirectional communication
- The Ambiguous "paranormative" production

www.fisaccgil.it/lab

EU legislation

- National differences in terms of information access (i.e. German model) vs. EWCs Directives
- Fitness Check or «Regulatory demolition»?

www.fisaccgil.it/lab

Banking 4.0 vs. Unionism 1.0?

4.0 BANKING



- New jobs & new career paths
- A «charming» internal marketing
- Digitalization as a key driver

1.0 UNIONISM?



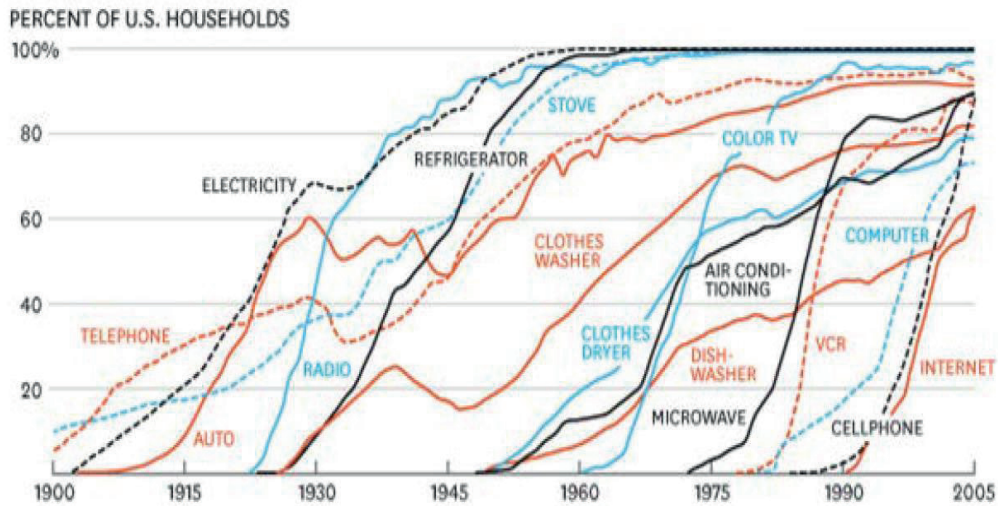
- The Unions are transforming
- They are no longer 1.0 but they still have to fill a gap
- How to intercept new needs?

www.fisaccgil.it/lab

Digital innovation: the global challenge

www.fisaccgil.it/lab

Technology adoption is quicker than ever

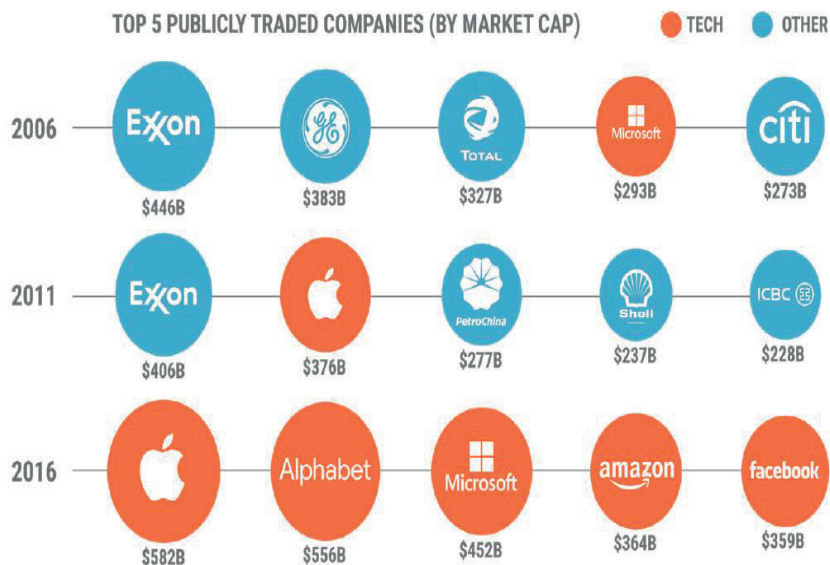


CBINSIGHTS Source: Michael Felton, The New York Times

14

www.fisaccgil.it/lab

Technology is eating every industry



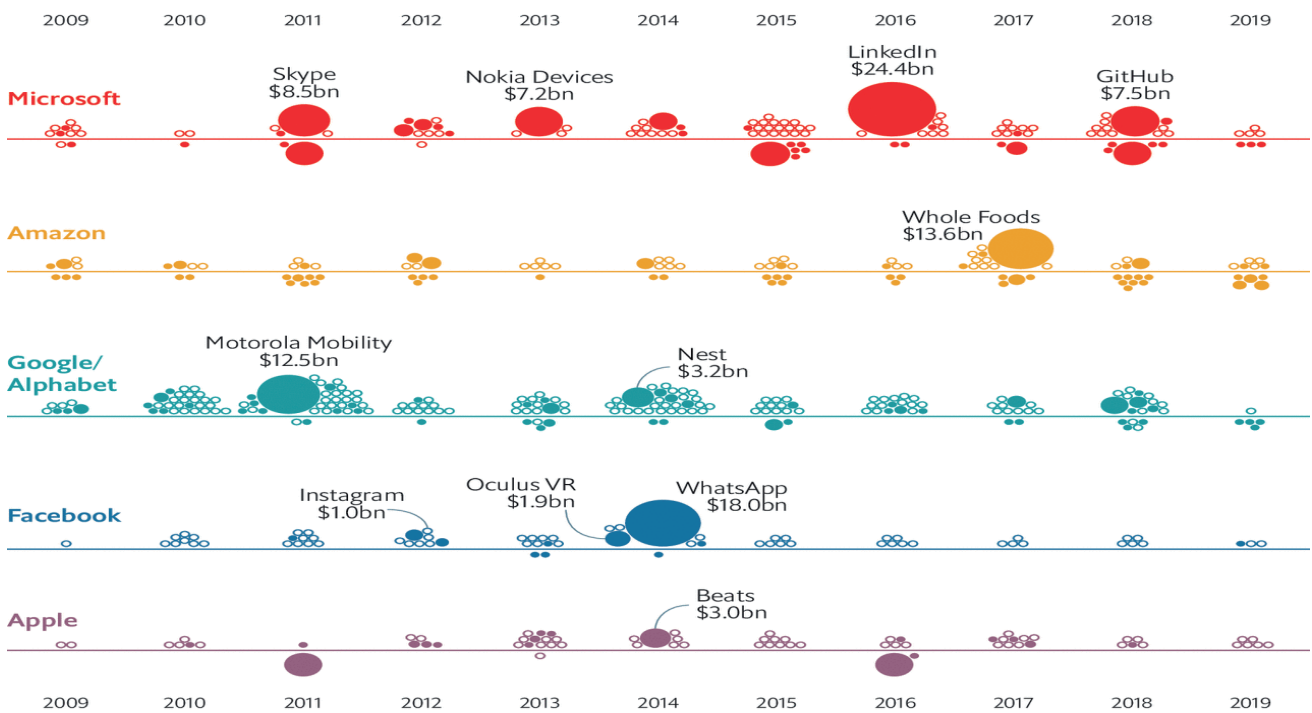
CBINSIGHTS Source: Visual Capitalist

13

www.fisaccgil.it/lab

All you can eat
Acquisitions and investments*
By year and value of deal, 2009–19

Deal value: Not known or less \$250m or less \$1bn
Acquisitions → Investments* →



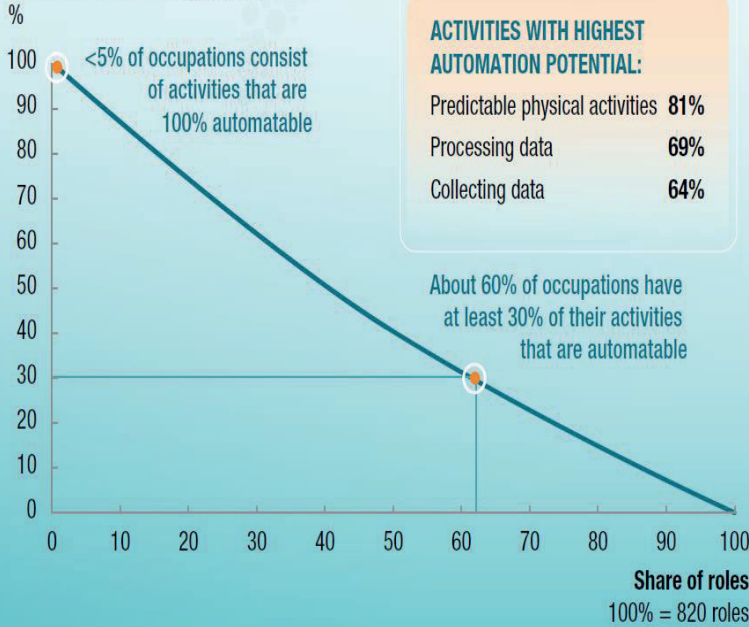
Sources: Bloomberg; The Economist
The Economist

*Partial investment in a company, usually as part of a consortium.
Value shown is the total value of the acquisition, not the share owned by a particular company

Impacts of digital innovation, robotics, artificial intelligence on the labor market

While few occupations are fully automatable, 60 percent of all occupations have at least 30 percent technically automatable activities

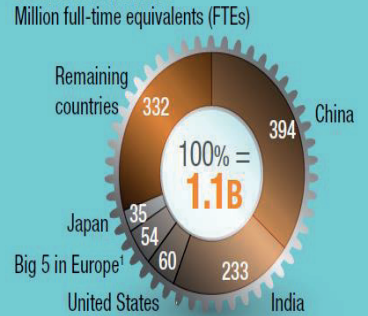
Technical automation potential



Wages associated with technically automatable activities

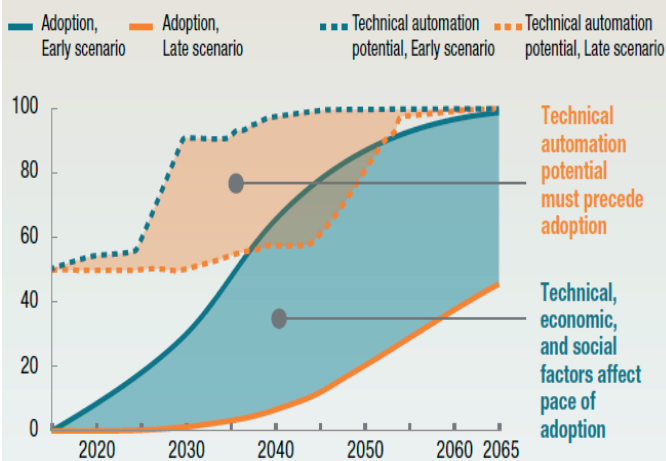


Labor associated with technically automatable activities



¹ France, Germany, Italy, Spain, and the United Kingdom.

Scenarios around time spent on current work activities, %



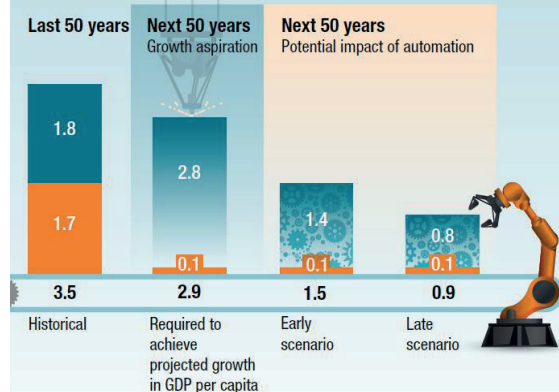
MCKINSEY GLOBAL INSTITUTE

Automation will boost global productivity and raise GDP

G19 plus Nigeria

Productivity growth, %
Automation can help provide some of the productivity needed to achieve future economic growth

Employment growth, %
will slow drastically because of aging



McKinsey&Company

THE VERGE TECH · REVIEWS · SCIENCE · ENTERTAINMENT · VIDEO · MORE ·
Automation threatens 800 million jobs, but technology could still save us, says report

EXPRESS
ROBOT WARNING: Artificial intelligence to steal 'thinking jobs within 45 YEARS'

WSJ **OPINION**
Europe Edition | February 16, 2019 | Print Edition | Video
The Fed Can't Save Jobs From AI and Robots

TechRepublic. COVER STORY f in t + more ·
Why AI could destroy more jobs than it creates, and how to save them

BBC Sign in News Sport Weather Shop Reel Travel Mo
NEWS
WEF: Robots 'will create more jobs than they displace'

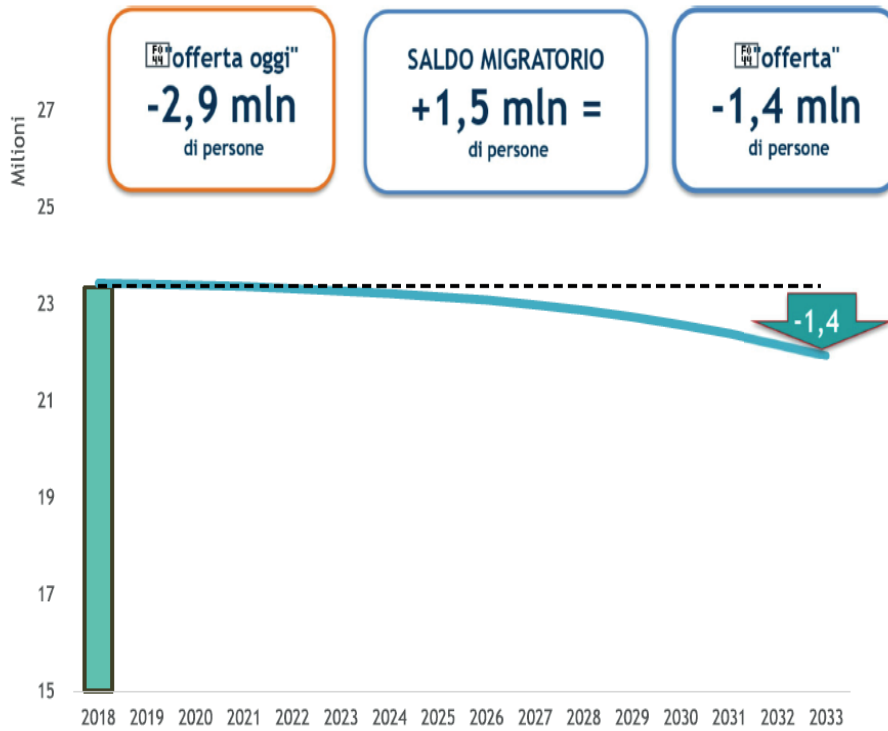
FORTUNE
A.I. Expert Says Automation Could Replace 40% of Jobs in 15 Years

CBINSIGHTS Platform Service
AI Will Put 10 Million Jobs At High Risk – More Than Were Eliminated By The Great Recession

www.fisaccgil.it/lab

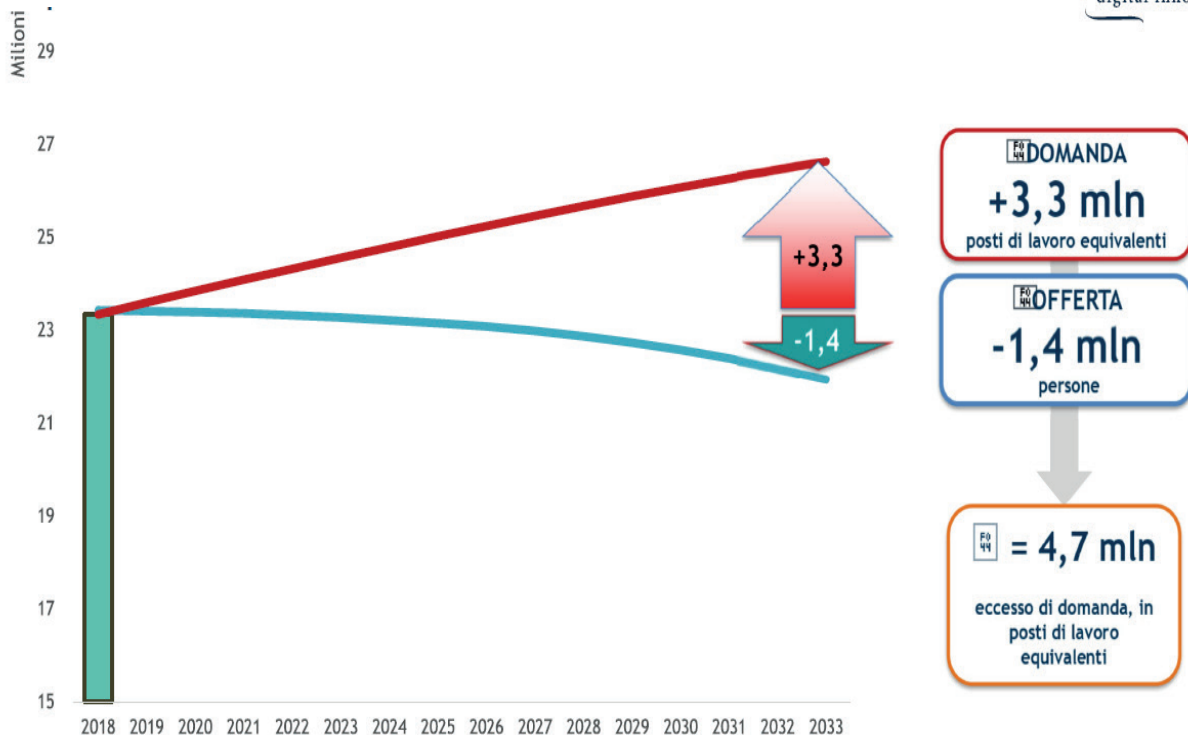
Artificial Intelligence and employment: an assessment for the Italian market

Labor supply evolution



www.fisaccgil.it/lab

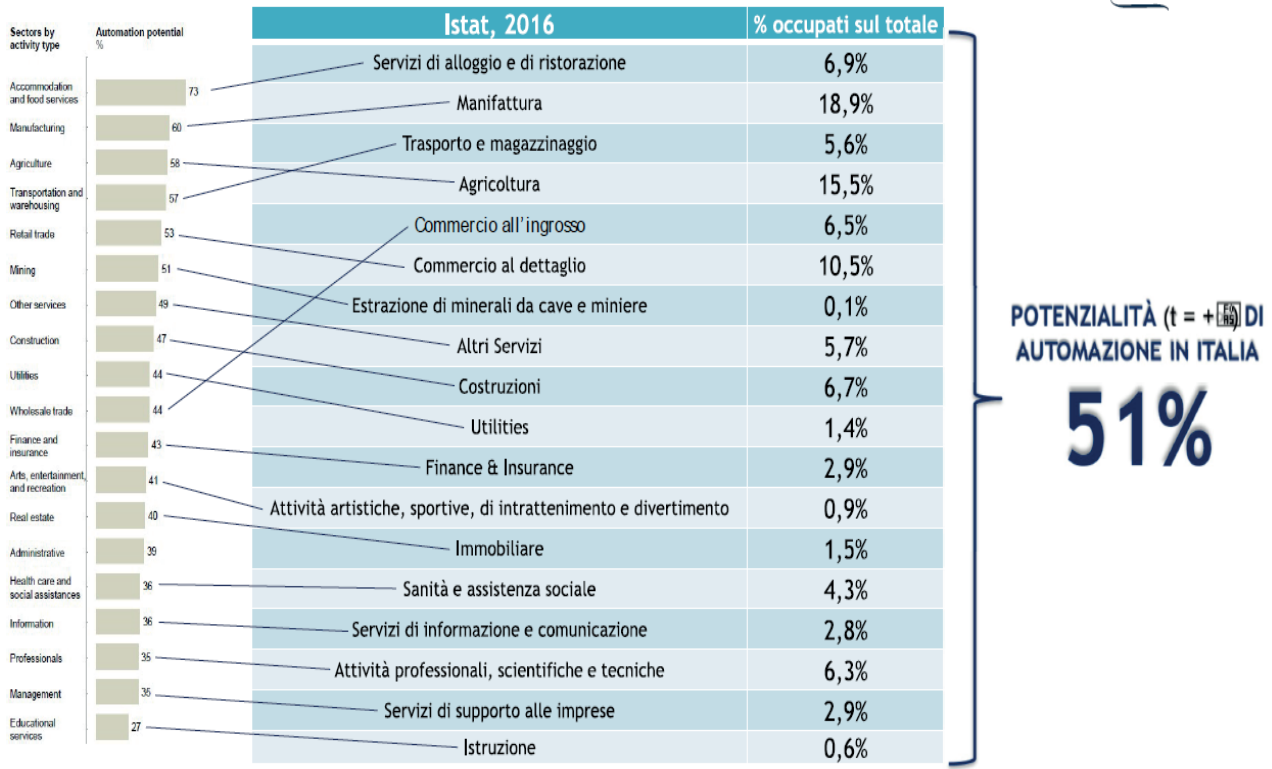
A preliminary assessment



www.fisaccgil.it/lab

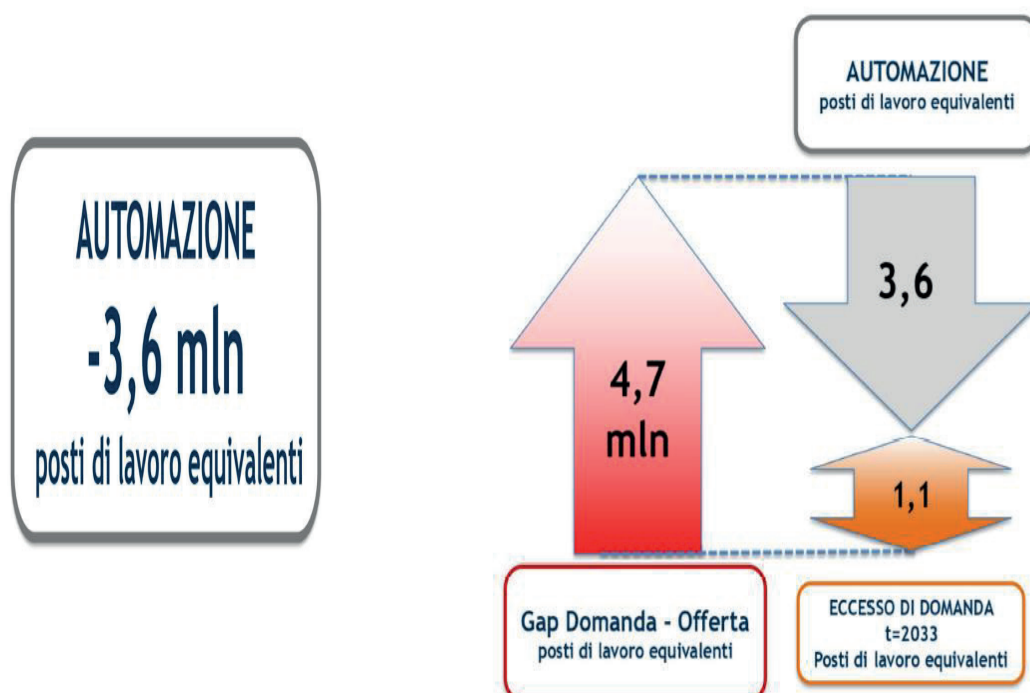
ITALY: Automation Potential

OSSERVATORI.NET
digital innovation



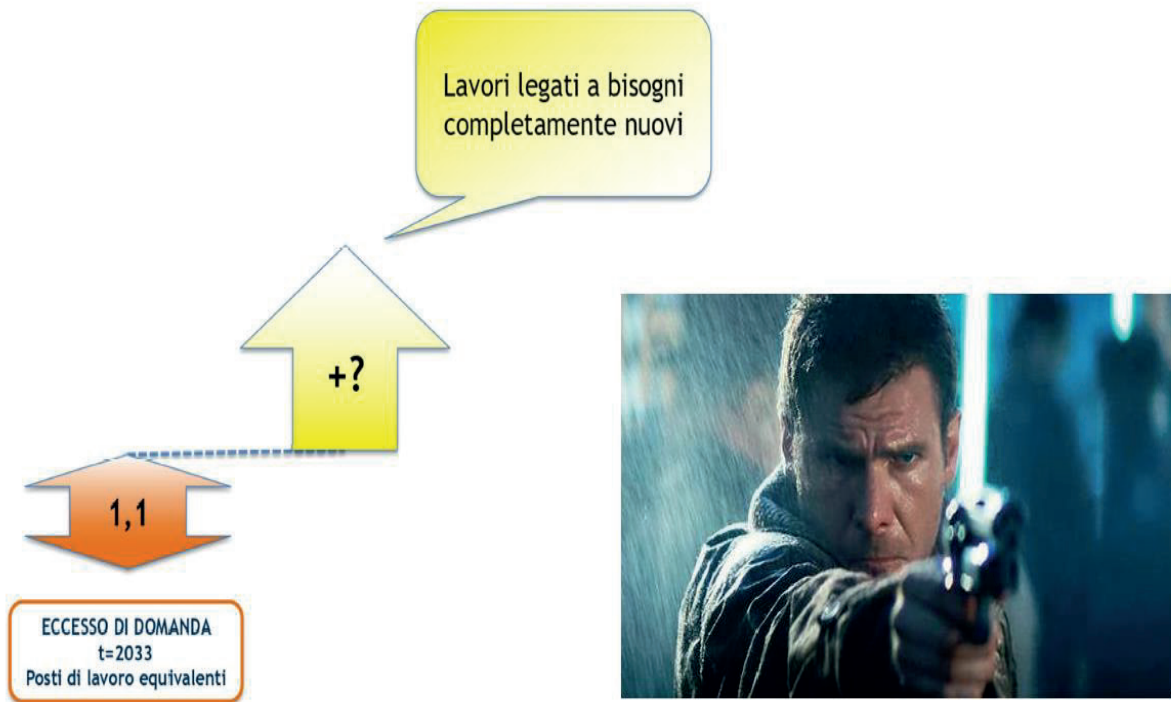
www.fisaccgil.it/lab

ITALY: Automation potential impact in the next 15 years



www.fisaccgil.it/lab

ITALY: Automation Potential



www.fisaccgil.it/lab

Digital innovation: the challenges in the financial services market

www.fisaccgil.it/lab

Market Challenges

Neo-Banks e Neo-Insurances

www.fisaccgil.it/lab

NEO-BANKS

UK

CUSTOMERS WITH MONZO, REVOLUT, ATOM, STARLING, TANDEM (MILLIONS)



SOUTH KOREA

CUSTOMERS WITH KAKAO (MILLIONS)



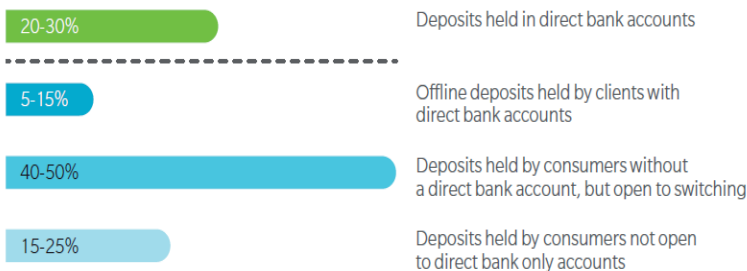
> **15%** of the total banked population attracted by one of South Korea's first digital-only banks in one year

5% UK adult penetration of top digital banks

US DIRECT BANKS

OPENNESS TO DIRECT BANKS

% OF TOTAL HOUSEHOLD DEPOSITS (MONEY MARKET/SAVINGS EXCLUDING UHNW)



> **20%** of US customer deposits in direct bank accounts
Another **50%** with the potential to switch

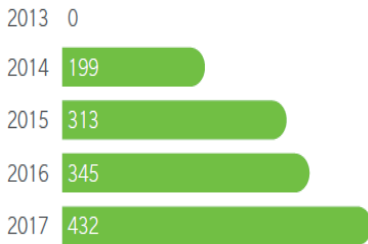
Source: Oliver Wyman Rising Rate Survey

www.fisaccgil.it/lab

NEW P&C OFFERINGS

GROWTH OF ZHONGAN, FIRST ONLINE-ONLY INSURER IN CHINA

NUMBER OF CLIENTS
MILLIONS



NUMBER OF POLICIES SOLD
BILLIONS



> **432 million** customers gained over four years by China's first online-only insurer ZhongAn

Source: Oliver Wyman Analysis; Press Releases

www.fisaccgil.it/lab

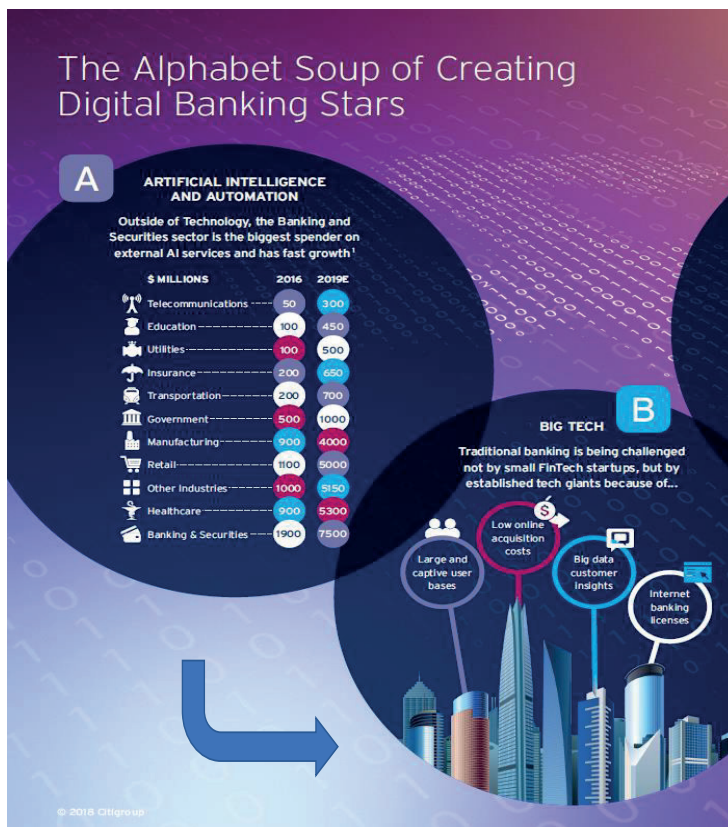
GROUP OF EXISTING BANKS

GROUP OF DIGITAL CHALLENGERS



Market Challenges FinTech - BigTech

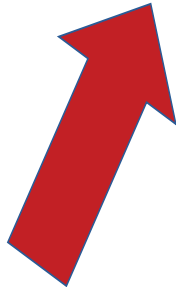
www.fisaccgil.it/lab



www.fisaccgil.it/lab

UNUSUAL SUSPECTS

Amazon's unbundling of the bank

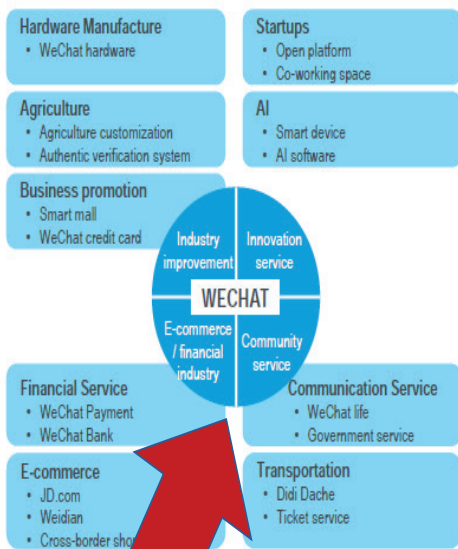


CBINSIGHTS Source: CB Insights' Research

130

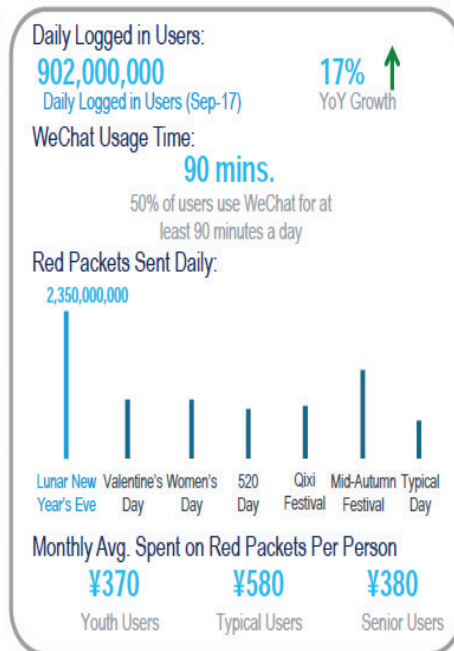
www.fisaccgil.it/lab

Figure 34. Tencent Ecosystem



Source: Company Reports, Citi Research

Figure 35. WeChat Stats and Trends



Source: Company Reports, Citi Research

Weixin (WeChat) Pay –

Tencent owns and operates Tenpay, which allows users to **transfer money through WeChat, a social messaging app.**

With **980 million monthly active user accounts as of September 2017** (+16% YoY), Tencent's Weixin mobile

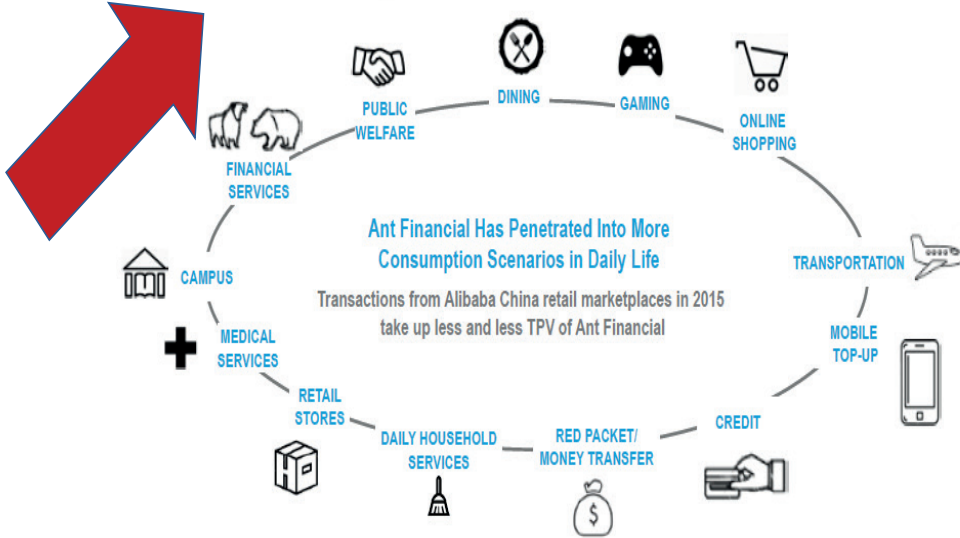
messaging app has become a powerful multi-function platform, including for integrating third-party services, including payments and financial services.

Weixin Pay and QQ Wallet are **consumer-facing mobile payment solutions that expand use cases for social** (red envelop gifting and money transfers), Online to Offline (O2O) services, and online finance. Based on a Tencent survey, about 70% of respondents spend more than RMB100 (\$15) per month in payments and transfers, with the most popular function being digital red envelope money (85% of respondents), followed by payments (58%) and money transfer to contacts (57%).

WeChat credit card (payment processed via scanning QR code) was used by 20% of respondents, and 14% used Weixin Pay to pay off credit cards.

www.fisaccgil.it/lab

Figure 31. Ant Financial Ecosystem



Source: Citi Research

Ant Financial is one of the largest FinTechs in the world. Its strategic vision is based on:

- (1) leveraging the power of the Internet and big data;
- (2) empowering financial institutions to create an ecosystem;
- (3) serving both SME and individual customers;
- (4) providing inclusive financial services.

Ant Financial's competitive advantages include: a large user base; an incubator for vital, innovative financial products; and a world-class financial cloud technology platform.

In addition, it is a pioneer in the DT Era, employing data to drive innovation.

www.fisaccgil.it/lab

Alipay is now the modern gateway to an ecosystem of financial services

	PAYMENTS		The crown jewel, Alipay, is now a mobile wallet that has 520M+ users , and 110M+ partners across 15 countries .
	WEALTH MANAGEMENT		Yu'e Bao is a money market fund that invests spare change from Alipay wallets. The money market fund is the largest in the world , managing \$233B at the end of 2017.
			Ant Fortune is a marketplace for other Ant Financial and third-party financial products. At the end of 2017, Ant Fortune had 330M users .
	INSURANCE		Ant Insurance Service has nearly 400M users and is seeing premium growth of 43% YoY. Ant Financial's marketplace has 80+ insurance companies selling thousands of products.
	CREDIT SCORES		Zhima Credit creates a credit score based on social networks and payments history – among other factors. At the end of Q1'17, it had about 260M users .
	CONSUMER LENDING		Ant's consumer credit offering, Ant Credit Pay, has 100M active users . In total, Ant Financial has lent \$95B to consumers through Q1'17.
			Ant Cash Now allows Alipay users to borrow funds quickly, based on user risk profiles.

Figure 6. Estimated Volume Lost to Disruptive Models by 2025

	North America	Europe	China	Developed Asia	Emerging Asia
Payments	6% 34%	6% 34%	9% 50%	6% 34%	2% 36%
Investments	6% 34%	6% 34%	9% 50%	6% 34%	2% 36%
Personal Lending	6% 34%	2% 17%	6% 34%	2% 17%	1% 24%
Credit Card Lending	2% 17%	2% 17%	2% 28%	2% 17%	1% 24%
SME Lending	6% 34%	6% 34%	2% 28%	2% 17%	2% 36%
Mortgage	6% 34%	2% 17%	1% 14%	2% 17%	0% 12%

* Disruptive models vary across product – Investments: low price, digital only brokerage and robo-advisor; Mortgages: digital-only robo-mortgage, new credit scoring; Personal, credit card, and SME lending: digital only, P2P marketplace; Payments: digital payment via wallets; P2P or A2A and digital only cross-currency exchange. Source: Citi Global digital Strategy, "Bang and Fuse" model, Citi Research

www.fisaccgil.it/lab

The necessary transformation of the banking and insurance system

www.fisaccgil.it/lab

The question is: **will banks and insurances become innovative before new entrants (FinTech & BigTech) have achieved sufficient economies of scale for their market programs?**

A decade after the Great Financial Crisis:

- They can try to "buy innovation" through partnership or the acquisition of new fintech participants.
- Banks and insurances can buy innovation faster than FinTech can acquire new customers.

www.fisaccgil.it/lab

When the new competitor is a BigTech, the equation changes: the economies of scale are already existing and the database is, at times, greater than the banks themselves.

Internet-based platform companies - like Amazon, Alibaba, Facebook or Tencent - have captured an ever-increasing share of consumer attention and time.

www.fisaccgil.it/lab

A continuous transformation for banks & insurances involving:



NEW BUSINESS MODELS



A REVISION OF THE ORGANIZATIONAL STRUCTURE



CORPORATE CULTURE REVIEW



CONTINUOUS TECHNOLOGICAL AND INFRASTRUCTURAL UPDATE

www.fisaccgil.it/lab

The International Social Dialogue in UniCredit

The path with our social parties so far

Monica Carta

Head of International Social Dialogue, Welfare and People Care

Fisac Second Plenary Meeting

Roma, November 14th 2019

Banking that matters. |  **UniCredit**

Social dialogue

The international scenario and UniCredit Industrial Relations system



The market scenario is **fast changing** and the banking business is evolving accordingly.



The role of **Industrial Relations has become strategic** to build a sustainable company where people needs are balanced with business requirements and **communication** plays an increasingly crucial role.



THE MISSION OF HUMAN CAPITAL



In UniCredit we want to become one of the best employers in the European financial sector, by creating a **positive working environment** and increasing the **quality of life**.

In this context **the EWC is increasingly a strategic partner** to manage the change.

2



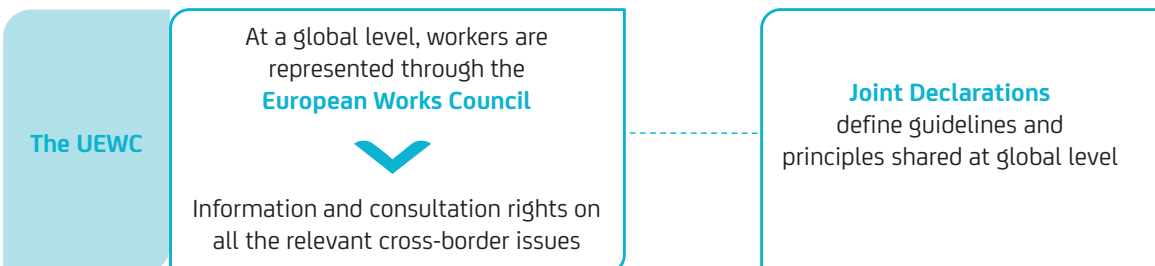
UniCredit European Works Council

Our system of Social dialogue Group wide



Our strategy is **defined globally** and **implemented locally**, preserving a uniform approach and at the same time respecting the specifics of each single country.

The involvement of social parties is a fundamental aspect of this model.



3



UniCredit European Works Council

The enablers

We want to **adopt a global approach** all over the Group on social topics, guided by **common core values**, with a **local implementation**

Drive the CULTURAL CHANGE



Create AWARENESS



Adopt SHARED VALUES



These are the key facilitating factors in our Industrial Relations system



UniCredit European Works Council

Where do we come from?



40 EWCs
Headquarters in Italy



2 EWCs
in the Financial Sector



WHAT IT IS

Founded in 2007, UniCredit European Works Council (UEWC) is an **international board** composed by the **Employees' Representatives of European Countries** where the Group is present, EU Member States and not

COMPOSITION of UEWC

- 33** Employees' Representatives
- 9** Select Committee Members
- 15** Countries represented
- 
- 4** Secretariat members
- 2** Experts

INFORMATION and CONSULTATION





- 2 Ordinary Meetings a year**
(23 Meetings with Top Management participation)
- 59 Select Committee Meeting**
of which 30 with Top Management presence
- More than 400 official communications**
to the Select Committee



UniCredit European Works Council

At a glance

THE PURPOSE

-  Improve the **right of information and consultation** for employees about transnational matters
-  Strengthen the role of UniCredit as a **Global Social Player**
-  Improve **our employees' understanding of Management decisions**
-  Give a **global strategic overview** to facilitate the social dialogue at **local level**

Strategic partner in order to enhance the level of International Social Dialogue, our EWC is one of the most active, reaching important results...

6



UniCredit European Works Council

The path so far...

We started a journey based on respect for our people

From 2007 onwards

Ethics & Respect

Do the right thing!



Inspiring all Group Training initiatives

The principles of Joint Declaration inspired the Gender Balance Program (2011) and the Group Policy on Gender Equality (2013)

Signed with Italian Trade Unions an agreement on 'Well-being at the workplace and commercial policies' (2016)

The Declaration defines a common approach to setting target standards in all of the countries of the Group

7

* Partially amended in 2011, 2015, 2019



THE CHANCE TO RAISE SOCIAL DIALOGUE AT HUMAN RIGHTS' LEVEL: THE GFA AS A KEY STEP



The Global Framework Agreement on human rights and fundamental labour rights

The path with UNI

The GFA represents the first step of our 'Ethics' strategy



Our partner

- In January 2019 we had the chance to **strengthen our relationship with UNI** – already partner in UEWC work sessions – through the signature of a GFA
- The agreement negotiated with UNI puts our Group among the first multinational companies in Europe in terms of **more advanced and outstanding international social dialogue in these matters.**



Main goals

- reinforce the social dialogue on **human rights and fundamental labour rights** (in particular the freedom of association and the right to collective bargaining)
- support the pursuit of sustainable growth of UniCredit's activities, in line with our **commitment to responsible sales** and with the J.D. previously signed with the UEWC
- promote a **safe and respectful working environment** for our employees, by supporting "Ethics" Group approach and through the improvement of a "speak up culture"



We keep on investing in a respectful working environment

Ethics & Respect: a qualitative leap

Our ambition is to create a **positive and respectful working environment** where employees are fully engaged



creating a new Group Culture and mindset based on **respect**



adopting the **best international standards** in relationships with employees, clients and other stakeholders



creating processes aimed at stimulating a **'speak-up culture'**



The Global Framework Agreement

Main contents and implementation



1. **Commitment to Human Rights**
2. **Trade Union rights**
3. **Combatting Sexual Harassment**
4. **Combatting Discrimination and Promoting Diversity**
5. **Positive working conditions and work-life balance**
6. **Healthy and safe working environment**
7. **Responsible sales**

Monitoring

Joint Central Monitoring Committee aimed to discuss progress made in the implementation

Duration

Validity of 2 years



Ethics & Respect

The Human Capital initiatives

The **Human Capital Initiatives** on 'Ethics & Respect'

<p>GFA on human rights and fundamental labour rights</p>	<p>New Global Policies on:</p> <ul style="list-style-type: none"> harassment, sexual misconduct and bullying retaliation 	<p>Global Communication campaign</p>	<p>Ethics & Respect in Performance Management and Recruiting</p>
---	---	---	--

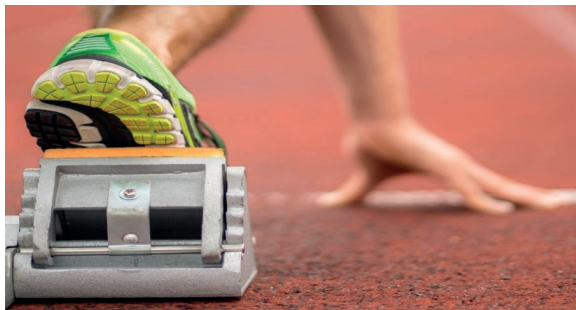


12

The new Global Policies

A new perception, a new awareness

Consistently with the GFA principles, we implemented **two specific Global Policies** driving a cultural change in our Group



HARASSMENT, SEXUAL MISCONDUCT AND BULLYING

ACTS OF RETALIATION

- raising the **awareness** on unacceptable behaviors
- allowing **zero tolerance** towards acts of harassment, sexual misconduct, bullying and retaliation
- protecting **people's dignity**
- promoting a **'speak up' culture** where all employees feel heard and protected when reporting misconducts
- involving **all** the **levels of organization**, starting from Top Management
- adopting a **global approach and monitoring** and a **local implementation**

13



STRATEGIC CHALLENGES FOR THE FUTURE



UniCredit Group - Internal Use Only

The UEWC 4th mandate Founding Agreement's evolution

UEWC agreement signed on 18 Sept. 2019 – **WHAT'S NEW!**

DECREASE OF MINIMUM THRESHOLD



100 HC instead of 150
to Keep on including minor geographies

SELECT COMMITTEE ACTIVE LOCALLY



Host meetings in CEE countries to better
link with local management and employee
representatives

REMOTE MEETINGS FOR SELECT



Increase information and consultation rights of UEWC, not limiting to 2 Ordinary Meetings and few Select Committee

TRAINING TO INCREASE PROFESSIONAL SKILLS



Focus on knowledge both for effective and deputy members, to **foster their active participation**

LISTENING GUESTS (ALSO EXTRA- EU)



Enlarge UEWC engagement on transnational topics, in the direction of a global social dialogue platform and network



The role of EU Directives in UniCredit Expectations for the future

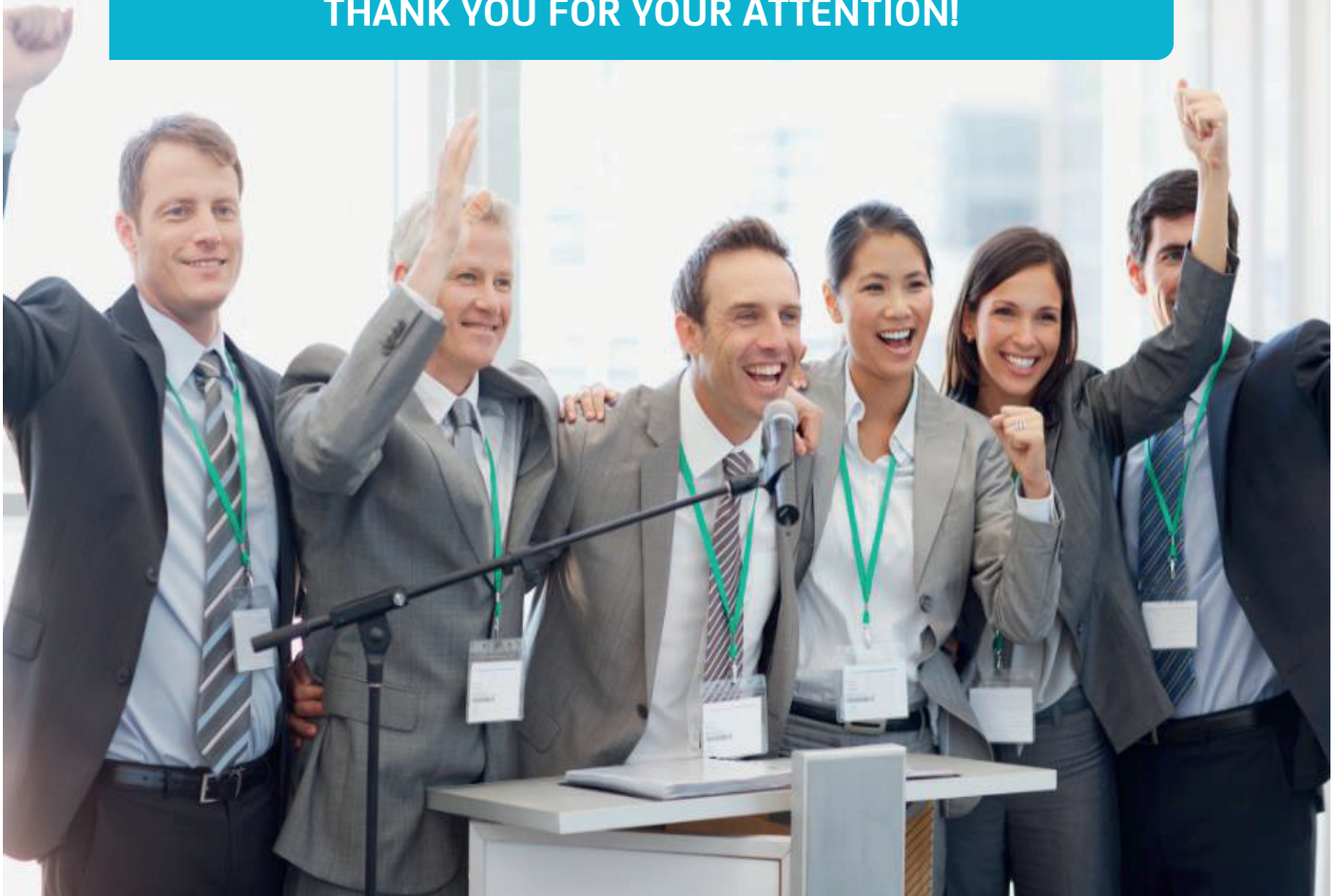


- The results achieved so far represent a tough basis to build the strategy of the future.
- A **more coordinated approach in the International Social Dialogue** is the strategic challenge and the role of the EWC is expected to become increasingly crucial.
- We'll continue investing in the creation of **positive and respectful working environment**, where colleagues feel fully respected and engaged, applying our core values to everything we do.

16



THANK YOU FOR YOUR ATTENTION!



Société Générale

Founded: 1864

Headquarters: Paris, France

CEO: Frédéric OUDEA

Website: www.societegenerale.com

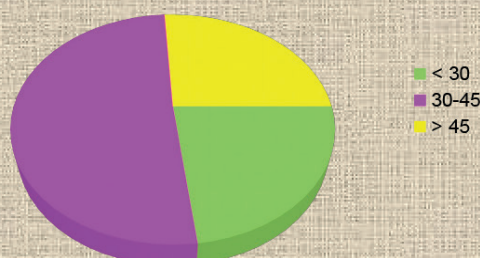


1

Société Générale. Some key figures

- Number of clients: 31 000 000
- Number of countries: 67, worldwide
- The SG Group employs 142 different nationalities and 58% of its employees are not French. 24% of the Management Committee's members have an international profile.
- Number of employees: 145.700. The average age is 37.8
- 23% of staff are under 30, 51% are between 30 and 45, and 26% of staff are over 45.

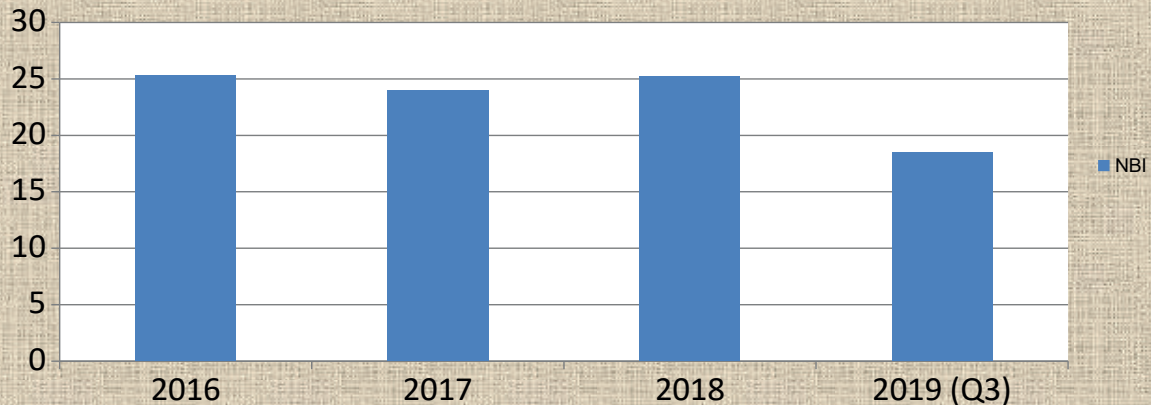
Staff age distribution



2

Société Générale. Some key figures

NBI evolution 2016 - 2019 (Q3)



- NBI 2016: 25.298 billion EUR
- NBI 2017: 23.954 billion EUR
- NBI 2018: 25.205 billion EUR
- NBI 2019 (Q3): 18.458 billion EUR



3

Société Générale. Social commitment

- The Société Générale Group signed in 2015 and has renewed in 2019 an agreement with UNI Global Union on freedom of association, fundamental freedoms, living conditions at work, non-discrimination and the Duty of Care Plan in the field of human rights.
- In 2016 Société Générale signed the WOMEN'S EMPOWERMENT PRINCIPLES (WEP), under the aegis of the UN Global Compact, addressing gender equality in the workplace. NB: The agreement on gender equality in the workplace signed in 2016 was renewed on 19 December 2018, for Societe Generale SA in France (only).
- The Group signed the ILO Global Business & Disability Network Charter in 2016.
- In 2016, Societe Generale SA France co-founded public interest group GEN (*Grande École du Numérique* or Elite Digital School). GEN is an accreditation body enabling people from different backgrounds (unemployed young people, Group staff seeking to advance their careers etc) to develop digital and IT skills.
- An agreement on changes to professions, skills and employment was signed in 2016 and renewed in 2019, calling for provisions targeting older staff members of Societe Generale SA France (only).



4

Société Générale. Important events

- December 2017: SG Group sold SG Croatia to OTP Group Hungary.
- July 2018:
 - SG Group bought EMC Division of Commerzbank Germany;
 - SG Group sold Private Banking Division of SG Belgium to ABN AMRO.
- August 2018:
 - SG Group sold SG Expressbank Bulgaria to OTP Group Hungary;
 - SG Group sold Banka SG Albania to OTP Group Hungary.
- November 2018: SG Group sold Euro Bank Poland to Millennium BCP Portugal.
- February 2019:
 - SG Group sold Mobiasbanca Moldavia to OTP Group Hungary;
 - SG Group sold SG Montenegro to OTP Group Hungary;
 - SG Group sold Ohridska Banka Macedonia to OTP GROUP Hungary.



5

Société Générale. Important events

- April 2019:
 - SG Group sold SG Albania to OTP Group Hungary;
 - 1600 jobs cut worldwide, of which 750 in France.
- May 2019: SG Group sold SKB Banka Slovenia to OTP Group Hungary.
- **Who's next: BRD-Groupe Société Générale Romania, KB Czech Republic, Rosbank Russia?**



6

Société Générale. EWC problems

- SG EWC is an instance of information only, not consultation!
- Only 4 official languages accepted:
 - 2 standard languages - French & English;
 - 2 additional ones that change from one mandate to another (currently they are Italian and Norwegian).
- Cooperation to improve:
 - with French trade unions (especially with ones affiliated to UNI);
 - with SG TUA (SG Trade Union Alliance).
- Objectives to accomplish:
 - involving all EWC members in the negotiation of the future EWC agreement (not only French unions);
 - application of the right of consultation, as provided by European and French legislation;
 - extending the number of official languages of the committee to at least 10.



7

Société Générale

Thank you for watching!



8

IMPACT OF DIGITALIZATION ON THE EMPLOYMENT IN THE BANKING SECTOR IN TURKEY



BASİSEN - TURKEY
Banka-Finans ve Sigorta İşçileri Sendikası

➔ **DIGITALIZATION IN THE BANKING SECTOR**

- The digital transformation process that led to Industry 4.0 continues to create new business models by changing the structure and mode of production.
- The digital transformation process that brings changes in the working life has also effects on



union movement
collective bargaining and
industrial relations system

➔ DIGITALIZATION IN THE BANKING SECTOR

DIGITAL TRANSFORMATION IN TURKEY:

Companies are starting to realize the importance of having a clear digital strategy.

Investments in digitalization both at the sectoral and company level have been increasing. This has effects on:

- ❖ Products and service channels
- ❖ Management and organizational structure of the companies,
- ❖ Working models,
- ❖ Production processes.

➔ DIGITALIZATION IN THE BANKING SECTOR

SECTORS INVESTING MOST IN DIGITALIZATION:

- ✓ **Banking**
- ✓ **Telecommunications**
- ✓ **Retail**



- In 2015, 55% of the investments made by banking, insurance and telecommunication sectors were in the field of digitalization,
- This rate was 16% in the remaining sectors...

The most prominent sector in digitalization is banking.

➔ DIGITALIZATION IN THE BANKING SECTOR

EFFECTS OF DIGITALIZATION IN THE BANKS ON THE NUMBER OF BANK BRANCHES

According to the Report of the Banks Association (June 2019):

- ❖ In the last 3 years; share of transactions by the branches have declined.



This decline in branch banking mostly caused by digitalization, especially mobile banking.

➔ DIGITALIZATION IN THE BANKING SECTOR

DEVELOPMENTS IN DIGITAL BANKING

- ❖ In the period of July-September 2017, the number of total (retail and corporate) active digital banking customers increased from 32.186.000 to 48.723.000 during the April-June 2019 period with an increase of 48.3% (5 million 537 thousand persons).
- ❖ 80% of the Bank customers actively use digital banking.



➡ DIGITALIZATION IN THE BANKING SECTOR

DEVELOPMENTS IN MOBILE BANKING

- During July-September 2017 number of those who use «**only internet banking**» was 5.7 million
- This number has declined to 4.1 million in 2019 with a decrease of 25%,
- Number of those using «**only mobile banking**» increased to 36 million in June-Sep 2019 from 19.4 million in June-Sep 2017 with a 85.5% increase.
- Number of those using **both internet and mobile banking** increased by 4% from 7.1 million to 7.4 million.

➡ DIGITALIZATION IN THE BANKING SECTOR

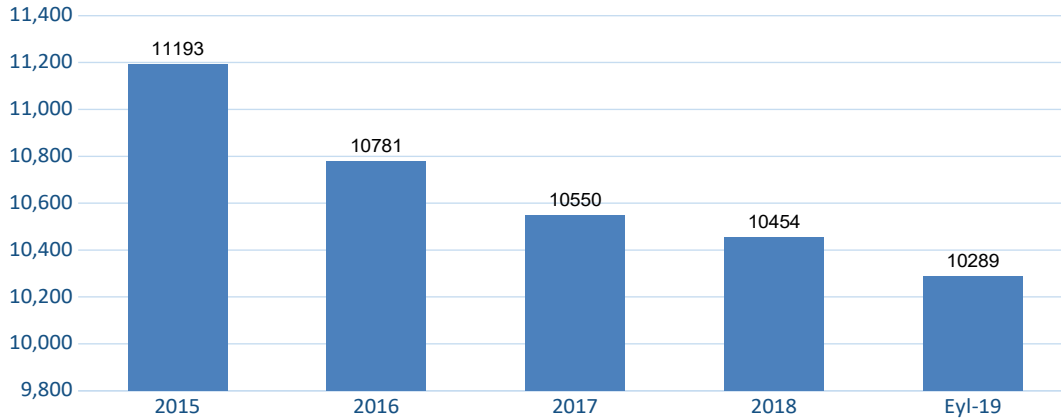
EFFECTS OF DIGITALIZATION ON THE NUMBER OF BRANCHES

- The digital transformation has an increasing impact on the organizational structure and working life in banking and therefore on the number of branches and employees.
- With digital banking; the number of branches and the number of employees (especially those working in operational works) have declined.
- However it should be noted that the economic crisis that has started in 2018 and the political conditions have also a role in this decline.

➔ DIGITALIZATION IN THE BANKING SECTOR

Changes in the number of bank branches

- ❖ Total number of bank branches in 2015 was 11.193
- ❖ In September 2019 total number of bank branches is 10.289 with a decrease by 904 (8%)



(Source: Bank Association, June 2015-Sep 2019)

➔ DIGITALIZATION IN THE BANKING SECTOR

Number of employment:

- ❖ Total number of employment decreased to 189.507 in 2019 from 201.205 in 2015 with a decrease by 11.698 (58%).
- ❖ Number of employees decreased by 3.836 (2%) compared to the same period in the previous year and 2.806 compared to the end of 2018.



(Banks Association, June 2015-Sep 2019)

RESULT

❖ Effects of digital transformation on the banking system

- Digitalization resulted in a decline both in the number of bank branches and the employment in the sector.
- Trade unions have been trying to develop new strategies to cope with the effects of digitalization both on the numbers of employment and working models. However it is still limited to adding some clauses on professional training and retraining to help employees to gain new skills required with digitalization.
- Trade unions need to develop effective strategies directed towards coping with the effects of digitalization to protect employment, quality of jobs and working conditions.

➔ **DIGITALIZATION IN THE BANKING SECTOR**

THANK YOU FOR YOUR ATTENTION





European Directives on employee involvement: From fitness to purposive review

Filip Dorssemont



Menu

- Lexical Issue : Fitness check , Impact assessment, review, recast, revision
- Worker involvement
- Directives related to Worker Involvement
- Review clauses and Review procedures
- How to design an EU review of involvement procedures?
- How to improve involvement procedures through bargaining?



Menu

- Crucial issues of INVOLVEMENT procedures (including in relation to digitalisation)
- Crucial issues of digitalization OUTSIDE involvement procedures



Submenu :

Crucial issues of INVOLVEMENT procedures (including in relation to digitalisation)

- Setting Goals
- Defining WI Tools
- *Rights or Duties ?*
- The object of WI
- The actors of WI : Management and Rep's
- Involving Trade Unions in Worker Involvement
- Facilitating Workers' representatives
- Worker Involvement in absence of representatives
- Strengthening Coverage
- Alleviating restrictions
- Enforcement of WI

Lexical Issue

- Fitness check :

Cf. Commission Working Programm (2010) :

'fitness checks' in order to keep current regulation 'fit for purpose'. The goal is to identify excessive burdens, overlaps, gaps, inconsistencies or obsolete measures which may have appeared over time since the EU law at issue was first adopted and implemented : **Threat of Deregulation ?**

"Some stakeholders initially expressed misgivings about the fitness check of the I&C Directives. They were concerned that its purpose might be deregulation in the social area. On the contrary, the fitness check aims rather at improving the quality of regulation and at ensuring that it remains relevant despite significant changes in demography, work patterns and technology (in particular against the background of the crisis)" (Commission)

Lexical Issue

- Impact assessment

"Impact assessments examine whether there is a need for EU action and analyse the possible impacts of available solutions. These are carried out during the preparation phase, before the Commission finalises a proposal for a new law. They provide evidence to inform and support the decision-making process"

"The impact assessment report must include a description of:

the environmental, social and economic impacts, including impacts on small and medium enterprises and competitiveness, and an explicit statement if any of these are not considered significant

who will be affected by the initiative and how

the consultation strategy and the results obtained from it"



Lexical Issue

- Review : An examination to assess whether there is a need to revise
- Revision : a modification of a EU Directive through the ordinary legislative procedure
- Codification : Integrating revision directives within the original directive → consolidated text
- Recast : a direct modification of an EU Directive, repealing the older one, with a limited role for the EP as co-legislator (Parliament cannot propose amendments to provisions which are not being revised)



Worker involvement

- “any mechanism, about the identity of the participating companies, concerned including information, consultation and participation, subsidiaries or establishments, and the number of their through which employees’ representatives may exercise employees, to start negotiations with the representatives of the an influence on **decisions** to be taken within the company(SE)

Directives related to Worker Involvement

- D **98/59** : Licenciements collectifs- Collective Redundancy (**1975**)
- D **2001/23** : Transfert d'entreprise-Transfer of Undertaking (maintien des droits-acquired rights) (**1977**)
- D **2009/38** : Comités d'entreprises européens- European Works Councils (**1994**)
- D **2001/86** *Societas Europaea* (**2001**)
- D **2002/14** : Directive Cadre Info Consultations- Framework on Information and Consultation (**2002**)
- D **2003/72** *Societas co-operativa europaea* (**2003**)

A body of directives which has been updated, consolidated, made coherent, recasted : NO formal codification of the directives as a whole (but rather of the case law*)

CR, TU, IC and EWC have been made subject to a fitness checks

Review clauses and Review procedures

- Both the EWC (1994) and EWC Recast Directive (2009) provide clauses on the review contrary to CR

- Article 14 D 94/45:

“Not later than 22 September 1999, the Commission shall, in consultation with the Member States and with management and labour at European level, **review** its operation and, in particular examine whether the **workforce size thresholds** are appropriate with a view to proposing suitable amendments to the Council, where necessary.

- Article 15 D 2009/38:

“No later than 5 June 2016, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.”



Review clauses and Review procedures

- ▀ See also Article 10 Directive 2001/23

The Commission shall submit to the Council an analysis of the effect of the provisions of this Directive before 17 July 2006. It shall propose any amendment which may seem necessary.

- ▀ Article 12 Directive 2002/14

Not later than 23 March 2007, the Commission shall, in consultation with the Member States and the social partners at Community level, review the application of this Directive with a view to proposing any necessary amendments




Review clauses and Review procedures

- ▀ How to review Directives adopted on the basis of Article 114 TFEU ?


(TU, CR) as opposed to Article 152 TFEU provisions?

- a) Unanimity or qualified majority?
- b) Social Dialogue or outside SD



Substance and Strategies for the review

- How ?
 - a) Examination of Implementation in MS
 - b) Examination of case law (CJEU and MS Courts)
 - c) Integration of *recitals* into the body of the Directive
 - b) Integration of the SR into the body of the Directive (eg : obtain a response, and the reasons for that response)
 - d) Formulation of more default rules (EWC)



Substance and Strategies for the review

- e) More and other SR (see additional subject matters, like CSR)
- f) Elucidating obscure provisions

How to improve involvement procedures through bargaining?

- ▶ EWC : better agreements, but how to get rid of bad agreements?
- ▶ IC Directive : in pejus bargaining ?
- ▶ Article 5

Information and consultation deriving from an agreement

"Member States may entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. These agreements, and agreements existing on the date laid down in Article 11, as well as any subsequent renewals of such agreements, may establish, while respecting the principles set out in Article 1 and subject to conditions and limitations laid down by the Member States, provisions which are different from those referred to in Article 4."

Crucial issues of INVOLVEMENT procedures (including in relation to digitalisation)

- ▶ Setting goals

Directives need to clarify their aims in order to facilitate teleological interpretations (good practice : Directive 2002/14 and Directive 2009/38)

What about *ratio legis* of IC ?

- ▶ Defining WI Tools

Information and Consultation

No definitions in CR, TU Directives

Weak definition of consultation in IC Directive

Strong definitions in Recast Directive

Generalizing « with a view to reaching an agreement » (TU, CR and IC)

Generalizing « Consultation shall take place

(d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate" (IC Directive)



Crucial issues of INVOLVEMENT procedures (including in relation to digitalisation)

- “information” means transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings (RecastEWC)



Crucial issues of INVOLVEMENT procedures (including in relation to digitalisation)

« Consultation »

« means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such **time**, in such **fashion** and with such **content** as enables employees’ representatives to express an opinion on the basis of the information provided about the **proposed** measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings; (REWC)



Crucial issues of INVOLVEMENT procedures (including in relation to digitalisation)

- *Rights or Duties ?*

- Few Directives refer to an obligation of the employer to INFORM and CONSULT (CR and TU)

- In case of restructuring , directives should provide an obligation to Inform and consult**



Crucial issues of INVOLVEMENT procedures (including in relation to digitalisation)

- The Object of WI

- a) Topical WI directives : CR and Transfer of Undertaking : definition of CR is subject to criticism

- b) Generic approach of « exceptional circumstances » needs to be precise and broad

- c) Generic approach to recurring WI needs to be precise and broad

- **What about Business Strategy or Economic Policy?**

Generic approach to « exceptional circumstances »

Precise

(c) information and consultation on decisions likely to lead to **substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).**
(Wi Directive)

Vague

Where there are **exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies**, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed.

(SR Recast Directive)

(c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request, the competent organ of the SCE or any more appropriate level of management within the SCE having its own powers of decision, so as to be informed and consulted **on measures significantly affecting employees' interests.**

(SR SCE Directive)

Generic approach to recurring WI needs to be precise and broad


Precise

- The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, initiatives with regard to corporate social responsibility, the situation and probable trend of employment, investments, **and substantial changes concerning organisation, the introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.** (SCE Directive)
- The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of **employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.** (SR Recast EWC Directive)

Weak

(b) information and consultation **on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;**


(Wi Directive)



The actors of WI : Management and Rep's

- The WI Directive provides INFO and CONSULTATION « at the appropriate » level : establishment or undertaking at the choice of the Member States
- The choice does not guarantee that at a level of the establishment as well as at the level of the undertaking information and consultation will take place → **We need establishment- undertakings and groups to be covered**
- In case of a EWC which is controlled outside the European Union, there is a free choice to appoint a representative?

Does this freedom need to be restricted?



Involving Trade Unions in Worker Involvement

-WI Directives define the notion of workers' representatives by means of reference to the law of Member States

-The EWC Directive institutes a body of workers' representatives but this could potentially undermine the position of trade unions in the group of undertakings

BUT

The competent European workers' organisation is informed of the composition of the SNB

Representatives of the Community level trade union organisation can serve as experts for the SNB

What about a role of these representatives as experts of the EWC?

Facilitating Workers' representatives

- Generalisation of a right to training for workers representatives
(Not just EWC, also WI Directive during working time and financed by management and organised autonomously)
- Generalisation of experts

Worker Involvement in absence of representatives

- There is a formal obligation to institute a system of Workers' representatives
- CJEU, 8 June 1994, Commission v UK, C-382/92 and CJEU, 8 June 1994, Commission v UK, C – 383/92
- In case of absence of workers' representatives , a default scenario is provided in case of Transfer of Undertaking
- **Quid in case of CR?**
- **Quid in case of other issues covered by WI Directive?**

Strengthening Coverage

- There is a problem of coverage of IC rights due to the lack of European Works Councils despite thresholds
- There is a problem of coverage when a collective redundancy does not meet the thresholds required

Solution : **CR is CR when it meets the requirement of at least one scenario**
Extending the period of 90 days to 6 months

Alleviating restrictions


- The EU directives tended to contain restrictions *ratione personae* in relation to seafarers, but this has been lifted due to Directive 2015/1794 (CR, TU, WI, EWC)
- The EU directives are not applicable to workers of central administration
- A collective agreement to complement these directives, has not been implemented by means of a directive, despite a joint request, and a subsequent procedure to challenge the refusal at the General Court
- Rules regarding secrecy and confidentiality are not relevant in case of CR and TU, but hamper communication of information outside these scenarios
- a) **It should be stressed that in exceptional circumstances, information is always obligatory**
- b) **It should be stressed that confidentiality only relates to third parties**



Enforcement of WI

- ▶ EU Directives on WI do not contain any enforcement sanctions contrary to other directives in the field of labour law
- ▶ **Restructuring operations in disrespect of IC should be suspended until IC rights have been respected**

e/g. a collective redundancy which has not been notified properly since no genuine information and consultation took place, could not take effect



Crucial issues of digitalization OUTSIDE involvement procedures

- ▶ The EU legislator need to tackle the right of training
- ▶ The EU legislator need

Our fourth collective event

:

**STEERING GROUP SEMINAR
+
JOINT MEETING
with
BANKING SOCIAL PARTNERS**

in

Rome

on

7th -8th October 2020



**EUROPEAN PROJECT
VS/2019/0016**

**implemented through the financial support of the EU Commission
- DG Employment, Social Affairs & Inclusion -**

**THE EMPLOYEE INVOLVEMENT IN THE CHANGING WORK
WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS:
TRAINING and POLICY MAKING
FROM THE EU DIRECTIVES TO THE CURRENT PRACTICES**

**AGENDA FOR THE
SECOND STEERING GROUP MEETING
Rome, 7th-8th October 2020
c/o
HOTEL MASSIMO D'AZEGLIO
Via Cavour 18**

- **arrival to Rome on Tuesday afternoon-evening 6th October:**
- **departure from Rome on Thursday afternoon 8th October**

We will have a 3 half days meeting to be divided into 2 sub-meetings:

- Wednesday 7th from 9.30 am to 5.30 pm, **with a selected sample of employees with their shop-stewards**, who have been and are being directly impacted by the 4.0 changing work.the sample as above.
- Thursday 8th from 9 am to 1 pm, **with a restricted delegation of employers' reps.**

**1st Session
Wednesday October 7th morning and afternoon**

to be attended by :

- **the Project Steering Group members**
- **the "Sample members" ***

(*i.e. the employees representing the 4.0 changing work from our concerned transnational groups+their shop stewards as direct union reps)

- 9.15 am Participants' registration
- 9.30 Introduction to the Meeting agenda and goals, including a brief presentation of the Project, its meaning, structure, objectives, work-plan etc.
by: Agostino Megale -Isrf-Lab President, and Mario Ongaro-EU Project Manager
- 10.15 Reports by the Steering Group Members from our transnational groups:

*Update about the state of play in your own transnational groups and EWC
Main news and main issues since we last met in November 2019*
We plan 15 minutes reports by each group

UNICREDIT : Francesco Colasuonno
INTESA SANPAOLO: Elena Cherubini
BNP-PARIBAS: Silvia Romano
CREDIT AGRICOLE: Franco Cappellini
SANTANDER: Marcello Carcereri

- 11.15 Coffee break
- 11.30 Reports to be continued
- 11.50 The outcome from the Questionnaire Report by
Nicola Cicala, Manager and Roberto Errico, member of staff, of our Research Institute ISRF-LAB
- 12.30 First round of self-introductory interventions by
our Sample members:
4.0 employee from Intesa SanPaolo
Maria Rosaria Mazzotta – Intesa SanPaolo
Goffredo Molteni – Unicredit Group EWC
4.0 employee from Santander
- 1.15 pm Lunch break
- 2.15 pm Second round of self-introductory interventions by the Sample members
- 3.00 pm Interactive moment to better highlight training needs and demands, problems and potentials within the 4.0 changing work.
More precisely here we propose a deepened exchange of views in particular between our Sample members and our Project staff.
*This exchange will be supported by **Piero Valentini**, Sociologist with a specific skill about restructuring processes led by digitalization and labour market*
- 4.00 pm Coffee break
- 4.15 pm The UNI FINANCE's point of view about the current phase and the perspectives of the 4.0 change in the industry
c/o Angelo Di Cristo – Head of Uni Finance
- 7.30 pm Fraternal dinner

Thursday 8th October 2020

TO BE ATTENDED BY

The Project Steering Group Meeting with the Employers' representatives

- 09.15 am Participants' registration
- 09.30 am Report on the state of play of the EU Project with a specific focus on the 21st March session
- 09.45 am *Digitalization and consequent restructuring processes in services companies*
Presentation by **Piero Valentini, Sociologist and expert in restructuring and labour market**
- 10.15 am Report on the state of play of the Project with a specific focus on the proposals (made last 15th November in our Plenary and Round Table c/o Frentani in Rome) to revise a number of points of the EU Directives for the Employee involvement. (a file pointing out those proposals will be sent out in due course)

- 10.30 am **First interactive round** for a deepened exchange of views about such proposals
- 11.15 Coffee break
- 11.30 **Second interactive round** for a deepened exchange about possible shared measures to manage the changing work and the impact of digitalization within a possible win-win approach at the collective bargaining level and/or at the social dialogue level

Within this second interactive round such win-win approach at the European Social Dialogue level will be expressed through two specific interventions, respectively by:

Jens Thau – Head of Social Dialogue for the European Banking Federation-Banking Cttee EU Social Affairs

Angelo Di Cristo – Head of Uni Finance

In the framework of both the above interactive rounds we will benefit from the contribution of

- **Monica Carta – Head of International Social Dialogue in Unicredit Group**
- **Giancarlo Ferrara – Industrial Relations and Welfare in ABI-Italian Banking Association**

- 12.45 Conclusive intervention by
Nino Baseotto, Fisac-Cgil General Secretary
(to be confirmed according to the busy agenda of the General Secretary in those days)
- 13.15 Lunch and departure.



European Project VS 2019/0016

**EMPLOYEE INVOLVEMENT IN THE CHANGING WORK
WITHIN THE 4.0 FINANCE INDUSTRY
TRANSNATIONAL GROUPS
TRAINING AND TRADE UNION POLICIES FROM EU DIRECTIVES TO CURRENT PRACTICES**

REPORT

**THE PROJECT PATH
FROM THE LATEST MEETING OF THE STEERING GROUP OF 7-8 OCTOBER 2020
(Rome, Hotel Massimo D'Azeglio)
TOWARDS THE FINAL CONFERENCE* scheduled on 24-25-26 FEBRUARY 2021**

edited by Mario Ongaro, Project Director

* MEETING DATES AND ARRANGEMENTS TO BE ASSESSED AND CONFIRMED soon,
DEPENDING ON THE EVOLUTION OF TRAVEL RESTRICTIONS.

TABLE OF CONTENTS

Our proposal for a revision of the EWC Directive 2009/38 amidst the growing digitalization of processes and the redistribution of workforce

The impact of the COVID-19 emergency on the timeline, implementation modes and topics of the Project

The acceleration of change due to COVID-19 and organizational issues for trade unions

The speed of change:

1) for a permanent collective bargaining, in a different balance between national bargaining and bargaining within transnational groups

Levels of bargaining amidst changes in work organization

The speed of change:

2) organizing and representing the 4.0 workforce

3) the fitness check of the EU Directives on employee involvement

Update on our proposals for the revision of EU Directives on employee involvement: the 13 proposals and the 4 key points

Overview of developments within the EWCs and within the Intesa Sanpaolo group

The experiences of two workers representative of industry 4.0 change and of their direct trade union representatives

The stories we heard on 7 October 2020 and the analysis of the questionnaires filled out by a sample of workers of the 4.0 segment

Our dialogue with management representatives

Future prospects and credits

Our proposal for a revision of the EWC Directive

We resumed the collective discussion and analysis when the Steering Group of the European Project FISAC 2019/0016 met on 7-8 October 2020. Two types of stakeholders took part in this fourth event:

workers representative of the 4.0 segment of the banking workforce, together with their direct trade union representatives;
management representatives of the European banking industry.

I will get back to the role which the two stakeholders had in this meeting – and in the Project in general – shortly.

Now let's go back to what we had discussed during our latest Plenary (i.e. the third stage of the Project) on 13-14-15 November 2019. The fourth meeting was originally scheduled for last March, but the COVID-19 emergency forced us to delay it for more than six months.

However, the COVID-19 emergency also led the EU to launch the Recovery Plan. Therefore, our Project was also revised in order to incorporate new, fundamental elements.

Below is the proposal which Agostino Megale and I had drawn up and summarized in 4 key points:

THE 4 KEY POINTS OF THE FISAC-CGIL PROPOSAL FOR A JOINT DOCUMENT BY SOCIAL PARTNERS

by Agostino Megale and Mario Ongaro

A) The European Works Council must have the right to be informed in advance of the impact which each Business Plan (including any digital innovation processes) of the transnational group will have on workers.

B) Information must be provided in particular on the potential quantitative and qualitative effects on jobs, work organization, smart working, working hours, including the changes deriving from the digital innovation of processes and products.

C) Information must be provided once the draft Business Plan has been drawn up, but well before it is officially made public, without prejudice to confidentiality clauses namely for the information potentially impacting on markets, notwithstanding the employees' reps duties of communication.

D) This kind of procedure must allow European Works Councils to be consulted in good time on the impact of Business Plans and process innovations. It must also allow them to draw up a Social Plan to govern changes that may affect workers and generate redundancies. For instance, in this case the priority could be given to voluntary redundancies and measures could be taken to retrain and reinstate the affected workers.

Our 4 key points are combined with the 13 proposals by Professor Filip Dorssemont of the University of Louvain, the expert in European labour law who has collaborated with us during our Project. These 13 proposals concern the possible revision of not only EU Directive 2009/38, but also all the other Directives on employee involvement.

I have dedicated a specific chapter of this Report to the comparison and integration of the 4 key points and of the 13 proposals.

However, I would like to **stress that it is necessary to link both the key points and the proposals to the EU Recovery Plan** and, more precisely, to its part on investments in digitalization.

We will have the opportunity to discuss this point more in detail, but one thing is for sure: the impact of digitalization on work organization, on the relocation of workers, on their productivity and on their training needs – brought about by the new organization of work – is a core issue for our European Project and for its legal foundations.

From this point of view, it is now imperative **to include in the concept and practices of employee involvement the plans of transnational groups which involve investments in digitalization thanks to the resources which will be made available through the Recovery Plan.**

We are facing something completely new in terms of **resources available to fund digital innovation for a sustainable economy. Through the pooling of the debt, public resources** of a scale that could hardly be imagined only few months ago will stimulate corporate restructuring processes at the transnational level.

With respect to these restructuring processes and to the **identification of the effects on workers of the digital investments** made possible by the Recovery Plan, it is now a priority to truly involve workers' representatives to anticipate change.

The very specific and relevant topic of employee involvement and participation is something we need to discuss in depth in the next weeks and months, together with the trade unions and employers' associations that are actively participating in this European Project FISAC-CGIL 2019-0016.

I would like to stress one specific element which has already been addressed by European Social Dialogue in the Banking sector and by the most recent Joint Statements issued as a result of Social Dialogue.

I am referring to the **increases in work productivity** which digitalization has brought about and will bring about. These have been made possible by the job cuts linked to digitalization, but also by the implementation of new procedures and by the physical relocation of individual workers.

There are at least **three ways** in which, in our opinion, a sizable part of these productivity increases should be invested:

- limiting job cuts, including the ones due to the pandemic
- retraining workers who would hardly be redeployed
- protecting the purchasing power of workers, in particular the ones directly affected by productivity increases

These are three recommendations that we make to trade unions and employers' associations, as we prepare to work together for the drawing up of joint proposals to the European Commission. To submit them, we can rely on the key support of our allies in the European Parliament, starting from **Brando Benifei**, with whom we have collaborated fruitfully for a long time.

The impact of the COVID-19 emergency on the timeline, implementation modes and topics of the Project

We had originally agreed with the European Commission for this project to last 20 months, from March 2019 to October 2020. This was in line with the average duration of similar projects with comparable objectives.

The COVID-19 emergency forced us to postpone the fourth and fifth events (the second meeting of the Steering Committee and the Final Conference). The fourth event was postponed from March 2020 – when the emergency was most serious – to October 2020, when we were lucky enough to benefit from the last days before the current lockdown.

The Final Conference was originally scheduled for last June, but it should now take place by the end of February. We still do not know to which extent it will be possible to hold it in person, since we have a potential audience of about 60 people from 16 different countries (at the moment it is currently not possible to travel to Italy from some of them, except under the condition of an impractical quarantine).

I would like to point out that since our latest Plenary, which took place as planned in November 2019, we have certainly had to adapt to the constraints imposed by the COVID-19 emergency. Yet, we have never stopped working. Proof of this is, among other things, that the DG Employment proposed last March that we formally ask for an extension of the Contract which FISAC-CGIL had signed with them. This is what we did, as we postponed the deadline by 5 months, i.e. from 31 October 2020 to 31 March 2021.

At the meeting of 7-8 October not all eight transnational groups participating in the Project were represented. Indeed, it is difficult to maintain continuity of participation for a Project which was submitted to the European Commission on 2 May 2018, which formally started on 1 March 2019, and whose original duration was extended from 20 to 25 months due to the COVID-19 emergency. This means it has been more than two years since the formal start of the Project activities, and almost three years since its submission to the European Commission. Indeed, the time it takes from the submission to the approval and to the payment of the first tranche of funds by the Commission is almost one year. Based on my experience, I can say that it is really difficult to keep people engaged for such a long time. However, the fact that **5 in 8 groups** were formally represented in this meeting was already a success.

This kind of situation was impossible to predict even less than one year ago. But a Project on *changes in work* and their considerable impact on work organization must necessarily try to understand what **effects the COVID-19 emergency has on work organization and the workers of the finance industry**. I am not saying that we should deviate from the original purpose of our Project, but that we should briefly integrate this unexpected issue into it.

Let's first clarify some key points:

remote work is not smart working, it is **telework**. Let's be clear. **We cannot use the expression "smart working" for someone working from home**. Smart working may also include working from home, but the two things should not be confused. Let's not oversimplify the situation.

Smart working and the changes in work organization addressed in our Project are something much more complex. As our guests will tell us, there is no longer a fixed, specific place where bank workers arrive every morning at a certain time. They no longer have lunch break at a certain time and they no longer go home at a certain time – unless they work overtime.

There is no longer a fixed workplace, nor fixed working hours. Employees now also work from home, but they mostly **work wherever they are needed**, for instance at the client's office or somewhere else.

With respect to this difference from telework, in his speech **Angelo Di Cristo**, Head of UNI Finance, correctly underlined that telework is regulated by a series of existing agreements, among which the ones signed by UNI Finance and by the European employers' associations of the banking and insurance sectors. With the COVID-19 emergency, there has been a strong acceleration in the spreading of work from home, but collective bargaining is struggling to keep up with this acceleration.

In the final speech of the first day, **Claudio Cornelli** expressed similar ideas. This concept was also confirmed by the results of the questionnaires filled in by the workers of the 4.0 segment. These results were presented by **Roberto Errico** and **Nicola Cicala** in October. The sudden and sweeping changes in work organization brought about by the pandemic have generated a significant increase in work productivity and decrease in “operational” costs. This has convinced even the companies which until February 2020 had most resisted smart working to adopt it.

The trade unions have not been caught unprepared, also at an international level. A good example is the **Agreement on the COVID-19 emergency**, or, to be more precise, the Joint Statement which was signed in late March 2020 by the social partners of the finance industry in the framework of **European Social Dialogue** in our sector (see annexes to this Report).

However, there is still a lot to negotiate, in particular on two issues:

- the workers’ right to disconnect at predetermined times and days;
- the workers’ right to receive from their employers all the tools, equipment and material needed to work from home, without using the workers’ personal equipment.

With respect to these two rights, I see an indirect yet substantial connection with the experience of **Finance Watch** mentioned by **Claudio Cornelli**. To be sustainable and adequately regulated, the finance industry should ensure the protection of savers, the corporate responsibility of financial investments, and the full implementation of workers’ rights and guarantees.

Angelo Di Cristo underlined a peculiar element, something which had already begun to emerge and was further accelerated by the pandemic: the growing superfluity of a significant part of the **real estate assets of banks** as a side effect of the increasing digitalization and of work from home.

This confirms a **concept of Marxist theory** which I had already mentioned during one of the first meetings of this European Project back in 2019: the tendency of the rate of profit to fall as a result of the increase in the organic composition of capital. In this regard, I would like to quote an excerpt of **my introduction** to the Plenary we organized in Belgrade in June 2019:

In my opinion there is an underlying trend to the speed of change, which is pushed by the digitization of the production process of banking and financial services.

*To understand this trend, it is helpful to make reference to the old and bearded **Karl Marx**, who – in this respect and in many others – proves to be more modern than many presumed modern economists and sociologists.*

*I am thinking about the **rapidity of rotation of working capital**, i.e. the money out of which banks must be able to make a profit as quickly as possible. At the same time, they also need to dispose of growing shares of **fixed capital, fixed assets like facilities, buildings, obsolescent machinery, offices and branches**. **These fixed assets have an impact on what Marx called the organic composition of capital and they lead to the tendency of the rate of profit (in this case for the bank) to fall.***

After all, what is the open, smart branch about? What is the process of divestment and sale of huge real estate assets about? It is just about banks getting rid of costly fixed assets for years, albeit with mixed results.

And, after all, what is digitization about? It is about the possibility of offering banking services with the least possible amount of fixed assets, using working capital and making it rotate more and more quickly.

*This **whirlwind and radical reorganization of the production cycle in banks** is pushed by the need to radically change what Marx called the organic composition of capital and to increase the rate of profit **in two ways**:*

first, the aforementioned drastic reduction in fixed capital, together with the exponential growth of the rapidity of rotation of working capital;

second, the strong increase in work productivity through quality improvement and the readiness of workers to accept different working hours, schedules and targets. This acceptance is then rewarded through increased independence, less hierarchy, more opportunities of professional growth and pay rises.

With this self-quotation I anticipated part of the considerations we made during our latest meeting in October. Another key concept was expressed by **Claudio Cornelli** and by **Angelo Di Cristo**: **UNI** works to **export the rights** of workers and trade unions to the countries where they are insufficient and where companies have relocated major segments of their production cycles precisely to exploit these insufficiencies.

In fact, **employers** have sent us a message that seems to agree to a significant extent with our critical approach.

As correctly pointed out by **Monica Carta** on behalf of the management of the Unicredit Group, the COVID-19 emergency *has further accelerated the processes which, in the competitive context and in the world of work, are **rapidly redefining roles and responsibilities**, probably as never before. This emergency has also led to a rapid **reskilling and upskilling in digitalization** of large groups of the population. (...) Internalizing change requires time. Employers and trade unions can act through **advanced social dialogue** to enhance the human capital and in order for workers to actively contribute to **the company's success** and to their own **professional growth** also in the new post-pandemic scenario.*

*Advanced social dialogue must set itself the goal of qualitatively improving the daily experience of workers and of defining a **set of rules to manage change** in the interest of workers, of undertakings, and ultimately of society.*

This approach is quite in line with what **Agostino Megale** said in his speech on 7 October. He drew our attention to the co-determination rights in Germany and France. He also explicitly stressed the need to implement at long last art. 46 of the Italian Constitution and to also overcome the age-old reservations of trade unions. Agostino stressed that the *economic, healthcare and social conditions of Europe can generate change in this regard. For this reason, it is necessary to carefully monitor also the forms of work that have become more common during the COVID-19 emergency, such as working from home and smart working. When they were first introduced, the many difficulties led to regulating them. However, we may now find out that the majority of workers see this evolution positively. Now that digital innovation helps us go beyond the traditional concepts of time and space, workers may see this change as a sort of liberation from the constraints of working in an office, bank branch, workplace. However, as we know, **every evolution of work can be a liberation only if it does not become a prison. And it becomes a prison when there are no rules.** In every European country, in a branch or office, work ends at a certain time. This is what we call "**disconnection**": **it is a right, but also a duty which must be recognized at a national and at a European level.***

Acceleration of change because of the COVID-19 emergency and organizational issues for trade unions

The COVID-19 emergency has certainly accelerated a number of processes and it may have made some of them irreversible.

A definitive change may be the permanent adoption of remote work for at least part of an employee's working hours. This is something we should think about carefully. On the one hand, remote work ensures more flexibility in the organization of working hours and shifts, and it can help meet some specific needs. On the other hand, I think it is also a major reason for concern for trade unions.

The fact that the workers represented by trade unions are no longer concentrated **in a specific, physical place** is a major problem for trade unions. In my opinion, unions do not know how to handle this issue and they are trying to do so as best as they can.

In this regard, **Agostino** said:

Trade unions very often approach innovation with the fear generated by change. Fear is a dominant aspect of modern societies. Very often, it leads to reactionary or right-wing political positions. It is indeed difficult to deal with fear, whereas it is easier to respond with superficial statements that appeal to people's gut feelings. It is difficult to integrate an immigrant arriving to your country, while it is simpler to use racist slogans that are more easily understandable. But difficulties are the ones that solve problems. Simplifications respond to fears, but without solving them. Regaining a positive idea of politics and union action requires the willingness and courage to address complexity. Every time we are dealing with a complex situation and we have to send a difficult message, we as trade unionists shall behave responsibly, tenaciously, seriously and rigorously, in line with the values that have pushed us to serve other workers and not to pursue our own interests.

These democratic processes strengthen the role of union leaders. We and you are here to serve workers. We should not be afraid of digital innovation. We cannot underestimate it, but we cannot be afraid of it. We must be willing to govern change and be aware that, through our knowledge and through the democratic participation processes existing within undertakings, we can and must do more.

The digital challenge is maybe the most important challenge of the last 30-40 years. Its characteristics are unprecedented. Yet, if we analyze the history of trade unions, we see that labour agreements and industrial relations have evolved in connection with technological changes.

**The speed of change:
for a permanent collective bargaining,
in a different balance between national bargaining
and bargaining within transnational groups**

Agostino Megale did not join the plethora of people who, faced with the contradictions, lack of discipline, and slowness of European liberal democracies, praised the supposed efficiency of public health management in authoritarian regimes like **China** (which is, whether we like it or not, where the pandemic started, as unfortunately only right-wing parties remind us).

Agostino emphasized "(...) *the extremely close connection between democracy and self-government and the responsible choices of individuals. Constraints can certainly be imposed, but if individuals are engaged to act responsibly and to personally contribute to the protection of their health, democracy wins over any kind of authoritarian rule.*

*This is essential, because there is no preordained destiny according to which democracy loses and authoritarianism wins. This is also relevant to our discussion in the smaller context of our Project. We are neither thinking about Socialism nor about the self-government of workers. But we certainly want to advance and strengthen democratic processes, for what we may call **an evolution of capitalism from the aggressive pursuit of profit to a form of capitalism mitigated by the democracy of workers' participation.***"

Trade unions – in particular union representatives that are most in direct contact with workers – need permanent collective bargaining in order to keep up with the speed of change. During our two-day event in October, this idea helped establish a direct link between Agostino Megale's speech and the analysis of sociologist **Piero Valentini** (see

annexes to this Report for his complete presentation). Figure 3 of his analysis clearly shows the connection between continuous restructuring and processes of continuous competitive digital innovation, which is also strongly driven by **Fintech companies**.

In this regard, Agostino pointed out that "(...) *in the early Nineties, while discussing the changes of the third industrial revolution, Bruno Trentin, the then Secretary-General of CGIL, mentioned the connection between collective bargaining and the bargaining timeframe. At the time, there were national collective bargaining agreements and group-wide agreements that lasted two or three years, depending on the situations. Back then, we already argued that, in order to regulate changes and work organization, collective bargaining cannot be limited in time. Instead, there should be **an almost permanent collective bargaining, because changes and technological production occur on a constant, continuous basis. And I would argue that digital innovation completes in space and time this concept, because, after all, we are dealing with continuous and permanent innovation.***"

LEVELS OF BARGAINING AMIDST CHANGES IN WORK ORGANIZATION

For this project we involved **8 transnational groups, namely 7 banking groups and 1 insurance group: Intesa Sanpaolo, Unicredit Group, Credit Agricole, BNP Paribas, Société Générale, Santander, Groupama.**

Why did we involve union representatives within companies rather than national trade unions?

Because those who are bargaining within undertakings and managing industrial relations are on the frontline dealing with change and its effects.

Therefore, union representatives within companies and transnational groups must be able to make preliminary assessments and elaborate first responses.

In this regard, I think it is inevitable to ask ourselves how to strike **a balance between a national collective bargaining agreement and company-level agreements.**

I want to speak openly and invite all of us to reflect on and examine real data and situations.

In order to try to anticipate change, I think it is fair to say that the **only way to do it quickly enough is company- or group-level bargaining.** This should be combined with and, if necessary, mediated through instruments of **co-determination, participation** and **surveillance** of corporate decisions. However, these **instruments are not (yet) available** in most countries, so I will limit myself to bargaining.

The latter should not be opposed to industry-wide collective bargaining, which plays – and should continue to play – a “universal” (albeit national and not transnational) role. However, we should take into account that a transnational group acts on a larger dimension, taking international financial and labour markets into consideration. Within its limited scope, the national collective bargaining approach of the last decades can hardly respond to these wider challenges.

When I speak of labour markets, I am thinking about workers that are hired or dismissed, salaries that are increased, kept the same or cut, working hours that need to be organized or even reduced. Let’s even assume that working hours must be reduced: in this case, should we keep salaries stable?

In order to keep salaries stable with fewer working hours, it is either necessary to increase productivity, or – to put it plain – someone must provide the money needed to cover the higher labour cost per hour which is inevitably generated by a reduction in working hours.

Who can provide this money?

The State, through general taxation, i.e. by further increasing an already very high tax burden?

Or should it be the European Union, through instruments which would have to be agreed upon and organized together?

We must absolutely find an answer to these questions. Either we increase productivity, or we find a way to fill the salary gap between reduced working hours and full remuneration. If trade unions intend to propose a reduction in working hours, I think they should also come up with an answer to this issue.

Of course, the employment dynamics are different across the various countries.

CGIL (my trade union) has reaffirmed its determination to defend national industry-wide collective bargaining agreements. In my opinion, CGIL and, in general, all Italian trade unions should reflect carefully on this aspect. Fine, let's defend national agreements. But if the proposal stops here, as a member of CGIL, I must say that I am not fully convinced. **Especially if trade unions put forward another huge priority, i.e. a substantial, across-the-board salary increase. How can we reconcile this priority with an equally across-the-board reduction in working hours in the framework of national collective bargaining? Once again and once more, I believe this leads us back to the core, real priority: productivity.**

Agostino Megale
on national, company- and group-wide collective bargaining

Mario has made some good points concerning the levels of collective bargaining and their effectiveness. However, I believe it is necessary to go more in depth to clarify some aspects.

*First, while there are national collective bargaining agreements and group-wide agreements, we cannot ignore the evolution of undertakings at a supranational level. When national agreements are negotiated, the European dimension is ignored. Yet, the European dimension has acquired a major role in the last decades. In the past we already discussed the idea of having European collective agreements. The extent of the single currency does not make it possible to negotiate salaries at the European level. As a result, in the European context we can only discuss the possibility of a mandatory minimum salary or of general guidelines. But, if we go back to the initial idea of European collective agreements, I think that **never before has a sector been as centralized at the European level as the banking industry – and in part the insurance industry as well.***

During the crises we even talked about bail-ins, bail-outs, and decisions to be taken during the weekend – when markets are closed – which have immediate consequences. This is something that does not happen in the textile, shoe-making or chemical sector. In the banking industry, the European dimension is more decisive than in any other sector.

*To deal with this evolution, we cannot envisage a large, European contract, which is only possible in theory and actually impractical. We cannot even deal with it through European Directives and rules. As Angelo Di Cristo, Head of UNI Finance, knows very well, what we need is **a strong, very strong European trade union.***

Within transnational groups, there is a tendency across countries to underestimate the role of European trade unionism.

*Whether we like it or not, our future lies in this dimension more than in the national one. **In the future, the real centre of gravity in the world of work will be in the workplaces – hence the direct representative bodies of workers – and in the supranational dimension.***

*We do not know how long it will take, and the world seems to go back to the pursuit of local interests. But the global economic dimension has helped us understand that the economic and financial power has no boundaries, whereas our boundaries are very often **cages** that prevent European trade unions from being effective enough. While steps forward have certainly been made, there is still room for improvement. I am thinking about social dialogue, relations with the*

European Commission, the negotiation with Ursula Von der Leyen – which should be mainly delegated to union federations, but which still leaves a lot of room for action.

If we look at the world of digital evolution, **in the future national collective bargaining agreements, albeit within this necessary European framework, are destined to go beyond industry boundaries.**

Today, how many financial transactions are made by financial corporations outside our sector?
How many financial transactions are made in post offices?

Suffice it to mention that Intesa Sanpaolo now sells prepaid cards through tobacconists, that companies like Amazon and Google will soon offer much more than simple payment and cash services, but also the possibility of making actual financial transactions.

Well-advised trade unions should start to consider the need for a single collective agreement that encompasses more than one sector. I am not saying this because I am particularly enlightened, but because we have to learn from history and try to understand what may happen, without exaggerating things.

An analysis of the context highlights three aspects:

- If we count all the countries in the world where there is a national collective bargaining agreement, we realize that they are only a minority.
- If we consider workers who are covered by an agreement and those who are not, in Italy the division is maybe 50-50 (in the banking sector, we should consider producers, who are freelancers). In the insurance sector, 42,000 workers are covered by an agreement and 130,000 are not (producers who are freelancers, covered by a law dating back to 1936).
- Digital technologies were already used to promote financial products. During the COVID-19 emergency, we realized that they can also be helpful for trade union meetings, as they make it possible to organize many more meetings than in person. This has a number of positive effects, but it also accelerates processes.

Whether we like it or not, **we may also try to defend collective agreements as they are, or as they were. But this is an approach typical of neo-corporatist trade unions, which do not have a plan or project for their future and, as a result, can only try to defend their past achievements.**

Instead, the spirit of union federations and of governing change leads us not to give up what we have, but to try to understand what is happening. While it is necessary to safeguard collective agreements, but also expand the role of trade unions, it is essential to reduce simplified contracts from the 800 existing in Italy down to 40. These simplified contracts should encompass several sectors and impose mandatory constraints and rules valid for all affected workers. Wider collective agreements that cover more than one traditional sector necessarily leave more room to group-wide and transnational bargaining. In the Seventies, during the Years of Lead, changes were basically similar for all workers. In the competitive and digital market of today, the effects remain similar, but the evolution of work and of the ways in which workers interact with clients differs.

In the past, classifications in grade were the same for all and rigidly established, and the groups simply applied predetermined roles and responsibilities. Today, the situation has completely changed, **so much so that the industrial sector has implemented company-wide bargaining since the Nineties and collective agreements have set some guidelines.**

I have made this argument for a while. Even if I have not been successful, history will prove that this is the situation.

What I wanted to tell Mario is that there are no simplifications when it comes to the dynamics of collective agreements and their future. When the president of the Italian industrialists' association attacked CGIL as if the union was stuck in the Seventies, I proudly replied that **in the Seventies, the Secretary-General of CGIL, Luciano Lama, stated that it was silly to believe that the salary was an independent variable that could grow under any circumstances.**

In CGIL, even in 1948-49, when Giuseppe Di Vittorio proposed a labour plan, he argued for workers' responsibility. In order to give a job to all the young unemployed, and for the good of the country, workers would have to be ready to sacrifice part of their salaries.

Left-wing individuals, except for extremists, have never **embraced the idea that profit, productivity and salary can be considered independent variables: they are closely related. This is why trade unions are questioning dynamics whereby inflation has been equal to zero for five years.**

This is clearly a problem, considering that **in Germany productivity has increased by 29% in 17 years, whereas in Italy by only 3%. When we look at the evolution of salaries, in Italy we are basically stuck in the situation we had in 1989, whereas in Germany, thanks to growth, salaries have increased regardless of the existence of collective agreements or collective bargaining.**

This should lead us to reflect on the following question: **is productivity an enemy of the world of work, or is it a challenge which the world of work poses to businesses?**

In my opinion, it is a challenge posed to businesses. When the Bank of Italy lists the parameters for the growth of productivity, it does not include labour. Actually, in one year Italian employees work 350 hours more than German employees and the productivity of labour is generally higher.

This **productivity is the result of innovation, investment and digital transformation.** It is no chance that Italy's economy is driven more by cost than by transformation. Of course this does not apply to Unicredit and to the other big groups, but Italy struggles on with its problems. Authoritative trade unions should not be afraid of the attack of the president of the Italian industrialists' association. In fact, in recent years the world of businesses and capitalism has not been able to make the changes and investments that were needed. And we still have a black economy of 3.5 million people who are paid by employers half of the salaries established in collective agreements.

It is a good point to move forward with our considerations. **No one who talks about reducing working hours can expect it to be paid for by a supernatural entity.** With a far-sighted approach, working hours could be reduced from the current 36 hours per week established in the collective agreement for banking industry workers. For instance, already in the early 2000s, I argued that textile workers could work for 32 hours per week, including Sunday. Employees could work 8 hours per day, 4 days per week, from Monday to Friday or Thursday, or from Tuesday to Saturday. This new work schedule deserves to be experimented for what I call the fourth capitalism, i.e. the 3-4 million most innovative people. Furthermore, with a rotation mechanism with two rest days, production is increased by 20%, which equates to 600,000 people out of 3 million.

With regard to the payment of the difference between 37.5 working hours per week and 32, considering that each working hour costs 3%, the resulting total of 18% can be covered as follows:

one third covered by the necessary increase in productivity;

one third covered by the State, which could pay social contributions in the poorer South, or pass a more general reform linking it with reduced working hours;

one third covered by something similar to the fund aimed at supporting employment which we invented in 2012 – which remains a unique example in the world.

At the time, the credit spread crisis led us to be creative and invent this measure, which ended up being an effective political tool to promote employment. We certainly cannot expect the reduction in working hours to pay for itself in the long term.

It is not only true, but also fair to say that there is a close connection between salary growth, employment measures and relations with productivity. However, we should not confuse the productivity of labour with technological and systemic productivity. But this is something that we will be able to further examine in the future.

The speed of change:

2) organizing and representing the 4.0 workforce

3) the fitness check of the EU Directives on employee involvement

2)

Speed of change is what characterizes the 4.0 era in our sector and it is the challenge ahead of us:

- speed of change in work organization;
- speed of change in the workplaces which businesses create for their employees;
- speed of change in the nature of employment relationships – from typical employees to parasubordinate workers, i.e. formally self-employed but dependent on a single employer for their income (see for instance the Mixed Contract at Intesa Sanpaolo);
- and speed of change in working hours, with a twofold evolution:
 - Firstly, **there is a trend towards a more flexible distribution of working hours** over the day, the week and the year. This has led to an extension in the time period between the beginning and the end of work, so much so that Italian trade unions have claimed the workers' right to disconnect from the tools which employers can use to contact them. Let me make a digression about what I have just said. If we reduce working hours and, at the same time, we distribute them more flexibly over the day or week, I think we can already respond to some of the challenges of reduced working hours in terms of productivity and costs. This is something which Agostino has already mentioned. Being able to work at times and on days (e.g. Saturday) which are traditionally dedicated to social activities may be part of the solution. But I will stop here with my digression.
 - Secondly, flexibility tends to be combined with a sort of **self-management of working hours** which is functional to the achievement of production and sales targets.

The changes brought about by industry 4.0 are causing major employment issues in banks. **Jobs** that are still concentrated in certain places and in certain sectors of a bank **are disappearing**. It is true that most of the back office has been outsourced or completely automated. However, it is also necessary to protect senior workers who are more tired and less motivated to stay active. In my opinion, protecting them means **accompanying them as they leave the production cycle**. This sounds sad to me, but they are often happy to leave.

While we strive to duly protect senior workers, we are also aware that many of the workers that we represent are longing to get rid of us, because they want to leave the production cycle. This is a serious problem.

At the same time, **as strongly emphasized by Agostino**, we should neither underestimate nor fear digitalization. Digitalization renews part of the workforce, with jobs which combine the characteristics of employees with time management schemes and tasks more typical of self-employment. This new workforce is necessarily more flexible when it comes to working hours and place of work.

The added value of this new workforce is based on specialist professional skills, which can potentially open up important opportunities of career advancement and pay rise. I stress the term "potentially", because the study carried out by our research institute ISRF LAB and the analysis of sociologist **Piero Valentini** (see annexes to this Report)

show that these new workers complain about the insufficient salary increases as against the growing demands of employers in terms of productivity and workers' availability.

The role of trade unions at a national level and, even more so, at a company level is to represent both types of workers: the traditional workforce and the "smart" one of industry 4.0. In other words, trade unions must protect the former because their jobs are no longer essential to reach corporate targets. At the same time, they must be able to represent those who have more bargaining power with the management. The latter also need to be involved in trade unions, in order for their bargaining power not to be limited to the individual sphere and to become a source of collective strength.

If trade unions fail to do so, this new workforce will negotiate directly with the management. This would end up seriously undermining the legitimacy of and communication with trade unions.

3)

The other pillar of the Project is something that we have already mentioned: the **fitness check** which the European Commission has recently launched to assess the impact and effectiveness of EU Directives on employee involvement.

Among the basic objectives of our Project,

a fundamental one is starting a concrete process to introduce new employee involvement and participation procedures. Considering the changes brought about by industry 4.0, the European Commission has launched a fitness check to assess the impact and effectiveness of the EU Directives on employee involvement which have been adopted in the last 40-45 years, since the mid-Seventies.

Our focus is on the agreements which EWCs and European Social Dialogue have promoted so far to implement employee involvement.

In the framework of our Project, we have set ourselves the task of analyzing these agreements, so as to make our contribution to the fitness check.

However, before getting into the details of what we have done so far in the framework of the Project, it is important to make a few points.

- In recent years, we have listened to professor Filip Dorssemont, the expert who has helped us elaborate our proposals for the analysis of Directives, of their effectiveness, of EWC agreements, and of the transnational agreements promoted by EWCs. Professor Dorssemont has previously pointed out that a crucial point is the lack of a consistent definition of information, consultation and participation across the various Directives on employee involvement. This generates considerable problems for the legal interpretation of the Directives, as well as for their implementation.
- Interestingly, during our Project, we as promoters, Filip Dorssemont as legal expert, and Jens Thau as President of the EBF Banking Committee for European Social Affairs agreed on this point. An idea for the future would be to involve once again Filip Dorssemont – starting from the 13 proposals he presented at our Plenary in November 2019 – and Jens Thau to draw up together a brief joint statement organized by key points. This document should be based on solid legal grounds to argue for the rewriting and harmonization of the basic definitions.
- During the meeting we organized in Rome on 7-8 October, the management representatives showed that they were open and ready to revise the Directives, in order to adapt them to the new working conditions and to the speed of change, which has been further accelerated by the COVID-19 emergency.
- Of course, we have to see whether their preliminary openness will translate into them agreeing to specific proposals. We will also have to involve MEPs like Brando Benifei (and others) to ask for their support.
- We will have to explore possible alternatives to the formal rewriting of the Directives also after the end of this European Project. We can do so with the European Banking Federation and UNI Finance, which expressed their willingness to collaborate. We imagined with them a joint initiative in 2021, with the goal of

adapting the Directives on employee involvement. This joint initiative would hopefully involve also other organizations representing the social partners of sectors other than finance, starting from the ones represented within UNI Europa.

To quote Agostino Megale:

Saying, as we did, that our proposal marks an evolution that strengthens the role of EWCs does not mean that we are suggesting a revolution of the rules. We are simply envisaging the inclusion of few lines in an amendment to the Directive. If there are too many political hurdles, we must be aware that we need to protect the rules and prevent them from going back. With reference to the Recovery Fund, which promotes a digital agenda and digital transformation, and its implementation in concrete projects, we can also envisage an alternative option, without giving up on our goals. Faced with the major changes generated by an investment of more than €1 trillion, we can imagine specific implementation measures that can more easily adapt to the current situation – heavily influenced by digital technologies – without having to change legislation.

Our proposals for the revision of the EU Directives on employee involvement: the 13 proposals and the 4 key points

Under the guidance of and in close collaboration with professor **Filip Dorssemont**, we **have drawn up a document including 13 proposals** on what needs to be rewritten. We presented this document in Rome on 13 November 2019, during our latest Plenary. Later, ISRF-LAB and FISAC-CGIL drew up **a very short text with 4 key points**, which – as stated by Agostino – highlights that anticipating change is key for social partners to govern it together.

I will now bring up Filip Dorssemont's 13 proposals. We not only need to examine in detail their implications for the wording of the Directives and their potential effects on industrial relations.

We also need to work with the management representatives who took part in the meeting of 8 October and in the Plenary of 15 November 2019 to reach an agreement on these 13 proposals. To this purpose, we can count on the willingness of **Jens Thau and Monica Carta** to collaborate in any rewriting of some parts of the EU Directives.

Furthermore, Jens expressed his support for something which I have been saying for years on the basis of Filip Dorssemont's analyses and which I also repeated during our latest meeting in Rome last October. I am referring to **the considerable discrepancies in the basic definitions**, starting from the ones of information and consultation, included in the various Directives on employee involvement.

Details aside, **the pillar of all the 13 proposals is the elaboration of definitions which eliminate discrepancies in the implementation of the fundamental rights to information and consultation**. The goal is to ensure a more certain and consistent implementation of these rights, without any more diverging interpretations.

The other pillar of the 13 proposals is essentially the strengthening of rights and guarantees. This is linked to the first pillar, in the sense that the definitions to be harmonized are also the most relevant and binding. They are indeed necessary to help social dialogue reach concrete agreements, while the separation between consultation and bargaining becomes more flexible.

13 proposals for the revision of the Directives to improve employee involvement
by Prof. Filip Dorssemont – University of Louvain – legal expert for our European Project

1) **Generalizing the wording “with a view to reaching an agreement” to the EWC Directive 2002/38 in case of information and consultation concerning proposed decisions which affect the employees’ interests under exceptional circumstances**
from:

art.4.4.e) of Directive 2002/14 on the information and consultation of employees
art.7.2 of Directive 2001/23 on the transfer of undertakings
art. 2.1 of Directive 98/59 on collective redundancies

2) **Generalizing the wording “The consultation shall be conducted in such a way that the employees’ representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express (Directive 2002/14 on information and consultation) to the other Directives on employee involvement.**

3) **In case of restructuring, the Directives on employee involvement must include an obligation to information and consultation, instead of a simple “right” for workers to be informed and consulted.**

4) **The EU Directives on employee involvement should include corporate strategies and economic policies in the right to information and consultation, and not only their implementation.**

5) **The wording “information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1) (Art.4.2.c of Directive 2002/14 establishing a general framework for informing and consulting employees) is preferable to the wording “Where there are exceptional circumstances or decisions affecting the employees’ interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed” (subsidiary requirements of Recast Directive 2009/38).**

6)
We need to have **information and consultation procedures at all levels**: -establishment -undertaking
-group of undertakings -Community-scale group of undertakings

7)

Representatives of Community-level trade unions can serve as experts for the special negotiating body. **This provision should be extended to their role as experts in EWCs as well.**

8)

Granting the right to **training for workers’ representatives** not only at the EWC level, but **also at the establishment or undertaking level.**

9)

Stating clearly that **the costs of this training** should be borne by the local and central management. **Workers’ representatives should also be left free** to choose their training path, provided that they communicate the summary of training activities to the local and central management.

10)

Generalizing the role of **experts at the local as well as central level.**

11)

Ensuring that, **if there are no workers’ representatives**, there is a default scenario not only in the case of transfer of undertaking, but also in the case of collective

redundancies. Furthermore, making sure that, if there are no workers' representatives, a generic system for employee involvement is put in place.

12)

In case of **collective redundancies**, Member States can choose between **two different definitions**. Ensuring that there is information and consultation in both scenarios or definitions of collective redundancies. **Extending the definition of collective redundancies over a period of 90 days to 6 months.**

Article 1 – Directive 98/59

1. For the purposes of this Directive:

a) 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, **according to the choice of the Member States**, the number of redundancies is:

(i) either, over a period of 30 days:

- at least 10 in establishments normally employing more than 20 and less than 100 workers,
- at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers,
- at least 30 in establishments normally employing 300 workers or more,

(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

13)

Establishing an **explicit sanction** in case of violation of information and consultation procedures, such as the suspension of the restructuring process.

THE 4 KEY POINTS OF THE FISAC-CGIL PROPOSAL FOR A JOINT DOCUMENT BY SOCIAL PARTNERS

A) The European Works Council must have the right to be informed in advance of the impact which each Business Plan (including any digital innovation processes) of the transnational group will have on workers.

B) Information must be provided in particular on the potential quantitative and qualitative effects on jobs, work organization, smart working, working hours, including the changes deriving from the digital innovation of processes and products.

C) Information must be provided once the draft Business Plan has been drawn up, but well before it is officially made public, without prejudice to confidentiality clauses namely for the information potentially impacting on markets, notwithstanding the employees' reps duties of communication.

D) This kind of procedure should allow European Works Councils to be consulted in good time on the impact of Business Plans and process innovations. It must also allow them to draw up a Social Plan to govern changes that may affect workers and generate redundancies. For instance, in this case the priority could be given to voluntary redundancies and measures could be taken to retrain and reinstate the affected workers.

We have not yet tried to **combine together our 4 key points with professor Dorssemont's 13 proposals**. This is something that we need to do in view of our final meeting scheduled on 24-25-26 February.

In my opinion, the analysis of the two documents shows that Dorssemont's points 1 to 6 and point 12 are related to our 4 key points.

More precisely, I propose the following **scheme**:

Key point A) ===== Points 3), 4), 5), 6)
Key point B) ===== Points 1), 5)
Key point C) ===== Points 4), 5), 6)
Key point D) ===== Points 1), 2), 4), 5), 12)

On the basis of this scheme, **point 5) of Dorssemont's Proposal** can provide **the necessary legal basis for all 4 of our key points**

5) The wording "information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1) (Art.4.2.c of Directive 2002/14 establishing a general framework for informing and consulting employees) is preferable to the wording "Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed" (subsidiary requirements of Recast Directive 2009/38).

Point 4) of Dorssemont's Proposal can provide **the necessary legal basis for at least 3 of our 4 key points, i.e. A), C) and D)**

4) The EU Directives on employee involvement should include corporate strategies and economic policies in the right to information and consultation, and not only their implementation.

Dorssemont's point 1) can provide the necessary legal basis for at least 2 of our 4 key points, i.e. B) and D)

1) Generalizing the wording "with a view to reaching an agreement" to the EWC Directive 2002/38 in case of information and consultation concerning proposed decisions which affect the employees' interests under exceptional circumstances.

Also Dorssemont's point 6) can provide the necessary legal basis for at least 2 of our 4 key points, i.e. A) and C)

6) We need to have information and consultation procedures at all levels: -establishment -undertaking -group of undertakings -Community-scale group of undertakings

Finally, Dorssemont's point 3) provides the legal basis for our key point A)

3) In case of restructuring, the Directives on employee involvement must include an obligation to information and consultation, instead of a simple "right" for workers to be informed and consulted.

And point 12) provides the legal basis for our key point D)

In case of collective redundancies, Member States can choose between two different definitions. Ensuring

that there is **information and consultation in both scenarios or definitions of collective redundancies. Extending the definition of collective redundancies over a period of 90 days to 6 months.**

The following points in Dorssemont's Proposal are not directly related to our key points:

7, 8, 9, 10, 11 and 13. Points 7 to 11 concern the prerogatives and roles of those who take part in EWCs as workers' representatives or trade union experts. Point 13 concerns the sanctioning regime for failures by the management of a transnational group to provide information and to implement consultation procedures. Unsurprisingly, the management representatives who participated in our previous meetings criticized and distanced themselves from the proposal in point 13.

I now deem it useful to quote another excerpt from **Agostino Megale's** presentation, who connected the political dimension with the legal one of our key points and **Filip Dorssemont's** 13 proposals:

***We can fight against populism by building a stronger democracy** and by promoting an idea of change and evolution through our Project. We know that undertakings and large groups have to make business plans and that, in the next few years, these business plans will inevitably include major investments in digital innovation and – I would add – in sustainable development. We need to have a clear understanding of the impact which these factors have on labour, in terms of number of jobs, occupational mobility and professional changes. Some jobs disappear, while new ones are created. According to a US study, out of the 50% of professions that are lost, 20-25% have already disappeared. But out of the 50% of new professions that are created, only some of them already exist, while others will appear in the next few years.*

*Today, these impacts are limited when a business plan is drawn up and approved by a board of directors, presented to the markets, and then discussed and negotiated wherever there are contract provisions like the ones existing in Europe (for instance, this is not the case in the United States and in Asian countries). In this framework, our proposal consists in an innovative and proactive modification of the relevant Directive, whereby **European Works Councils would have an additional right before the launch of a business plan. This is why we say that information should be given in advance**, in good time to be able to assess the impact of digital innovation on work. This is what we call advance information procedures in transnational groups. We have said that this information should not be generic and focus on five main points: quality of work; working hours; professional changes; smart working and working from home; innovation in processes, products and working conditions – nothing too generic. This information should be provided in advance – 60, 40 days in advance, or in any case **in good time to assess the impact** which the information will have also within the works council. This information should obviously be kept confidential until it is officially made public to the markets. The confidentiality clause should not only apply to transnational groups, but also to any workers' representatives in general – even if we are now used to it. Many times, we are even more responsible than the members of boards of directors, who, because of internal strife, sometimes leak information to the press. This procedure, whereby management informs workers' representatives of a business plan in good time, makes it possible to include in it what we may call the **Social plan for corporate jobs**. This is a reference to the evolution of industrial and corporate democracy of the late Nineties, when we envisaged the creation of a social plan for large Italian undertakings in Europe in parallel with the adoption of the EWC Directive in 1994.*

*(...) The whole development of EWCs is based on this condition, which remains valid to date. **When we imagine these amendments and modifications to the Directive**, we do so to reinforce democracy and participation at the global and European level, in order for them to become an essential – and not just secondary – element of the evolution of democratic systems across Europe.*

This element of our Project is part of a wider dynamic which, after the adoption of the Charter of Fundamental Rights of the European Union at the Nice Council, should lead to the evolution of the concept of consistent minimum rights across Europe. For instance, the rights of

*participation existing in Germany, France and other countries **could serve as an example for future common rules on the presence of employees' representatives in supervisory boards and for the full implementation of roles and responsibilities established in national Constitutions – like in art. 46 of the Italian Constitution.***

The reference to art. 46 of the Italian Constitution (see below) is in line with our reformist approach and consistent with the basic objectives of our European Project. Despite some limits and contradictions, the most advanced and consolidated experiences of employee participation made in some European countries remain a crucial source of inspiration.

For the purposes of economic and social betterment of workers and consistently with the requirements of production, the Republic shall recognise the rights of workers to collaborate in the management of enterprises, in the forms and within the limits established by law.

After making all the necessary, possible and appropriate steps to contribute to the fitness check, the goal we now set ourselves can be summarized in this excerpt from Agostino Megale's speeches in Rome last October:

"(...) The best way to do so is a revision of the Directives. However, we can achieve our objective also in an alternative, yet equally effective way."

Overview of developments within the EWCs and within the Intesa Sanpaolo group

The EWC of the Unicredit Group was represented by **Goffredo Molteni**, member of the **Secretariat of the Central Coordination Unit for FISAC-CGIL** and member of the **EWC Select Committee**.

He strongly emphasized the need for the Select Committee to receive information *in good time* in order for consultation to be possible.

To quote Goffredo:

"I will be very honest. As members of the EWC Select Committee, we receive information on the business plan before the markets. However, this information is provided to us at 7:30 a.m. of the day in which the business plan is officially made public. The Select Committee is composed of nine members from both Western and Eastern Europe and we have traditionally been very united in our relations with the management. However, in these cases our possibilities of interaction with the management are clearly very limited because of the very short notice. In other words, we are granted the right to information, but not really the right to consultation, considering that we are faced with a series of elaborate data, future scenarios and a complex, composite and difficult business plan. Indeed, ours is a pan-European bank which covers 16 countries, ranging from mature markets (Italy, Germany and Austria) to Central and Eastern European countries with completely different economic and social characteristics."

This explanation mostly referred to major restructuring processes involving up to 8,000 redundancies and with a time lag between the cutting of jobs and the actual implementation of digitalization. Hence, these processes involved a complex transition phase in work organization which had a major impact on the affected employees.

On the other hand, Goffredo emphasized not only the limits, but also the achievements of his EWC, namely the fact of having significantly reduced the final number of collective redundancies in comparison with the initial plans of the parent company.

During the COVID-19 emergency, the group accelerated information and consultation procedures by convening the Select Committee every two weeks. The parties are also working to turn the EWC Statement on work from home into a Joint Declaration.

Goffredo welcomed enthusiastically our proposal for an advance information procedure for the elaboration of a Social Plan together with the Business Plan. He agreed that information should be provided *in good time* and that plans should be made to hire new workers and to implement effective training programmes to prevent, at least in part, collective redundancies and to support dismissed workers.

Marcello Carcereri, member of the EWC of **Santander**, replaced in this meeting Ana Herranz, representative of the trade union Servicios-CcOo in the parent company.

We know very well the long-standing limits of this EWC. It only meets once a year, no information is provided because of the lack of basic communication tools (intranet page), and top management representatives hardly ever participate in the annual meeting. We have received many reports of these issues. However, I think that, without a joint action plan agreed upon by the EWC representatives from Spain (who are the only ones to have significant industrial relations with the parent company) and UNI Finance, these problems will persist, making the role of the EWC in this transnational group of almost 100,000 employees even more marginal. Even the constituent agreement of this EWC fails to meet the requirements established by Directive 2009/38. Only the collaboration between the EWC representatives from Spain and UNI Finance can lead to its renegotiation.

Similarly to other groups, the COVID-19 emergency has led the Santander group to adopt remote work. In Spain, the most vulnerable workers have been protected thanks to the measures taken by the central government (however, 700 branches were closed during the first lockdown, 400 of which will probably never reopen). In the United Kingdom, there has been an agreement on demotions which guarantees the payment of salary differences for 24 months.

The COVID-19 emergency has also had a major impact on the consumer credit market. To deal with it, Santander Consumers (where Marcello is a company-level representative of FISAC-CGIL) has signed an agreement which combines remote work and 6-hour shifts for 6 days with the goal of preserving the 650 jobs of the group in Italy.

Franco Cappellini, on behalf of the EWC Select Committee of **Crédit Agricole**, underlined **two key points on information and consultation**:

1) the Select Committee receives information promptly, so that it can effectively monitor the business plan, the annual accounts of the group and all the management's new proposals;

2) consultation is effective, also thanks to the constituent agreement of the EWC, which establishes that organizational changes with a transnational impact must be presented to the EWC in good time to allow the EWC to express its opinion.

Franco also stressed another two elements. Firstly, the **Global Agreement** (C.A. is one of the largest banking groups in the world) extends a number of basic rights to all the workers of the transnational group. Secondly, the new **website of the EWC** was made more user-friendly during the COVID-19 emergency.

However, it is useful to quote an important excerpt of Franco's speech, which confirms the separation between the traditional workforce made up of "mass workers" and the new 4.0 workforce segment:

As Agostino and Mario said, a divide is emerging between the branches which keep on working with traditional instruments – which due to COVID-19 have reduced their workload by 50% – and the central departments, like marketing and all the new emerging

professions, e.g. IT and digitalization. There are now huge differences in the working hours, workload and targets.

The new roles are almost entirely occupied by young people working in marketing and digital technologies (some legacy systems are still used in the IT department and digitalization has yet to be completed).

But all the new tasks are performed by younger engineers. These young people no longer see trade unions as a form of protection, because they are used to working and speaking directly with the central department. As a result, they believe that the idea of trade unions is outdated. In all of these new emerging jobs, colleagues see opportunities to stand out and do new things.

There is a growing divide. On the one hand, there are the traditional branches which, like in all banking groups, are being reduced in number and size. On the other hand, there are the central departments which are becoming aware that local resources can be used more efficiently. COVID-19 has helped them understand that people can work from home also in Southern regions. It is enough to make it an objective, but unfortunately there are not yet any rules to protect the rights of individuals.

Many are advocating for the right to disconnect, which we included in the Global Agreement and which should therefore be applied across the entire group. This is a really important right. I can personally confirm it, as I have been working from home almost from the first day.

You no longer work early in the morning, because you actually start to work at 10-10:30 a.m. But then you work until 10 p.m. Clients are at home, specialists like me as well, and the central department completes transactions, marketing and other activities towards the evening.

Therefore, without rules, there is this mess, this confusion among colleagues.

On behalf of the Secretariat of the Central Coordination Unit for FISAC-CGIL in Intesa Sanpaolo, **Elena Cherubini** strongly emphasized that the largest banking group in Italy – and one of the most important ones in Europe – has yet to create a EWC. The international dimension of Intesa Sanpaolo has even grown bigger since the merger by incorporation of the UBI group. Now the employees working outside Italy amount to 40% of the total workforce. They are mostly concentrated in the new EU Member States and candidate countries, as well as in the Bank of Alexandria in Egypt (with 80% of its shares now controlled by Intesa Sanpaolo).

The creation of a EWC has become even more urgent in light of the COVID-19 emergency, which has further accelerated changes in work organization. (...) *It would have been important to exchange information on the health and safety measures adopted by our bank across Europe. We might have introduced best practices from the grassroots level upwards. While governments may fail to introduce health and safety measures promptly and effectively, maybe best practices implemented at grassroots level in undertakings can be successful. It would have been important, but we will continue to work hard for the creation of a EWC. I think that **the participation of management in our November event was an important factor.** Indeed, we have to start by meeting each other and establishing human relations. I think that was the first time that our colleagues from the banks of other countries saw the faces of their Italian management.*

*So let's build on what we have to continue to work in this direction. **Mario mentioned the creation of the Trade Union Alliance, which helped us to formally request the setting up of the EWC.***

Elena underlined a fundamental element for this session of the Project when she stated: (...) *We are here also to talk about employee involvement, and it is very important to have some of them participating in this session. However, I would like to conclude by saying that employee involvement requires a certain approach by us, as trade unionists. Trade unions must be culturally prepared to be ready to enlarge the number of workers they represent and involve.*

The traditional tools used by trade unions, like in-person meetings, demonstrations and even strikes, are now challenged by the situation. But we must be the first to believe that new forms of action are possible, which we have to find, invent and communicate to workers. As the other speakers have shown, workers need supranational dialogue, simply because they all have the same problems.

We have to look at internationalization and digitalization as challenges that can help us feel better and overcome the fear of change.

With respect to work from home, Elena stressed the need to revise the company-level agreement on the topic, which predated the COVID-19 emergency: (...) *We need an agreement which makes reference to national industry-wide standards or laws, and which increases the number of days of work from home to 10 per month, in line with the national industry-wide agreement. Considering the fixed costs of working from home, the lack of meal vouchers (not distributed in this case) and of an ergonomic workspace, we must find regulatory and remuneration guarantees.*

Mariarosaria Mazzotta also talked about the situation and current changes **in the Intesa Sanpaolo group**. In particular, she talked about the so-called **Mixed Contract** which was agreed upon by the social partners to regulate workforce segments that are a perfect example of the changes brought about by industry 4.0. We have also often referred to them: young workers whose workweek is regulated for two days in five by the ordinary contract that generally applies to the Intesa Sanpaolo employees, and by a freelance contract for the remaining three days.

The Intesa Sanpaolo employee who participated in our Meeting, is a typical example of this 4.0 workforce segment: highly qualified and specialized, his working conditions are regulated by the so-called Mixed Contract.

Below is the transcription of Mariarosaria's speech, including the questions posed to her by sociologist Piero Valentini:

Mariarosaria Mazzotta – Coordination Unit FISAC-CGIL in Intesa Sanpaolo

*I am a company-level union representative (editor's note: hence the union representative most directly in contact with the workforce) and I am a Coordinator in the Intesa Sanpaolo group. I am here to talk about transformations in the Intesa Sanpaolo group and about what we call the **Mixed Contract**. My colleague Gerardo Carrara next to me works under this kind of contract, which is the result of a new way of organizing work.*

We know very well that banks all have different organizational systems, something which was not the case in the past. They also have different business channels.

How did we get to the Mixed Contract?

*In Intesa Sanpaolo, we started from a project concerning employees focusing on investments. Some of them were asked to work offsite and to **register as Financial Promoters**, even if they remained full-time employees of the bank with an open-ended contract. So the only difference was that they were used to meeting clients outside their workplaces.*

This initial experiment was not very successful. On the one hand, other trade unions tried to discourage people. On the other hand, the colleagues who passed the exam as financial promoters actually never wanted to perform their job outside their workplaces.

In the meantime, digitalization was making huge steps forward, so we came to the offers made at a distance.

(Piero Valentini) When did that happen? More or less? When was it?

(Mariarosaria) The initial experiments I told you about took place in **2015**. In the last two years, Intesa Sanpaolo has tried to meet clients' needs in a new way, through transactions offered at a distance. These offers were made also by employees working in the branches. This turned out to be useful when COVID-19 struck, because in this area we were already prepared.

In 2017, with the major bank crises, Intesa opted for something new, i.e. what we call workers with a Mixed Contract. However, this instrument was mainly used for financial promoters of other banks in order to have new assets under management.

So there was this new possibility. On 1 February 2017, when the relevant agreement was signed, this initiative was still considered "experimental". Basically, financial promoters of other banks were offered the possibility of a stable job. For two days per week they would work as part-time employees with an open-ended contract, while for the remaining three days they would work as financial promoters, bringing their customer base to Intesa Sanpaolo.

In this experimental phase, internal employees also had the opportunity to request the switch to a Mixed Contract.

How? They would work part-time as employees and part-time as freelancers. After 24 months, they would go back to being full-time employees, unless they explicitly requested to continue with the Mixed Contract also after the initial 24 months.

The experiment with financial promoters was not very successful, because those who approached Intesa Sanpaolo did not manage many clients nor large asset portfolios.

The workers who accepted had very low annual incomes, around €15,000. We offered them a net income of €900 per month as employees. In addition, they would continue to do what they already did, i.e. manage asset portfolios as freelancers.

So after a while, the bank slowed down the hiring of financial promoters, limited the number of eligible workers and finally stopped this procedure for promoters.

In the meantime, Intesa Sanpaolo had acquired the banks based in Veneto.

(Piero Valentini) What were the main issues and opportunities of this experimental initiative?

(Mariarosaria) I will give you some useful information to assess the effectiveness of the Mixed Contract.

These people work as part-time employees for 40% of the week, receiving a net monthly salary of about €900. For the remaining 60% of the week, in the first six months the company guarantees a minimum gross income of €1,354, i.e. a net monthly income of about €1,000-1,100. During the lockdown period, we were able to extend the guaranteed minimum income to 12 months for those who had been hired at the end of 2019.

As a result, workers with a Mixed Contract earn a part-time salary plus a guaranteed minimum income for the first six months, for a total net monthly remuneration of about €2,000.

Why did it not work? More precisely, why was the growth of this category of workers below expectations? Because promoters' mentality has much more to do with freelancers than with employees, who must comply with several constraints and rules. On the other hand, employees benefit from the guarantees established in all the industry-wide and national agreements implemented by Intesa Sanpaolo: complete health care coverage, supplementary social security scheme, and all the other rights and bonuses we have as employees.

The promoters who were hired with a Mixed Contract received a number of benefits: a part-time salary plus all the additional welfare bonuses. Furthermore, they kept on working as freelancers, bringing their asset portfolios to Intesa Sanpaolo.

The group had initially planned to hire 400 or more promoters in this way. However, after a while it stopped because of the issues I have just mentioned.

(Piero Valentini) *Sorry for interrupting you, but we have a very tight agenda. It is very important that you stressed the need for more information, but we could also examine this issue more in depth separately.*

(Mariarosaria) *Let's now get to the near past and to the present of the Mixed Contract. Young graduates are selected on the basis of their relational skills. They are hired for a paid internship – as established by the Regions – which serves as a training course in preparation for the exam to become financial promoters.*

Once they pass the exam for financial promoters, they are hired according to the scheme I have just described. For two days per week (equal to 40% of working hours) they work as part-time employees, while for the remaining three days they work as freelancers, with a guaranteed minimum income for the first six months, for a total monthly remuneration of about €2,000. In addition, the bank assigns some existing clients to them and undertakes to pay commissions for any new clients they acquire.

Let's now talk about the critical aspects.

The most important one is the insufficient training for the two days in which they work as employees. Being recent graduates, they have to learn everything about working in a bank. They have a university degree and they have extensive knowledge of financial matters, but they have no work experience in the real context. On the one hand, the digitalization processes certainly lead them to work with clients in a different way. On the other hand, they need training both for the two days per week in which they work as employees in the branches and for the three days in which they represent the bank as freelancers. They are formally self-employed, but dependent on a single employer for their income. Hence, they need well-structured, complex and timely training. This is a very important issue: we have made major steps forward at the contract level, but we still have a lot to do.

Silvia Romano, Deputy Secretary of the EWC of BNP-Paribas, joined us by video from Madrid because she was not able to get to Rome due to the travel restrictions.

She confirmed us that there are some persistent issues in industrial relations with the parent company. More precisely, there are some contradictory attitudes that have a negative impact on the functioning of the EWC. For instance, the central management initially refused to sign a European agreement on telework. However, during the latest virtual meeting of the Select Committee – extended to countries that are not represented in it – the management changed attitude. To quote Silvia, (...) *the plenary with 50 members who represent the 23 countries in which BNP operates was replaced by a meeting of the Select Committee, the heads of the HR Department and some European experts.*

During this mini-plenary we once again asked for a European agreement on telework. This time, the heads of the HR Department accepted the idea. We have already started to assess all possibilities in the various countries to collect all the available data. We will certainly keep you informed.

Silvia also confirmed that the trade unions are faced with the challenges posed by the extensive and radical organizational changes caused by the COVID-19 emergency. This transformation is questioning the effectiveness of the traditional and well-tested instruments used by union representatives, who must continue to be the most direct and immediate contact persons for workers.

Finally, Silvia stressed once again the existence of a problem which she had also highlighted during the project we carried out from 2015 to 2017: the less and less sustainable imbalance between the advanced and dynamic industrial relations existing in the group and in the EWC and a EWC Agreement that is still based on the old article 13 of Directive 94/45. It is a political issue that must be overcome with the political determination of the EWC, with the support of UNI Finance. We should also bear in mind that, from a regulatory and legal point of view, those EWC agreements now lack a legal

basis. On the one hand, the transnational group has changed in size. On the other hand, these old agreements can no longer exist, because the transitional period established by Directive 2009/38 ended some time ago.

The experiences of two workers representative of industry 4.0 change and of their direct trade union representatives

Our survey involved about 30 workers representative of this strategic segment of the new banking workforce. The results of the questionnaire were analyzed by our research institute LAB together with sociologist Piero Valentini. In the annexes you will find the complete transcription of their presentation during our meeting of 7-8 October.

We also listened to the stories of an employee **from Santander Consumers** and one **from Intesa Sanpaolo**. They told us about their work experiences and contexts. They gave us a general overview, as well as their personal point of view. They have two skills which are different but equally emblematic of the professional roles that are emerging in the changing scenario. So their stories are a perfect match for the indications and expectations we had set ourselves when we laid down the objectives of the Project.

The complete transcriptions of their speeches are included in the annexes to this Report. This is probably the easiest way to demonstrate the validity of the basic assumptions which we had made already during the presentation of our project in April 2018:

- 1)** This segment of the workforce is strategic, because it is highly skilled in sectors like IT governance and the sale of financial products which are decisive to generate added value in the credit production process.
- 2)** These workers are dynamic and strongly motivated. They find their jobs engaging because they require their know-how and because, in the organization of the entire production cycle of the bank, they have a good degree of autonomy in organizing their working hours and productivity. This condition is almost antithetical to the one of “mass workers”, who are the ones most heavily affected by restructuring processes.
- 3)** The most critical aspect in their condition is the contradiction between their strategic role in the production cycle – which leads them to be strongly motivated and to have certain salary expectations – and the classic/Marxian “exploitation” of their living labour (their expectations are not entirely met) and insufficient response to their training needs.
- 4)** However, this issue does not potentially unite these employees to make joint salary demands. As I have already stated, the individual and corporate situations are very diverse, both in terms of current salaries and of concrete prospects of pay rise and professional advancement. For instance, in the case of Intesa Sanpaolo’s “Mixed Contract”, the 24-month deadline to decide whether to permanently confirm this kind of contract or to turn it into a full-time employment contract may not be enough to make a final decision on the basis of the experience accumulated in the 24 months.
- 5)** These employees ask for the traditional help of trade unions for things like understanding their payrolls and the right to disconnect, i.e. the right to working hours typical of this workforce segment.
- 6)** Trade unions are willing to and aware of the need to respond to the demands of these workers. However, they encounter some difficulties related to these workers’ organization of space and time. Furthermore, union representatives require training on how to best meet the demands of these employees and how to turn them into an organized movement.

Point 6) concerns a fundamental element of the Project, i.e. the training needs of union representatives. After the stories of those two employees, and after the speech

by **Franco Cappellini** (see above), we asked the question directly to **Goffredo Molteni** and **Mariarosaria Mazzotta**.

Through our Project, we maintain that training is required for the union representatives who have to represent also this kind of workers. We should not take it for granted that union representatives inside a company or production unit have this kind of professional skills, considering the cognitive, informational and work tools they have been provided by trade unions' training.

It is difficult to engage the 4.0 workforce segment, especially if they have no physical workplace. Company-level union representatives must often find ways to engage these employees and keep them engaged as union members.

They will not remain members if we cannot respond to their needs, or if they consider our responses inadequate for any kind of reason.

Together with Piero Valentini, I asked Goffredo Molteni and Mariarosaria Mazzotta, who represent this new kind of workers, the following question:

*Do you think that **union representatives require training** to be able to represent these workers and their needs in the framework of more general union policies? What are the conditions necessary to engage these workers and to adjust the work of union representatives to the new characteristics of these workers?*

So the question is about both organizational conditions and training.

If this is a problem, how can we face it and solve it?

Below are some excerpts from the long answer provided by Goffredo Molteni and the complete reply of Mariarosaria Mazzotta.

Goffredo Molteni:

My immediate answer is yes. Union representatives do need training to engage, understand and respond to new-generation workers, who, on average, are very young. They are the ones who provide remote help, work online, and reply to your phone calls when you need help with bank transfers and other bank issues, but also investment advice.

After the initial period in which they have to settle in, these workers strongly need the help of trade unions. Often times, their initial remuneration is quite low and they work hundreds of kilometres away from their place of abode or of birth. So they have a number of needs which fall within the scope of traditional trade union activities: understanding the payroll, respect of work shifts, payment of benefits, respect of the breaks they are entitled to in a digitalized service that is very similar to call centres. Actually, if I use this term, the management immediately stops me, because they are not call centres, but consultancy centres. However, they make use of electronic systems which record the worker's status and control their activities.

Workers are very sensitive to these issues and we need to understand and respond to their needs. We must be well prepared to understand how to best interact with these workers and meet their demands. These are needs which, after all, are part of the traditional activities of trade unions: payrolls, breaks, benefits, controls.

These new workers demand guarantees and respect for their professional growth opportunities. We must work to understand and help them understand the whole of the banking sector and explain them the prospects of professional development, growth and transfer.

There is also another fundamental element.

Why do we need to invest in the internal human capital by providing continuous training in information technologies – both for senior and junior workers?

Because for junior employees there is a major risk. What do they demand?

They demand to be trained and kept up-to-date. They join the bank with certain IT skills and they no longer have the concept of bank which I had, or which people who began to work 20 years later than me have. Young workers want to receive training. In fact, there is a huge turnover problem. These young people are telling us:

"But when I did my job interview, it sounded like I would design skyrockets and now I am here, still using Excel sheets. I did a 6-month internship at Microsoft in the United States and after six months here my CV has actually gotten worse."

This is a major challenge. How can we face it?

We must voice their demands and challenge the management to provide training in-house or to purchase it externally. Today the situation is quite imbalanced. We need to provide continuous and certified training both to workers aged 35 to 55 and to young employees. We are losing young talents, so we need continuous and certified training to respond to their needs and provide them with useful tools and skills.

Mariarosaria Mazzotta

Many of the young workers we represent at FISAC-CGIL have become members of our union without even knowing me. We have never met, but we regularly speak on the phone and exchange information through digital tools. They feel the need of trade unions, because they have no idea of how the bank works: they know nothing about our classification in grade, our work organization and the rights they have. No one tells them anything. The management does not give them any information, so they come to us to receive it.

When we manage to give them useful indications, young workers are well organized through WhatsApp groups and quickly spread the information around. If you tell something to one of them, many others will receive that information and they will look for our help. So we must be able to represent them and find a way to engage them in a new way, because maybe we are used to our old lifestyle.

Personally, I have worked in a bank for 30 years. When I joined the industry, the world was different, everything was different and now everything has changed. Every worker does something different. There are now the ones using technological tools, the ones working online, the ones with a Mixed Contract, and everything else which may follow – because I am pretty sure that in the future there will be other innovations.

So we must find a different way to be closer to them, speak their language and use their instruments.

I have interacted with several new members from various central and southern regions of Italy (Apulia, Calabria, Sicily, Latium), some of whom now live in the north (Liguria, Lombardy). I have never personally met them, but I have always been regularly in touch with them. Unfortunately we speak of the right to disconnect, but we never disconnect from our cell phones, not even on Saturday or Sunday. But we must try to find new models to represent this new generation of workers. This is something imperative we need to do now.

The stories we heard on 7 October 2020 and the analysis of the questionnaires filled out by a sample of workers of the 4.0 segment

A more in-depth analysis will be made by our friends from the research institute ISRF-LAB. I will only underline a series of aspects which emerged in **Roberto Errico's** speeches and which confirm the basic assumptions we made in 2018 when we presented this

European Project (see chapter: **The speed of change: 2) organizing and representing 4.0 workforce**)

However, the results of the questionnaires highlight a number of issues which we can summarize as follows:

- The increasing workload does not correspond to a proportional increase in productivity. Indeed, a significant part of the workload increase is due to corporate shortcomings, inefficiencies and delays in the implementation of digital procedures. The speed of innovation brings corporate problems to light and the workers affected by change have to bear the burden of it. As a result, they complain about the insufficient training provided by the company, both in quantitative and in qualitative terms.
- The larger responsibilities and more advanced professional skills required to workers by the 4.0 industry does not translate into an adequate pay rise. In this regard, the action of trade unions is made more difficult by the large variety of professions and individual situations existing in this workforce segment that joins the production cycle. I have already asked our friends of the research institute LAB to carry out an additional analysis next January. We must assess to which extent this is due to resistance by management (which we can counter with specific demands) and to which extent this may be due to market dynamics that keep salary levels as they are.

Our dialogue with management representatives

The last part of our session on Thursday, 8 October was dedicated to the exchange of views with **Jens Thau**, President of the EBF Banking Committee for European Social Affairs, **Giancarlo Ferrara**, Head of Social Affairs for the Italian Banking Association (ABI), and **Monica Carta**, Head of International Social Dialogue for the Unicredit Group.

The full transcriptions of their speeches are available in the annexes to this Report. Here I would like to list the **7 points which Monica Carta** drew up in preparation for our meeting in Rome on 7-8 October. They are all very interesting, but point 6 is entirely in bold, because I think it is an important requirement to elaborate a joint proposal with our social partners, starting from professor Dorssemont's 13 proposals and our 4 key points.

1.
Innovations in society, in the competitive context and in the world of work are **quickly redefining roles and responsibilities**, probably as never before. This process has been further accelerated by the COVID-19 emergency. This emergency has also led to a rapid **reskilling and upskilling in digitalization** of large groups of the population.
2.
Occupational mobility: we are now faced with a “**hybrid environment**”, in which the old model has disappeared and many workers can now contribute to corporate performance **anywhere they are**, regardless of them being in an office. We have rediscovered the **value of processes and activities**.
3.
Considering the entity of new challenges, we must continue to promote inclusion. **No one should be left behind** in this challenge, independently from their age,

cultural and professional background, and individual peculiarities.

4. Internalizing change requires time. Employers and trade unions can act through **advanced social dialogue** to enhance the human capital and in order for workers to actively contribute to **the company's success** and to their own **professional growth** also in the new post-pandemic scenario.
5. Advanced social dialogue must set itself the goal of qualitatively improving the daily experience of workers and of defining a **set of rules to manage change** in the interest of workers, of undertakings, and ultimately of society.
6. **EU Directives on employee involvement must take recent changes into account. Therefore, it is necessary to update the current regulatory framework to ensure that social dialogue keeps playing its crucial role in all EU Member States.**
7. Thanks to digital technologies, the **EWC of Unicredit** has always maintained dialogue during the months of the pandemic. We have kept on exchanging views on the most important topics for our colleagues, above all **remote work**.

Jens Thau agreed with Monica Carta's point 6) when he addressed a crucial issue which I raised during the meeting and which we repeatedly stressed in recent years (thanks to Filip Dorssemont, who first raised it at the time of the recasting of EWC Directive 94/45, which led to the adoption of EWC Directive 2009/38): **the lack of consistency in the definitions of Information and Consultation, as well as in the procedures and objectives of Information and Consultation between the various EU Directives on employee involvement.** Some years ago, the European Commission launched a fitness check of these Directives and our European Project intends to make an original and independent contribution to it.

Jens Thau and Giancarlo Ferrara both insisted that the stakeholders of European Social Dialogue should be able to choose the procedures, timeframe and objectives of dialogue **independently**. In our case, the stakeholders are UNI Finance, with its affiliated national trade unions, and the European employers' federations – three in the banking sector and three in the insurance sector. This certainly does not mean that we should work without the European Commission or other institutions. It means that we should agree on joint procedures and objectives in order to achieve the results which the speed of change imposes on social partners if they want to continue to play a significant role.

Angelo Di Cristo confirmed that European Social Dialogue in the finance industry is in a very good condition – a joint achievement of the social partners. He said it without being rhetorical, and he underlined that social dialogue is very efficient thanks to the independence of

stakeholders. In this regard, he referred to the Joint Statement on Telework and suggested that we could build on it to reach an agreement on a Joint Statement on Work from Home.

Future prospects and credits

We agreed with Angelo Di Cristo and Jens Thau to work together on joint proposals for the rewriting of the most critical aspects of the Directives on employee involvement, starting from Directive 2009/38. The goal would be to involve also other sectors represented by UNI to elaborate together in 2021 a joint document or joint proposals for the revision of these Directives.

As far as we are concerned, the contract for **our European Project VS/2019/0016** will **end on 31 March 2021**. We will use the next three months to organize our Final Conference, within the limits imposed by the restrictions. **We will involve all the trade unions which originally joined the Project, together with the employers' representatives.**

We have already a preliminary agreement for 26 February 2021 – also with MEP **Brando Benifei**, who has collaborated with us in the last five years, both in this and in other European Projects, helping us promote our initiatives concerning EWC legislation.

We will also involve the workers and their direct union representatives who took part in our meeting on 7 October 2020. Considering the successful experiment, we have already invited them to our Final Conference.

With regard to their participation and to the analysis of industry 4.0 change, we will continue to rely on and to collaborate with the research institute **ISRF-LAB**.

As a follow-up to this European Project, we plan to work on the initiative we envisaged with Jens Thau and Angelo Di Cristo. This initiative would be fully in line with what we established in the Contract signed with the DG Employment of the European Commission.

We will of course continue to work towards the completion of our Project with **Agostino Megale**, Secretary-General of FISAC-CGIL from 2010 to 2018, then President of **ISRF-LAB**, who now also holds a prestigious position at a **national level in CGIL**.

We will also involve the **International Department of FISAC-CGIL** in our collective discussion.

Last but not least, the meeting of 7-8 October 2020, as well as all the other collective initiatives of the Project, and the preparation of paper, electronic, online and audio-visual materials have been made possible by the accurate and professional work of the Organization Department of FISAC-CGIL, headed by **Cristiano Hoffmann**, and by the Administration Department of FISAC-CGIL, headed by **Rita Diotallevi**.

We know we can count on their invaluable support, together with the one of **Simona Borelli** from the Office of the Secretary-General. We can also count on the political support of the legal representative of our Project, **Nino Baseotto, Secretary-General of FISAC-CGIL**. Since he was elected few months ago, he has only recently learned about the details of our Project, but we will certainly involve him in the preparation of our next initiatives.

Mario Ongaro
European Project Director

Our fifth collective event

:

FINAL CONFERENCE

**in
Rome**

**on
24th -25th -26th February
2021**



AGENDA
for the
FINAL PLENARY of the EUROPEAN PROJECT

***EMPLOYEE INVOLVEMENT
IN THE CHANGING WORK
WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS:
TRAINING AND TRADE UNION POLICIES,
FROM EU DIRECTIVES TO CURRENT PRACTICES***

*carried out with the financial support of the
EU Commission – DG Employment, Social Affairs and Inclusion*

Rome, 24-25-26 February 2021

held remotely* at the times specified in the agenda

***with the exception of the Fisac Project staff and participants who have confirmed their presence**

Wednesday, 24 February

- 2:30 p.m. Registration of participants attending in person and of all the other participants attending remotely
- 2:50 p.m. Opening of proceedings and technical information -*Mario Ongaro and Cristiano Hoffmann*
- 3:00 p.m. Introduction -*Agostino Megale, National Coordinator of CGIL - Foundations and Research Institutes*
- 3:30 p.m. The European Project towards its conclusion: agenda and objectives of the meeting
Mario Ongaro, European Project Manager
- 3:45 p.m. Update on the Project: research and data analysis
Piero Valentini, Sociologist - La Sapienza University of Rome

4:15 p.m.** In representation of the EWCs participating in the Project,
Steering Committee members reply to the following **3 questions**:

**break planned from 4:45 p.m. to 5 p.m.

1) *In your opinion, are information and, above all, CONSULTATION practices adequate in your EWC?*

2) *In your opinion, is a renegotiation of the agreement that regulates the functioning of your EWC possible? How could it improve the quality of information and, above all, the quality of consultation?*

3) *Do you believe that in your EWC 4.0 workers (i.e. the ones we are focusing on in our European Project) are adequately represented? In your EWC, has there been information and consultation about the issues that most directly concern them, such as digital innovation, the flexible organization of work and working hours?*

Silvia Romano - EWC of Bnp-Paribas / Franco Cappellini - EWC of Crédit Agricole / Guido Van Den Eeckhoudt - EWC of KBC / Ana Herranz and Marcello Carcereri - EWC of Santander

6:00 p.m. Industrial relations and the transnational dimension of the Intesa Sanpaolo group
Elena Cherubini – (member of the Secretariat of the Coordination Unit Fisac-Cgil Intesa Sanpaolo)

6:20 p.m. End of session

Thursday, 25 February

9:45 a.m. The changing work: report on the results of the survey on a sample of workers concerning salaries, training and responsibilities

Piero Valentini, Sociologist - La Sapienza University of Rome

10:20 a.m. The changing work: collective bargaining in the Intesa Sanpaolo group

Mariarosaria Mazzotta – National Executive Cttee Fisac-Cgil Intesa Sanpaolo

10:45 a.m. The stories of the workers most affected by change

11:45 a.m.* France, Italy, Slovenia, Hungary, Slovakia, Serbia, Romania, Bulgaria, Albania, Turkey, Malta: the points of view of the trade unions from these countries on the situation and prospects of their banking sectors

Mireille Herribery - Fec F.O. / Claudio Cornelli - Fisac-Cgil Intl.Dept. / Tomaç Boltin - SBS / Sandor Toth - BBDSZ / Slobodan Mihailovic - Sfos / Adrian Soare - Fsab Cartel Alfa / Svetomir Dichev - Ftufs / Hasan Shkalla - Fstbsh / Meral Gunenc – Basisen / William Portelli - Mube

1:30 p.m. – 2:30 p.m. lunch break

2:30 p.m. Update on the EWC of Crédit Agricole – *Dominique Mendes – EWC Secretariat*

3:00 p.m. Preparation of the final round table: (*Megale – Ongaro*)

3:30 p.m. Discussion with the employers' representatives on the topics of the round table

5:00 p.m. End of session

Friday, 26 February

10:00 a.m. – 1:00 p.m.

FINAL ROUND TABLE

THE SPEED OF CHANGE AND THE EUROPEAN DIRECTIVES ON EMPLOYEE INVOLVEMENT

Participants:

Brando Benifei, Head of the Italian Democratic Party delegation at the European Parliament

Susanna Camusso, Head of International Policies for CGIL

Angelo Di Cristo, Head of UNI Finance

Giancarlo Ferrara, Italian Banking Association (ABI)

***Emanuele Recchia, Head of Labour Policies, Industrial Relations and Welfare
for the Unicredit Group***

***Jens Thau, President of the Banking Committee for European Social Affairs
of the European Banking Federation***

Coordinator: *Mario Ongaro, European Project Manager*

Conclusions of the round table and of the Final Conference:

Nino Baseotto

Fisac-Cgil General Secretary

REPORT ON THE FINAL CONFERENCE

Rome, 24-25-26 February 2021

Introduction

The Final Conference was delayed for more than eight months (it was originally scheduled on 15-17 June 2020). Nonetheless, we stuck to the basic objectives we had indicated in April 2018, when we presented the Project to the DG Employment.

The agenda included the same kinds of participants (union representatives from the multinationals and the trade unions participating in the Project + employers' representatives + Member of the European Parliament) we had listed at the time. And we also maintained the same structure, with joint sessions, sessions for union representatives only, and the final round table.

During our Final Conference it was not possible to have a representative of the DG Employment. We promptly sent an invitation, but our contact person was not able to attend. Unfortunately, we could not change the February dates because of a number of organizational and contractual constraints. The Grant Agreement which funded the Project activities was set to expire on 31 March 2021 – after a 5-month extension that was agreed upon with a specific amendment to the original Agreement.

We neither discussed nor drew up any final documents. However, we agreed with the social partners of the finance industry and with the Member of the European Parliament to keep on working together to reach an agreement on some joint proposals to update and amend EU Directives on employee involvement.

We laid the foundations for this common path during the meeting of the steering committee which took place last October. Back then, we met Jens Thau, President of the Banking Committee for European Social Affairs of the European Banking Federation, Giancarlo Ferrara, Head of Social Affairs for the Italian Banking Association, and Angelo Di Cristo, Head of UNI Global Finance. The latter is the European and international federation with which FISAC-CGIL is affiliated. One of the institutional tasks of UNI Finance is to engage in European Social Dialogue of the banking and insurance sectors in the name and on behalf of the national trade unions which represent the workers of these sectors.

The Final Conference marked the beginning of this work, with the goal of organizing a joint event by the end of 2021 or the beginning of 2022.

I will get back to this later on, when I summarize the topics and discussion of the round table and of the joint session held in preparation of it.

FIRST SESSION

24.02.2021

The attachments to this Report include the full speeches by Mario Ongaro, Project Director, and Agostino Megale, formerly President of ISRF LAB and Secretary-General of FISAC-CGIL, with whom I collaborated on the political and research elements of the Project.

Very briefly, here are the titles of the two speeches and of their chapters:

UPDATE ON THE EUROPEAN PROJECT AND FUTURE PROSPECTS (Mario Ongaro)

- ***Constraints, limits, potential and opportunities of an online conference: between pandemic and digitalization***
- ***A different use of time in a different logistical organization of the collective events in a European Project***
- ***Our agenda for the Final Plenary of 24-25-26 February: three questions to EWC representatives***
- ***When there is no alternative to the renegotiation of the constituent agreement***
- ***The ability of EWCs and trade unions to represent new workers***

- *The 4.0 workers involved in this European Project, the EU Directives and the need to reform collective bargaining*
- *From Sofia to Rome through Belgrade*
- *Our fitness check of the EU Directives on employee involvement, our dialogue with employers' representatives, the collaboration with UNI Finance, the relationship with the European Parliament*
- *The final round table and the follow-up to the European Project*

AGOSTINO MEGALE

Introduction (Rome, 24 February 2021)

- *The role of trade unions and EWCs in the era of digitalization, of changes in human work (which does not disappear) and of the acceleration caused by the pandemic*
- *EWCs and the anticipation of change in the framework of Next Generation EU*
- *Our 4 key points (combined with the 13 proposals by professor Dorssemont) to anticipate change in relation to business plans and transnational groups*
- *The need to govern change in the financial sector in the framework of Next Generation EU and of an effective employee involvement*
- *Strong trade unions with new skills to take up and meet the challenge of change*
- *Using the productivity increases generated by digitalization to protect and retrain employees*

On 24 February we listened to the point of view of those who experience changes in work organization in their daily lives, i.e. employees and their representatives at the company level.

Their experiences were analyzed in three surveys carried out by **sociologist Piero Valentini** in collaboration with ISRF LAB, the research institute of FISAC-CGIL.

The first survey involved 50 respondents, including employees and their direct union representatives, from various service departments. Its results can be summarized as follows:

- Restructuring is no longer achieved through a sequence of different processes occurring one after the other. Restructuring is now a continuous and uninterrupted process. Keeping up with it confuses not only employees and their representatives, but also the managers who organize work. The shared feeling of confusion is a factor that can potentially stimulate a dynamic and innovative social dialogue
- Respondents are fully aware of the situation and they ask social dialogue and collective bargaining to move from the traditional defensive approach to a proactive approach that can anticipate change
- The main demands highlighted by the survey are the following: reinforcing the coordination of trade unions at the transnational level; support of national trade unions to EWCs, also through appropriate training; making transnational information effective by advancing it, thus making consultation possible
- Reconsidering the work-life balance in the light of the widespread diffusion of remote work following COVID-19.

A summary of the results of the **second survey** was already attached to the report on the meeting of last October.

**The experiences of EWCs and transnational groups
through the three questions which I asked them:**

1) Do you think that information practices and, most of all, CONSULTATION practices are adequate in your EWC?

2) Do you think that the current Agreement regulating your EWC activity can be renegotiated and that such renegotiation can improve the quality of information and, most of all, the quality of consultation?

3) Do you think that 4.0 employees (i.e. the kind of employees who are at the core of this European Project of ours) are adequately represented in your EWC?

Are, or have you been, adequately informed and consulted as EWC about the issues concerning them directly, such as digital innovation and the flexible organization of work and working hours?

Of the eight transnational groups which formally joined the project three years ago through their EWCs and company-level unions, two did not take part in the last two events. This may not be accidental, considering that we were forced to delay the two events for many months because of the pandemic. We were not able to keep Groupama and Société Générale involved, while KBC and Unicredit respectively did not take part in the meeting of the steering group of last October and in this Final Conference.

We were clearly very sorry for these “defections”. However, we are not particularly concerned, because, to a certain extent, they can be considered as normal and linked to turnover in union representative bodies. It is reasonable to believe that some of the individuals who undertook to actively participate in the Project for its entire duration in 2018 (and 2019) reached the end of their terms of office and were not able to delegate their successors. Furthermore, the change might have occurred during the course of the Project because of its unusual extension due to the pandemic.

With respect to the geographical and transnational representativeness and to the relevance of the six groups which continued to take part in the Project, there was no decline. Indeed, the six groups are present across the entire European Union, including candidate countries, and they have a global footprint. Furthermore, their employees are traditionally represented by well-rooted trade unions and the quality of industrial relations is very high.

After this methodological explanation, I would like to summarize the answers to the three questions above, together with important parallel information that we collected on the priorities existing in these groups. In all groups, the priority was the impact of the pandemic on work organization through the massive diffusion of remote work, which was made possible by the acceleration of digitalization.

The answers to the three questions basically confirmed what we have been saying for years on the functioning of EWCs:

- The existing constituent agreements should be renegotiated for two basic reasons:
 - they are not in line with Directive 2009/38. Some of these agreements are really distant from the principles established by Directive 2009/38, while others only require some adjustments.
 - Digitalization and the resulting considerable changes in work organization are posing problems to the full implementation of the rights to information and consultation laid down in constituent agreements. Despite being in line with Directive 2009/38, these agreements were written with a much more traditional work organization in mind than the current one.
- For this reason, the representation of 4.0 employees has become a challenge. EWCs are facing this challenge, but they have to deal with the lack of training of trade unionists – an issue which we had already identified when we elaborated this Project three years ago.

During the discussion, we also went back to the issue of the constituent agreement of the EWC of BNP-Paribas. The management does not want to renegotiate it arguing that the agreement was concluded pursuant to art. 13 of Directive 94/45. We believe that this argument is unfounded. The company for which that agreement was signed no longer exists, because BNP-Paribas is the result of a merger which radically changed the structure of the group.

However, this is not just a legal matter. Our argument cannot be disputed. Proof of this is the renegotiation which I led in 2019 in my capacity as expert from UNI Europa, which led to the renegotiation of the EWC agreement of Crédit Suisse, which had also been concluded pursuant to art. 13. The real issue is political: it concerns the relationships of power existing in the EWC between trade unions from different countries, between UNI affiliates and non-affiliates, and the will/advantage of opening a discussion/dispute with the group's management.

Our only possibility is the manifest inadequacy of information and consultation, whose limits are clearly due to the inadequacy of the agreement. This is the only possibility we have of convincing even the most reluctant ones of the absolute need to renegotiate the agreement in order to avoid the poor functioning of the EWC.

However, in the long term the only possible solution is the legislative one, i.e. an amendment to the survival clause for agreements concluded pursuant to art. 13 of Directive 94/45. The survival clause is included under art. 14a of Directive 2009/38.

Another issue was the one raised by Elena Cherubini, member of the Secretariat of the Central Coordination Unit for FISAC-CGIL at Intesa Sanpaolo. Unfortunately, the largest Italian group – one of the largest in Europe – stands out for not having created any EWC yet.

Elena's full speech is attached to this Report for reference.

SECOND SESSION

25.02.2021

This session was opened by the presentation of the results of the third survey by sociologist Piero Valentini. This survey focused on 4.0 employees of the banking industry through a series of wide-ranging and in-depth interviews.

The full speech and the PowerPoint presentation by Piero Valentini are attached to this Report for reference.

The presentation outlines a very complex and dynamic situation, with both positive and critical aspects. It is a rapidly changing situation, which requires trade unions to be able to represent this new kind of employees, even if for the moment they remain a minority.

Why do we pay so much attention to them?

Because these employees represent the future. Because we know that, in the coming years, the generation of employees and union officers who organize traditional work in banks – who are still a majority – will respectively leave the production cycle and trade unions simply for age-related reasons. This turnover started more than 10 years ago, but in recent years there has been an acceleration, which has been driven in particular by early retirement schemes funded by the finance industry.

Therefore, trade unions must be up to the challenge of engaging and organizing these employees and of identifying among them potential union representatives.

There is no realistic alternative to this.

But the presentation also focuses on entrepreneurs, companies and employers' representatives.

If, as is predictable and fair, companies invest in young employees who represent the future and expect high productivity and profitability from them, they must be aware that they also have to meet the expectations of these employees and reward them with appropriate professional opportunities and salaries. Companies must overcome organizational uncertainties and bottlenecks, invest increasing resources in training, and

provide guarantees in relation to the responsibilities which 4.0 employees are often forced to take upon themselves. Companies must implement measures to prevent demotivation in this kind of employees. If they really plan to invest in these workers, companies must seriously take this problem into consideration. This topic certainly deserves being investigated further, but it fully pertains to social dialogue and collective bargaining.

The presentation by Piero Valentini was integrated by **Mariarosaria Mazzotta** from the Coordination Unit for FISAC-CGIL at Intesa Sanpaolo. She made a detailed overview of the working conditions and contractual arrangements introduced by the company with the so-called Mixed Contract. Under this agreement, young workers work for Intesa Sanpaolo for two days in five in a branch as employees, and for the remaining three days as freelance financial promoters.

Mariarosaria highlighted how the two working conditions are balanced and she described the guarantees provided to these young workers in terms of salaries and legal provisions. She also underscored the need for trade unions to make a targeted and specific effort to engage and represent this kind of 4.0 employees.

A colleague from Intesa Sanpaolo representative of this category highlighted the potential of this peculiar working condition. In particular, these workers have considerable opportunities to freely organize their working hours, they have interesting prospects in terms of salary growth, and they feel more motivated to work and achieve results. The main problem is inadequate training, which is excessively delegated to the colleagues working in branches, who are not motivated to train these young workers. Another problem consists in the “unproductive” workload due to merely administrative and bureaucratic tasks. Furthermore, these workers have to deal with the tax-related obligations typical of self-employment. However, since they work exclusively for Intesa Sanpaolo, the company should take care of these tasks.

The session continued with the speeches of the national trade unions from France, Italy, Malta, Serbia, Slovenia, Romania, Bulgaria, Romania and Hungary (see attachments).

On 25 February, the afternoon session focused on the preparation of the round table of the following day. There was a very open and informal discussion which involved Giancarlo Ferrara (ABI, Italian Banking Association), Jens Thau (European Banking Federation) and Claudio Cornelli (Head of International Affairs at FISAC-CGIL).

Given the stand-by situation in terms of the EWC to be set up, we want to stress this crucial political issue through the contribution by Elena Cherubini

ELENA CHERUBINI / Fisac-Cgil Secretary in Intesa Sanpaolo Group
(in charge of the transnational dimension and issues)

Good evening everyone and thank you for inviting me to the plenary conference of this European project which, in spite of all the current problems, seems to be going well. In this project I really appreciated the possibility of listening to and spreading the voice of the men and women workers who had the opportunity to participate directly and who are directly involved in technological change – not only in digitalization, but also in the fast and continuous change and adaptation that have concerned many colleagues because of the health emergency.

I have been asked to speak about the following topics: an overview of the situation at the national level and one at the transnational level, in terms of prospects and current bargaining.

As far as the transnational dimension of the Intesa Sanpaolo group is concerned, after the acquisition of another important national group such as UBI, the bank ranks second in the Eurozone after BNP Paribas in terms of capitalization, and among the top banks in the wider European region.

So, you can see how important it would be to inform employees across the organization about what is happening, given that the bank definitely has a supranational organization. Today's figures, which have not changed since 30 September, show that the group has a strong transnational footprint in Eastern Europe and the rest of the world with 1,000 branches, over 7 million customers, and banks that are well rooted in their respective geographical areas. I would like to mention some of them, even though I may be pronouncing them wrong, as a sign of recognition of the colleagues who work there: Intesa Sanpaolo Albania, Intesa Sanpaolo Bosnia-Herzegovina, Privredna Banka Zagreb in Croatia, Intesa Sanpaolo Bank România, Banca Intesa Beograd in Serbia, VUB Bank in Slovakia and the Czech Republic, Intesa Sanpaolo Bank in Slovenia, CIB Bank in Hungary, Eximbank in Moldova, Pravex Bank in Ukraine, AlexBank in Egypt and Bank of Qingdao in China.

As you can see, most of the countries I have mentioned are European, but as Mario clearly stated – and I will not go back over it – unfortunately it has not yet been possible even to start a dialogue on the potential establishment of a European Works Council. So, I am not in a position to provide any information on what happens outside of Italy, on the health and safety conditions of people who do not work in Italy, but who are people like us: they share with us the same needs, the same claims, the same work procedures, the same rules. The same European directives and regulations also apply to them, like the MiFID, privacy, antitrust and supervision regulations, or the non-performing loans regulations we are all familiar with. And these employees are, no doubt, all facing huge changes.

We just heard, a few days ago, that CIB Bank, a subsidiary of Intesa Sanpaolo in Hungary, has launched a rather peculiar online mortgage application process. First of all, they are getting about 300 submissions per month and this means that there was a customers' need, but I do not know how this is being managed and what kind of workload this is implying. In addition, a new "video banker" professional profile was created for mortgage specialists who interact with customers by video after their mortgage application has passed the first online submission stage.

Finally, the whole procedure – and I believe this is possible thanks to Hungarian law – can be concluded with a voice signature. So, you can see how the innovation processes are all heading towards the same target: massive digitalization.

This information is circulating internally in the bank, but it is not specifically addressed to the unions. This is unbelievable in a banking group that has very high-level industrial

relations and a type of bargaining that I would define as continuous, since so many agreements are being signed: on average not a month goes by without an agreement; they are actually even more frequent.

Given that our sector has an international and European dimension, having an exchange of information would be fundamental. As we all agreed during the last session in October, the pandemic made us realize how important it would be to know how my own company, the company I am working for, is applying health protection rules elsewhere. Are these rules the same? Are they different? Are they better? So as to extend good practices from one country to another through local agreements.

On my side, I can only say that we will keep committing ourselves, with the support of the Trade Union Alliance and, above all of UNI Finance, to initiating talks to establish a European Works Council at Intesa Sanpaolo. I must say that this would shine a light, not so much on the unions, but on the people, on the colleagues who are fully involved in achieving the group's business objectives in other countries.

It is estimated that one fifth of net revenues is generated abroad, and these are the figures that make the group one of the leading banks in Europe. To come back to the national situation, with the acquisition of the UBI group in 2020, Intesa Sanpaolo has strengthened its position in Italy as the leading bank in terms of capitalisation – with 500 billion lending, representing one third of Italy's GDP – and as the main holder of government bonds in our country. This bank seems to be becoming Italy's bank.

Moreover, as stated by its CEO a few days ago at a FISAC event, this is a bank that is planning to extend an amount of credit equal to the funds that will be allocated to Italy through the Next Generation EU programme. We are talking about 200 billion Euro to support companies investing in innovation and in the green economy. This is an important decision that shows the company's commitment, but also the skills, competences and commitment of its employees, who will have to work hard on this front too, and for whom we are asking for recognition.

Now, let us consider the people working in the group. After the acquisition of UBI, and the sale of a number of branches to Banca Popolare Emilia Romagna to comply with anti-trust regulations, 5,000 people left the group for another bank. So, we acquired UBI, but 5,000 employees were moved to another bank, and another 7,500 or so left through the early retirement agreement I described in the October session. In 3 years' time this group will have about 70,000 employees, also taking into account that the hiring/shedding ratio will be 1:2, one worker hired for every two workers leaving the company.

This is an aspect that I would like to emphasize because we see it as a success. In October, I spoke of our commitment, or rather, of a company that had committed itself to hiring 2,500 people, and we were able to increase this number to 3,500 people. Therefore, we have managed to bring in 1,000 more people, and with an initial agreement that was signed at the end of September, which commits the company to focus hiring in the branch networks and in the areas of the country which are most at a disadvantage, in particular Southern Italy.

This is a commitment, however, that we will have to carefully monitor, because it is precisely related to the changes we are experiencing right now and that are being discussed in this project: the process of digitalization, the fragmentation of work, the traditional branch that no longer exists or is no longer the only point of contact with customers, the increase in branch closures – the percentages described by Mr. Megale are striking – the surge in agile work (remote work), which during the pandemic has become the rule rather than the exception, and atypical jobs regulated by the so called "Mixed Contracts" – which we will discuss tomorrow – with workers having a mixed salaried and independent status.

I do not want this to suggest that it is pointless to increase the number of employees, or that agile working, smart working, remote working do not require that many people. That

is not the case and we do not think so, because customers actually need more support and colleagues need more knowledge and expertise to be able to deal with these changes.

Therefore, training must remain the mainstay of the future to manage change: it must be ongoing for those who have already been working for many years, but also for digital natives, as Pietro Valentini said, since it is understandable that they too may have difficulties in the face of a change that is continuous and always different.

I would like to make one last comment on agile work because it will certainly change the work of the future. We already had a pre-COVID agreement and we will have to regulate agile working in a more serene phase. However, the bank is already planning something, because what we are negotiating at the moment concerns the acquisition of UBI, which will lead to the merger of UBI and Intesa Sanpaolo branches next April. The company has told us that in many places, the branch that is going to incorporate UBI will not necessarily be restructured to increase space.

The bank in essence does not think that an enlargement is necessary to allow each employee to have their own desk. Therefore, in branches where the workforce is greater than 10, it is possible that not everybody will have a workstation, and if this concerns more than 40 people, a reduction of 25% is envisaged.

In the current situation, with a lot of absences and agile work on a daily basis, this compromise may seem acceptable, but if we think about it, we are actually facing a revolution: a whole world has come to an end. So, we have to prepare to live in a new world, but without losing positive elements such as training and on-site work.

We will also have to deal with the practical consequences of this approach when we bargain for our colleagues, and I do not think this will be easy, especially as this was not even conceivable or imaginable a year ago.

Therefore, managing the impact and repercussions of work changing so quickly requires a specific preparation, also on our side; trade union officers require proper training.

This is yet another reason why an exchange is necessary and useful to make progress at the transnational level. It would be important to learn how other countries are tackling training for change, also for trade unionists, who will have to support people in a process that impacts on the working space (I no longer have my workplace, my desk) and working time, especially for women, as Ana said. Time is the border between private and working life, a border that can be blurred, where it can be difficult to exercise the right to disconnect. In addition to this impact on the space-time dimensions, we will also see impacts on the psychological dimension.

There are studies on agile work that show how the initial resistance to change, that we all experience when usual patterns are disrupted, can create a conflict that must be managed because, unfortunately, it can also turn into an illness. Therefore, to manage change, it will be important to work on individual awareness, so that each employee becomes aware of their rights, of what is changing in order to be able to manage change. This applies both to the union and to the workers.

As we have been saying for a long time, bargaining on agile working will see us committed to demanding financial compensation for expenses, for ergonomic workstations that are not available at home, for meal vouchers, and the right to disconnect. However, all this will not be enough if we do not take action and work with people to help them experience this transition in the best possible way.

I think that the topics of this project, which are change, digitalization, and employee awareness raising and involvement, are key to facing the future with the right tools.

A great advantage, and starting point, is that we are here to discuss all of this, and we have been doing so for some time. So I think that through UNI Finance it will be

possible to keep in touch and maintain a dialogue among the countries where the Intesa Sanpaolo group is present, and this will be a source of strength.

THE FINAL ROUND TABLE
:
THE SPEED OF CHANGE AND THE EUROPEAN DIRECTIVES
ON EMPLOYEE INVOLVEMENT

Here is the list of participants in the round table:

- for the employers' side of the banking sector:
 - **Jens Thau**, President of the Banking Committee for European Social Affairs of the European Banking Federation
 - **Emanuele Recchia**, Head of Industrial Relations for the Unicredit group
 - **Giancarlo Ferrara** from the Italian Banking Association

- for the trade unions:
 - **Angelo Di Cristo** for the European and international level. He is the Head of UNI Global Finance, the international federation with which FISAC-CGIL is affiliated, together with the major trade unions of our sector. UNI also represents workers in Commerce and, more in general, in the Communication Industry
 - **Susanna Camusso**, former Secretary-General and currently Head of International Policies for CGIL
 - **Nino Baseotto**, Secretary-General of FISAC-CGIL. We will not ask him any direct questions, but we will ask him to conclude proceedings, the round table and this 3-day event.

The round table is coordinated by **Mario Ongaro**, European Project Director.

Each participant will be asked two questions. Some questions are the **same** for several participants, others are **different** depending on the specific role of each participant.

MARIO ONGARO

My **first question** is for the President of the Banking Committee for European Social Affairs of the European Banking Federation, **Jens Thau**:

During our latest meeting, when we had a very interesting exchange of views with some of you as employers' representatives, we were able to identify in particular two important points of agreement concerning our proposals for the review/recasting of some parts of the EWC Directive and, more in general, the Directives on employee involvement. These points of agreement are:

- *EU Directives on employee involvement also need to take into account recent changes. Therefore, it is necessary to update the current regulatory framework to ensure that social dialogue keeps playing its crucial role in all EU Member States.*

- *The definitions of information and consultation are different and inconsistent from one Directive to another. Therefore, we need them to be re-written or amended in order to make these definitions more uniform and rational. In this way, in all the EU Member States represented within a transnational group, social dialogue can take place in a legally consistent framework and with clear definitions of the available tools and of the common objectives to be pursued by the social partners.*

Could you please confirm that we agree on these two points? Could you suggest a way to work on them together with us as trade union representatives and as European Works Councils?

JENS THAU

Thank you, Mario and good morning, everybody. I am happy to take part in this Project and in particular in this important round table.

What Mario referred to is something he and I, together with UNI Finance, have often discussed in relation to social dialogue. The banking industry has to face several challenges, which must be seriously taken into consideration. The EWC Directives do not fully represent the needs and demands of the banking industry with regard to European consultation within groups.

This happens in several EU Member States for a number of reasons.

We are certainly facing some complex challenges. Due to local rules, traditions and habits, in the banking sector there are different employee involvement models already at the national level. Of course, these national rules go back a long way and they predate EWCs. The problem is how to successfully transpose the European legislation on EWCs into the existing national legislations.

To put it diplomatically, the rules on how to combine the European Directive with national legislations are not always perfect. They definitely need to be improved. In order to make EWCs more effective, we must absolutely create an area where they can operate. It is not enough to simply add EWCs to the existing national rules.

So our dialogue is very important to understand which values we can add at the European level.

In this regard, Mario has already highlighted two very important points.

In the very different regulations existing across Europe, no one has dedicated enough time to harmonize things and to make all local and national initiatives consistent with the European ones.

We obviously know that Directives are one thing and daily work within individual companies and industrial groups is another. We know that we can always find a way at the European level. We need to do the same also at the company level, in order to harmoniously integrate the added value of EWCs within a company.

In this respect, I think it is important to leave companies free to find the solution that best suits them. This is the best possible solution for them. I think both parties agree on this.

Of course, someone's evaluation of legislation and idea of what Directives should depend on the actual functioning of the EWC in a given company.

Some believe that it may be best to find a single model that is simple enough to be applied in all situations, without too many changes.

In my opinion, this is feasible in the banking industry, but not necessarily in other sectors.

With respect to changes in work organization, considering the speed of change in the banking sector, I think this topic should be treated separately from the Directive. When the Directive is adopted, the speed of change has already made it obsolete.

Furthermore, work organization is in a way an issue of competition between one bank and the other, both in relation to employees and clients. It goes back to what a company

represents on the market and for its employees. If you think that there could be a single approach for the whole sector – the only possible one for a Directive – you risk leaving out the needs which a highly digitalized, project-oriented banking sector requires, also in relation to the functioning of the EWC. This is why I think that many of the rules adopted by works councils are in certain respects different from the prescriptions of the Directive.

This is the first issue raised by Mario. I want to strongly underline that we support increased flexibility. And the people sitting in a bank's EWC deserve more trust. They are highly trained, skilled workers with many ideas and a considerable potential. They can organize their own EWC activities more independently than workers from other sectors, who would need more help for the legislative aspects. In the banking industry we focus more on the freedom we need to have new forms of work – which are also reflected in the work of EWCs.

This potential can be better exploited in the framework of the Directives.

With respect to the second point, what Mario said is of key importance. The various Directives on employee involvement create a sort of mosaic. It is not only a matter of clarifying or harmonizing the rules. I would not say that they are contradictory, but they are hard to align. This adds to the difficulty we have to align EWCs with the national traditions of employee involvement.

With respect to the European level, I would like to go back to our latest Plenary, which took place in Rome in November 2019. There, we said that it is necessary to clearly distinguish the different roles.

With regard to employee involvement, EWCs must be able to make the most of their abilities. For instance, EWCs are not supervisory boards. The real issue for EWCs is getting the information in good time and being free to make assessments and discuss with employers. A supervisory board does not have this kind of freedom.

This potential strength of EWCs is very important. We need to promote this idea and we need an adequate regulatory framework. In this respect, since our sector is at the forefront of knowledge-based work, I believe it is very important to check what the needs and desires of employees' representatives are in order for European Works Councils to work effectively.

It will be very interesting to hear what other participants in this round table will say, especially about possible improvements. Many organizations have EWCs which work very well – not thanks to the Directive, but thanks to the rules which the EWCs gave themselves, going beyond the Directive.

We should also take into account what Mario said. I think we agree on this point, but we need to continue to work in this direction.

I believe that the best way to do so in the framework of European social dialogue is not an exclusive of the banking sector. So we are exchanging views with other sectors, including in the field of social dialogue. But I think we should also consider the four bullet points presented by FISAC, the views expressed by the representatives of the Unicredit EWC, as well as the issues raised by professor Filip Dorssemont.

In my opinion, these are the foundations for our next steps. We need to make the most of the results of this very important Project. With the format we will be allowed to use, we need to continue to work in this direction in order to put these points in practice. We could also lobby together the European legislator in order to bring these issues to its attention. These are indeed very relevant issues for a sector like ours, which represents knowledge-based work.

I will stop here for now, and I will be happy to take any other question.

MARIO ONGARO

Thank you very much, Jens Thau. You gave a very exhaustive answer to my first question and, in part, also to the second one I had prepared.

I see that Emanuele Recchia is online, so I would like to ask you to reply to the following question, which I had prepared specifically for you:

The speed of change in work organization is transforming most professional profiles and it requires a quick reskilling and upskilling of a large group of industry workers. These trends have been further accelerated by the pandemic, which forced the physical relocation of workforce at all levels.

The optimization of human capital, together with workers' motivation, is more decisive than ever for business success in an increasingly competitive global context.

Do you think that social dialogue, information and – above all – consultation of workers' representatives in EWCs (and, more in general, in the framework of industrial relations within the whole group – not just in Italy) are up to these challenges? Or do you think that changes are needed to tackle them? If so, which changes are needed?

EMANUELE RECCHIA – HEAD OF INDUSTRIAL RELATIONS FOR THE UNICREDIT GROUP

First of all, good morning everybody. It is a pleasure to be here with all of you, even if only virtually. Hopefully, sooner or later these virtual meetings will be replaced by traditional physical meetings. We need to meet in person, because after one year of remote work we are all a bit tired of it. I really hope that next time we will be able to greet each other and shake our hands.

To reply to Mario's question, I deem it appropriate to first contextualize the situation in Unicredit to give a more pertinent answer.

In the last 10 or 15 years, there has been a strategic and competitive repositioning process in the entire banking system. The way banks work has changed. Adaptations have been made after the various financial crises. This has been necessary also in order to regain credibility and customer trust.

In this very difficult period and during this repositioning process, Unicredit has been able to successfully govern the situation. This has been possible also thanks to the excellent relations with trade unions, which have traditionally played a major role in our group.

Two days ago I signed the agreement on the productivity bonus, which will be awarded to all employees. This is another achievement that was made possible by our collaboration with trade unions.

The Unicredit group has regularly involved trade unions, not only in Italy, but also in all the European countries where it is present. This involvement has traditionally led to positive results, as it has helped to manage very difficult moments.

Another peculiarity of the Unicredit group is that we are the only systemically relevant bank in Italy. We are a real multinational. Just to give you an idea, we are the first bank in 13 European markets, and our network covers another 16 markets around the world.

Our presence across many countries has necessarily required us to adopt a different model of industrial relations from most other Italian banks. Our headquarters are located in Italy, so we are one of the few international groups with a EWC to be based in Italy. The other Italian multinationals do not always have a successful operational structure like ours.

Our approach to industrial relations has necessarily been influenced by our DNA as an international banking group.

We are used to saying that we have a global approach, a global strategy and a local implementation plan.

What does it mean?

I will get back to this later on. We like to devise HR management strategies at the global level by involving the EWC of the Unicredit group. Then, the local implementation occurs with the involvement of the local trade unions, which play a primary role, without the EWC prevailing over them.

It is always important to consider the objectives of the European Works Council and, more specifically, of the Unicredit group.

In our constituent agreement we established four objectives:

- Improving the communication process. Our group has more than 80,000 employees. In large-size organizations like ours, the communication process must necessarily be adapted and the EWC has always helped in that.
- Improving the level of understanding of the communications of the group management.
- Ensuring and strengthening the international footprint of the group.
- Improving and encouraging industrial relations at the local level.

In the last 15 years, the Unicredit EWC has always worked effectively and explicitly to pursue these goals. The EWC has always strived to play an important role in the international framework of our group.

I would like to remind you that our EWC has signed five Joint Statements, which have often preceded contract innovations later introduced in many countries. For instance, our provisions on work-life balance were later integrated in the Italian national collective bargaining agreement for the banking industry. But there have been also other important Joint Statements, such as the latest on remote work.

Mario earlier referred to the physical relocation of workforce. This is, and will be, a central issue to be discussed with trade unions, always in compliance with local legislation.

Three months ago, the Unicredit EWC signed a Joint Statement on remote work, another result of our successful collaboration.

The next years after the pandemic – which hopefully will end soon – will be full of challenges for all of us, management and trade unions alike. We can only meet these challenges together, by being on the same side.

At such a difficult time, confrontation risks generating no added value for our colleagues. Traditionally, the Unicredit group has been favourable and open to debate, to constructive dialogue, and even to productive disputes, but always looking for a shared solution for the good of our employees.

Considering all the Joint Statements signed between 2008 and 2020, the history of our EWC demonstrates how proactive it has been and how the Unicredit management has invested and believed in the functioning of the European Works Council.

I would also like to mention the GFA signed with UNI. The discussion took years, but it led to the signature of one of the very few Global Framework Agreements existing in Italy and abroad. I really hope that other multinationals will follow the same road.

The challenges ahead of us mainly pertain to sustainability. We must understand how the model will evolve. And let me say once again that the best way to do so is together with trade unions.

In this regard, confrontation risks generating no added value for our colleagues, unless in the case of a constructive exchange for the drawing up of an agreement.

I use to tell Unicredit colleagues from the trade unions that it does not make sense to sign an agreement if it does not generate any added value for our colleagues – the resources we are all interested in.

In the last 15 years, the recent history of our EWC goes exactly in this direction. To reply to Mario's question, we are happy and satisfied with the way the Unicredit EWC has functioned so far.

But we cannot stop here. In the future, we need to be even more determined and practical. To reply to Mario's question, I think that, in order to improve their functioning, EWCs must be more proactive and bolder. They must discuss topics without necessarily prevailing over national negotiations, but they should ensure a consistent strategy across countries and guarantee the implementation of equitable agreements everywhere.

We are happy with the relations we have with the EWC of the Unicredit group and we hope that this will be the case in the future as well. We also hope that the EWC will sometimes have the courage to face issues which do not affect the local level, which is where we need to continue to make negotiations and agreements with trade unions.

We have the utmost respect for national prerogatives and for each stakeholder.

Thank you, Mario.

MARIO ONGARO

Thank you, Emanuele Recchia. I would like to ask Giancarlo Ferrara from the Italian Banking Federation the same question I addressed to Jens Thau. We identified two points of agreement during our previous meetings between trade unions and employers' representatives.

They are the following:

- *EU Directives on employee involvement also need to take into account recent changes. Therefore, it is necessary to update the current regulatory framework to ensure that social dialogue keeps playing its crucial role in all EU Member States.*
- *The definitions of information and consultation are different and inconsistent from one Directive to another. Therefore, we need them to be re-written or amended in order to make these definitions more uniform and rational. In this way, in all the EU Member States represented within a transnational group, social dialogue can take place in a legally consistent framework and with clear definitions of the available tools and of the common objectives to be pursued by the social partners.*

I would like to ask Giancarlo Ferrara if he agrees on these two points and if he can envisage working together with us, the representatives of trade unions and EWCs, in order to develop them.

GIANCARLO FERRARA – BANKING COMMITTEE OF EBF – ITALIAN BANKING FEDERATION

Thank you, Mario. First of all, I would like to greet all the colleagues who are online and I really hope to be able to meet them in person as soon as possible.

I would like to thank FISAC for inviting me to this round table and I would like to thank you, Mario. As you know, we have followed all the stages of the Project, which I think is very interesting.

The first aspect I would like to underline is the importance of EWCs in conveying group values across companies which have acquired a common culture across different EU Member States. Employees have also greatly benefited from the exchange of information across different countries and I believe that this is the primary added value of the introduction of EWCs.

EWCs are certainly affected by the many different systems of industrial relations existing across different Member States. Consultation procedures also vary considerably from one country to the other. For instance, in some countries collective bargaining agreements and company-wide agreements do not exist. All this should be taken into account in a complex framework like the one of EWCs.

Another important aspect is to acknowledge that EWCs are not a negotiating body. This is very clear to all of us. But EWCs can generate a virtuous circle, as in the case of the Joint Statements – above all the ones of the Unicredit EWC – which are transposed into national collective bargaining agreements. European social dialogue, which is also based on non-binding joint statements, also promotes good-quality relations and plays a very important role.

As Mr. Recchia correctly pointed out, dialogue should be on a continuous basis and the Italian Banking Federation has invested a lot in European social dialogue. We have had an intensive exchange for years. This has led to the signature of several joint statements, some of which have also been integrated in the national collective bargaining agreement, e.g. the ones on continuing professional education and on corporate social responsibility. This proves the importance which these topics have for us.

I will speak more in my capacity as member of the Banking Committee of the European Banking Federation then as representative of the Italian Banking Association. Indeed, we have a European approach and I have been involved in social dialogue for 20 years now. Together with Jens and several union representatives who are here with us, we have often discussed delicate issues. Yet, after long negotiations, we have always been able to find a win-win solution for both parties.

To reply to Mario's question, I would not say that the Directives on information and consultation need to be rewritten. There are a lot of Directives, with different scopes of application. I would rather say that it is necessary to rationalize information and consultation procedures at the European level.

This should probably lead to the rationalization of the whole system. As a result of rationalization, we could have less detailed and less contextualized, but more effective procedures.

With regard to new scenarios, they are certainly the basic aspect of what we are talking about here.

It is hard to imagine future scenarios. The COVID-19 emergency is a key factor for the redefinition of labour relations.

At present, the only thing I can say is that the channel for dialogue has been reinforced, especially at the European level. This is something we can further improve already in the coming months. I found the Joint Statement on telework adopted by the Unicredit group very interesting. This is also a topic we need to discuss and work on.

In my opinion, all that we have done so far can be very useful. As Jens said, I think that the debate we have launched can be integrated in European social dialogue. I think this

would be the best framework for this kind of discussion with the three employers' associations which represent the European finance industry, with the Savings Bank Federation, the Cooperative Bank Federation and UNI Europa.

A day of discussion and in-depth analysis would be very useful, starting from all the material produced by this Project run by FISAC and from the points raised by professor Dorssemont.

I will stop here for now.

MARIO ONGARO

Thank you, Giancarlo. The next question is for Angelo Di Cristo, Head of UNI Finance. Here is my first question for you:

With respect to your dialogue, collaboration with and support to unions affiliated with UNI in the framework of transnational groups, could you briefly tell us what our strengths are? And what are the critical aspects we need to work on and overcome? What can you tell us about our experience so far with Global Framework Agreements and the renegotiation of EWC agreements?

ANGELO DI CRISTO – UNI FINANCE

Thank you, Mario. I would like to thank FISAC-CGIL, in particular its Secretary-General, Nino Baseotto, the national secretariat, and the Head of the international Department, Claudio Cornelli. I would also like to greet all the participants in this interesting conference. I would like to say hello to Emanuele. We had some labour disputes with him, but we also collaborated for the GFA of Unicredit, the only Italian bank to have this kind of instrument.

I would like to say hello to Jens, President of the Committee for Social Affairs of the EBF, and Giancarlo Ferrara. We have been in touch and faced common issues together for many years now.

To come to Mario's question:

Strengths:

UNI is an international federation which represents national unions at the international level. As other speakers have already said, for us it is fundamental to have relations with large multinationals of the various sectors. In this case, I am obviously talking about UNI Global.

In recent years, in the finance sector, we have drawn up global agreements with the main multinational groups.

Mr. Recchia mentioned the Unicredit one, but I would like to add the ones with BNP Paribas, Crédit Agricole, Société Générale, ABN Amro, just to mention a few in Europe, and the agreements with Banco ITAU and Banco do Brasil in the Americas.

The signature of these Global Framework Agreements is fundamental for national trade unions, as it gives us the opportunity to negotiate national agreements on the topics covered by the GFAs.

For instance, I am proud of having negotiated, together with the other Italian trade unions, the Protocol on the responsible sale of financial products with Unicredit, back when I was the union coordinator in the company. That negotiation, which ended in 2016, was a pioneering effort, but the topic was later included in the national collective bargaining agreement and, above all, in the global agreement.

Unfortunately, commercial pressure is still very strong, but the Protocol gives unions the possibility of having an exchange with management on this delicate issue.

The EWC also adopted this instrument through a Joint Statement.

So we were able to take this aspect to the European level. We did the opposite of what Giancarlo said. Instead of starting from European social dialogue to go down to national or company-level collective bargaining, we started from the latter and two years ago we got the issue on the agenda of the banking committee for social dialogue. Together with the three employers' federations of the finance industry, we were then able to sign a Joint Statement on this topic.

Our European federation creates several instruments. Of course, the employers' associations must be willing to accept them. And the trade unions must be willing to engage more regularly in these international initiatives.

What do I mean by that?

As Jens and Giancarlo know very well, we adopted a lot of Joint Statements at the European level. I am proud to say that, immediately after the outbreak of the pandemic, we worked with all the European employers' associations of the finance industry, including insurance companies (it is important to underscore it) and on 30 March 2020 we signed a Joint Statement on the management of the pandemic.

This demonstrates once and for all that European trade unions reacted very quickly. I must also give credit to the employers for acknowledging this need and for signing the Joint Statement.

However, in order to be effective, Joint Statements must be implemented at the national level.

Giancarlo mentioned the European statement on continuing professional education. Signed more than 15 years ago, it was later integrated in the Italian national collective bargaining agreement. Only Denmark did the same.

I think that, if they deem it appropriate, our affiliated trade unions should make the most of European and international achievements.

They should not be afraid of an intrusion by the European or international federations. We work at the international level. We are not interested in bargaining and negotiating at the national level. We clearly want negotiations to be in place, but we have no interest in intruding into the national level.

Unfortunately, this happens with some EWCs.

As Giancarlo pointed out, I also think that EWCs are not negotiating bodies. They are information and consultation bodies. I quite agree that improvements must be made in this regard.

EWCs can act as an incentive for collective bargaining and for the negotiations of trade unions at the national level. For instance, Emanuele earlier mentioned the Joint Statements approved by the Unicredit EWC, which later served as an inspiration for national collective bargaining. This can be one of the benefits of EWCs.

Unfortunately, in Europe there are some EWCs which do not act in the same way. They are the EWCs where the presence of trade unions is not welcome or insufficient.

Trade unions need to make investments to improve the situation. They need to invest in the training of union representatives within EWCs, because EWCs are an essential source of information. In the European Works Councils where trade unions are present, UNI Europa has a representative who acts as expert/coordinator. This helps us collect

information on industry trends. At the European level, we have the social committee for the banking and insurance sector.

It is an important, even essential body. In recent years it has drawn up valuable Joint Statements on real issues. But also the information we collect from our experts in EWCs is valuable. However, we sometimes notice that this is not considered as a priority by trade unions, but it should be.

Together with the European Trade Union Confederation, our European federation organizes training courses for EWC representatives. I think it is important for our affiliates to develop their knowledge and skills. In Europe the situation is very straightforward. Regulators are no longer at the national level, but at the international, European level. As a consequence, it is now essential for our affiliates to invest in their participation in European-level discussions.

It is also fundamental to develop our organization and to become more effective at the international and European levels. If trade unions believe in this, we grow stronger.

Just to give you an example, in order to sign the global agreement with Unicredit mentioned earlier by Emanuele, it took us 10 years – no kidding.

I am really proud of it, because I was an employee of Unicredit, and I was also the president of its EWC. So I was really proud when we were finally able to sign a Global Framework Agreement.

But why did it take us 10 years?

I do not want to blame anyone. Trade unions also made mistakes: we made one step forward and three backward. But this is now part of the past. I hope that this will no longer happen in the future, because there are many other companies in the finance industry in Europe and around the world which need these agreements.

Many of us take it for granted that everyone has the same rights we have.

I actually believe that there are more people without rights than people with rights. Even within the European Union, there are some problems in some countries, such as Slovakia. This problem was brought to the attention of social dialogue in the finance industry, as well as to the companies which created the situation.

Unfortunately, Slovakia did not make any steps forward, but it actually took a backward step. In Slovakia, all the companies of the banking sector – I am not accusing one in particular – decided to put an end to industry-wide national collective bargaining.

This happened five years ago and I am really sorry about that. We made a campaign to raise awareness of the issue. Unfortunately, our campaign has not yet borne fruit, but we keep on supporting the Slovakian trade unions and we will not forget this problem.

I hope that in the future we will be able to reopen negotiations and to conclude the national collective bargaining process.

On the other hand, there are some good news. For instance, Romania adopted industry-wide collective bargaining and the first industry-wide national agreement was signed 2 or 3 years ago.

This means that trade unions and employers' associations agreed to have a national collective bargaining agreement in the finance industry for the first time in the history of Romania.

But it has not been all plain sailing. For instance, most finance industry employees have no contractual coverage – hence no rights – because either legislation or undertakings do not allow the trade unions to have rights.

This happens in the United States. With all due respect, I am not talking about states like Burundi or Nepal, where collective bargaining actually exists.

We have a lot to do together. With the experience acquired over the years, Europe can be a driving force, but it must be aware of the need to do more.

Unfortunately, when I make reference to Europe, I am referring to negative practices used by European undertakings outside Europe.

There are very serious situations caused by the behaviour of European companies outside the EU. Since we have repeatedly underlined the importance of social dialogue, I urge the European legislator to bind European undertakings to apply European standards everywhere in the world. European companies cannot be left free to ignore European social standards, which are a fundamental achievement and strength of the European Union, outside the EU.

I will stop here for now.

MARIO ONGARO

Thank you, Angelo. You say you have replied to both questions, but I may get back to you to ask you to integrate your answer to the second question.

Now I would like to ask Susanna Camusso, who I see online, two questions concerning her role within CGIL. Susanna Camusso, formerly Secretary-General of CGIL, now serves as Head of International Policies.

From your observatory at CGIL you can have an overview of all sectors – not just of the banking industry – so I would like to ask you the following question:

How do you assess the quality of social dialogue, of information and consultation in transnational groups and in the EWCs of the various sectors? I ask you this question also thinking about the general speed of change I mentioned earlier, which poses significant challenges to the effectiveness of workers' representation bodies in transnational groups (like EWCs).

SUSANNA CAMUSSO – HEAD OF INTERNATIONAL POLICIES FOR CGIL

Good morning, everybody and thank you for inviting me. I think the results of this Project are very important. Later on I will go back to some of the things mentioned by Angelo. I must say that the banking sector is not necessarily representative of the functioning of EWCs in all European sectors.

As usual, when you make an overview, you find all sorts of situations. There are undertakings where we cannot even create EWCs because they are not owned by European entities (we cannot forget them). In other cases, the EWCs cannot perform their basic tasks – established in the Directives – of information, consultation and early discussion of business reorganization projects.

This does not discourage us. EWCs remain an essential instrument. It is true that they are not a negotiating body, but I firmly believe that collective bargaining is part of our activities, which should acquire a more European and less national dimension. For the moment, this may sound utopian, but we should take it as an objective.

Together with the other major Italian trade union confederations (CISL and UIL), CGIL is not only supporting the training of EWC delegates through the European Trade Union Institute (ETUI). As our friends from FISAC Claudio and Annamaria can confirm, we are also promoting the exchange of views and experiences within EWCs and among EWCs of different sectors, in order to collect best practices across Europe and to establish relations between the European and the national dimension.

This is true for EWCs, but also for the international agreements signed in the various sectors. As Angelo pointed out, the national trade unions affiliated with the European

federations must increase their participation at the international level. But affiliates also need to improve their knowledge. This is why best practices are such an important element. They show what can be achieved and your sector has set several positive examples.

The situation is a bit more complex for social dialogue. I have just heard that the EBF is very open to dialogue. However, I must admit that we have a negative opinion of the employers' attitude in social dialogue.

Let me give you two examples. As you know, in European social dialogue there can be tripartite dialogue, but also bilateral dialogue. In case an agreement is reached, the latter can lead to the elaboration of Directives.

However, this has not been possible for too many years.

There have also been problems with the implementation of previous agreements. For instance, it took Italy 12 years to implement the Bilateral Agreement on sexual harassment and violence in the workplace. The same is now happening for the agreement on digital work.

There has been a slowing down in the effectiveness of social dialogue in redefining rules that are useful for collective bargaining in all countries.

Yet, the latter is a fundamental instrument. As other speakers said, collective bargaining does not exist in all countries, especially industry-wide collective bargaining.

In some countries, collective bargaining only occurs at the company level. In others, there are practical obstacles both to the free organization of trade unions and to collective bargaining. An example is the current discussion on the Directive on minimum wages and collective bargaining. In this case, the employers' associations replied negatively to all proposals for the introduction of a Directive and of rules to support collective bargaining in the EU Member States.

We have to take this into account. In any process to negotiate possible advancements, we have to deal with the actual situation, which, in my opinion, is currently not very advanced.

We have an opportunity.

As it took over the six-months' rotating presidency of the EU Council, Portugal announced that the Pillar of Social Rights would be one of its top priorities. In this regard, as European trade unions, we will raise all the topics concerning collective bargaining and the improvement of working conditions. I think we really need to engage at the European level, in order for the social pillar to be truly implemented and not just remain a declaration of intent.

While we certainly have a very broad work programme, the quality of social dialogue is not always adequate. I am referring in particular to bilateral dialogue (the discussion and negotiation of the new social dialogue work programme will start in June).

However, the general attitude does not seem in favour of introducing regulations and agreements, and of promoting collective bargaining and dialogue in all European countries.

In my opinion, this is even more of an issue now that organizational change has accelerated and that the impact of digital technologies has exploded because of the pandemic.

For instance, there are sectors in which we have been able to make progress in the field of health and safety during COVID-19, and others in which this has not been possible. Even when faced with emergencies, differences remain. In this respect, it is absolutely necessary to find and propose national solutions to the countries which encounter more difficulties with collective bargaining and to provide instruments to address changes. I am thinking of aspects like training and discussion on new technologies. FISAC knows them because they are covered by national agreements, but this is not the case everywhere in the world.

We are facing together the same challenge. This challenge concerns part of the Directives, which are now being openly debated. We must bear in mind that our goal is necessarily the generalization of industry-wide collective bargaining across Europe. This is the only possible way to introduce elements of European collective bargaining. Indeed, the European dimension should not be seen as an interference in the national one, but as an opportunity to fully implement the same social standards across Europe.

Thank you, Mario.

MARIO ONGARO

Thank you very much, Susanna. My second question to you will get more into the details, as I would like to further examine a very complex – to say the least – situation, which represents a major challenge for all trade unions.

Now I would like to go back to **Emanuele Recchia** and ask him the **same question I asked to Jens Thau and Giancarlo Ferrara**. I would like to hear his point of view in his capacity as the manager of a multinational company which is represented in this Project. *We have identified two points of agreement on the topics we have addressed as trade unions and as CGIL during this Project. Since our October meeting, we have discussed with employers' representatives and I would like to thank in particular **Monica Carta from Unicredit** for making an interesting and very stimulating contribution to our discussion.*

My question has partly been inspired by some of the considerations which Monica Carta made in October.

These are, in our opinion, the two points we can agree on:

- *EU Directives on employee involvement also need to take into account recent changes. Therefore, it is necessary to update the current regulatory framework to ensure that social dialogue keeps playing its crucial role in all EU Member States.*
- *The definitions of information and consultation are different and inconsistent from one Directive to another. Therefore, we need them to be re-written or amended in order to make these definitions more uniform and rational. In this way, in all the EU Member States represented within a transnational group, social dialogue can take place in a legally consistent framework and with clear definitions of the available tools and of the common objectives to be pursued by the social partners. Furthermore, the information and consultation instruments need to be the same for everyone.*

EMANUELE RECCHIA

Thank you, Mario. Addressing change, especially now that we are facing an emergency, is a priority. It is a matter of subsistence, of survival. Therefore, we believe that the possibility and the need for European Directives to address changes is essential.

Let me go back to the central role of industrial relations with the European Works Council of Unicredit. Their central role is a starting point and it establishes a framework of rules and guarantees that can be useful for all trade unions within Unicredit, anywhere they are.

Angelo Di Cristo earlier mentioned the case of Slovakia, which I am fully aware of.

We are one of the many Slovak banks and we play a role in Slovakia, where the model of collective bargaining and industrial relations has ceased to exist. As Unicredit, we had a duty to maintain collective bargaining within our company.

Only those who work with me, in my team, know how many times I called the HR office in Slovakia to ask and encourage them to reach an agreement. Even if collective bargaining had failed at the national level, we wanted to preserve it at the company level.

All this has always been done in the framework of the guarantees provided to all the Unicredit group employees by the 5 Joint Statements signed in the last 14 years and by the Global Framework Agreement.

So the central role of social dialogue is not an end in itself, but it is aimed at ensuring a framework of guarantees in industrial relations. Industrial relations then have different nuances in the various states. They may be more or less advanced depending on the maturity of the socio-economic context where we work.

The Unicredit group is one of the largest banks in Italy, Germany and Austria, but also in Russia, Slovakia and the Czech Republic. Therefore, as a group we have to deal with very different trade unions and labour situations. The degree of maturity of industrial relations also varies greatly between Western European countries and Eastern European countries, where the tradition is less strong, less rooted and more recent.

So for us the central role of the EWC helps ensure a number of guarantees.

Those who know our group, like Angelo Di Cristo, know that, during my tenure as Head of Industrial Relations of the Unicredit group, the Joint Statements have always been signed by our CEOs.

Even if I have the power to sign this kind of statements on behalf of the group, we have always wanted not only to keep our CEOs informed of everything, but also to directly involve them. And I must say that our CEOs have always been very committed.

Those who know Jean-Pierre Mustier and Federico Ghizzoni know that they do not do anything if they are not 100% convinced. They wanted to get personally involved and to sign the statements to give tangible proof of the importance of Joint Statements for the Unicredit group.

To go back to the issue of change, I would like to say that we cannot follow change. If you follow change, it basically means that you are already late.

It is true that there are different phases and different intensities of change, but it is our duty to manage it, especially in a very traditional context like the finance industry. In the last 10 years, we have governed strategic repositioning processes and we have dealt with the need to combine tradition and physical presence on the one hand with the increasingly remote nature of distribution channels on the other.

We should neither follow nor be overwhelmed by change. Change must necessarily be governed together by employees and trade unions.

Especially when dealing with change, which traditionally occurs more quickly than expected, if industrial relations are conflictual, they can only have negative and detrimental effects.

Therefore, in our opinion it is really essential to manage change and to have European Directives that allow us to regulate and govern it.

Susanna Camusso earlier talked about best practices and said that the knowledge of affiliated unions needs to be improved. I completely agree with her. In my capacity as Head of Industrial Relations of the Unicredit group, my dream in relation to EWCs would be to create a network of EWCs, not only from the finance industry, but also from other sectors, and with the participation of employers' representatives.

I am a curious person and in the last six years I decided to invite to the biannual plenary meetings of the Unicredit EWC several representatives from the EWCs of other major European financial companies, namely some of the largest European banks.

To be honest, I encountered huge difficulties. The first problem was identifying EWCs that were truly functioning – not just merely a cosmetic exercise – and that had signed in recent years some Joint Statements. This was a major obstacle.

The second problem was the lack of interest of other EWCs – which are often less active than expected – in exchanging best practices and information and in learning from each other.

To quote Susanna Camusso, I think that a best practice would be to create a network of best practices, i.e. a network where the major financial companies can share their results and learn from each other. In this network, trade unions would exchange views not only with an individual company's management, but with several other trade unions and employers. I think this would be an important opportunity of growth.

To come to your question, Mario, we think that European Directives on employee involvement must necessarily adapt to change. But two things are needed.

- Firstly, rationalization. The proliferation of rules does not lead to certainty and to a clear framework of reference. This is why it is important not to draft too many European Directives. There should only be few well-done Directives that clearly establish a framework of reference.
- The rules must necessarily allow the stakeholders to act in relation to the specificities of the business context.

I truly hope that European Directives can lay the foundations to manage change together.

Before concluding, I would like to go back to what Mario said about the physical relocation of workforce.

As I have already told you, three months ago we signed a Joint Statement on remote work. I think it was one of the first of its kind in Europe. So why should the European Directives help us to improve clarity and dialogue?

Because – this is our common position – no one expects Unicredit to revolutionize work organization in the future. After the pandemic, there will probably be an evolution of work organization. I say an evolution – not a revolution – which should benefit everyone, employees and clients alike.

The situation we are currently experiencing has been imposed on us by the crisis and by the emergency. When the pandemic is – at long last – over, we will no longer be the same. It is not just a saying.

At the same time, for instance, in the banking industry we expect an evolution towards a better and stronger integration of on-site work with remote work.

This is the future model on which all companies, including Unicredit, are working. We are beginning to plan the work organization of the future. This is a spontaneous change which will not be imposed on employees. On the contrary, they will play an active and positive role in it.

In order to turn this change into a positive evolution, we obviously need trade unions and employers to have an open dialogue, with clear rules which ensure mutual respect.

Thank you.

MARIO ONGARO

Thank you, Emanuele. I would like to make a brief remark.

When we propose to rewrite or rationalize European Directives, we do not want to further complicate or enrich the existing legislation to make it longer, more complex and more detailed. Not at all!

We want European Directives that help information and consultation bodies to be effective, that have clear and easy-to-interpret rules, and that are not difficult or require a long time to interpret them.

We welcome simplification, provided that it does not weaken the rights, procedures and guarantees of employees and those who represent them in information and consultation bodies.

So I think we agree on this, as well as on the need to absolutely and clearly distinguish between transnational information and consultation and collective bargaining.

We have always very openly stated that the two dimensions – collective bargaining on the one hand and consultation on the other – should integrate each other, but also that there should be clearly distinct roles and possibly different people involved.

The most important thing is that EWCs do not engage in activities they are not entitled to perform. EWCs should not engage in collective bargaining. They must be good at collecting information and at making consultation effective. This is what EWCs should do. They should not be involved in activities they were not supposed to perform when they were created.

I am not saying it to argue with you, but just to clarify what our point of view is.

Now I would like to get a bit more into the details and ask Jens Thau a more specific question.

We have made you two proposals, summarized in the "4 key points" and in the "13 proposals", and we have started an exchange of views on them.

On which points can we agree to write together a joint document as a result of this European Project? This joint document would be a fitting example of the remarkable cooperation and dialogue we have had during the Project.

This question is also connected to a possible path of dialogue (which we imagined together last October), on which we could embark soon after the end of this European Project. UNI Finance and the European Banking Federation could start to reflect together on these proposals – of course also with your industry partners in Europe – and later try to involve as well other sectors under the UNI umbrella.

Thank you.

JENS THAU

Thank you for your question, Mario. In a moment I will also talk about a future road map in relation to the 4 key points and the 13 proposals.

But I would like to go back to what you and Angelo said. It is a pleasure to see that we are all here. But like everyone else, I hope that this situation will end soon and that we will be able to meet in person.

Emanuele said: "Let's not do the revolution, but an evolution." I agree, but we should bear in mind that evolution is not linear, but exponential.

This is true for the banking sector, in which technology is driving an exponential evolution. It is important to understand that, for the human brain, it is quite difficult to handle this pace. Not only is change quick, but there are also multiple simultaneous changes and the impact of artificial intelligence makes everything more problematic.

AI (Artificial Intelligence) will implement its own programmes. We are no longer talking about what surrounds us, a world that we like. We are talking about something that is no longer physically around us. The real issue for all of us is that, in order for EWCs to generate an added value, we need to exchange information and views on what happens around us. All this is fundamental to understand what is actually going on.

Then there is the issue of the competence level.

In Germany there are *Betriebsräte* (Works Councils) at the employee level, at the company level and even at the group level. And now, with the EWC, there is also the European level. So who is responsible for what? This question is in the DNA of all those that use this instrument in their working life.

The real issue is not whether employee involvement occurs, but what the right level of consultation is.

As I have said earlier, Germany adopts the principle of subsidiarity. If something can be done at a lower level, this should be the level of consultation. If something must be done at a higher level, then this is the level of consultation.

This means that there must be a clear separation between the competence levels. Having four different levels to discuss the same issue is not only inefficient – we are not talking about efficiency here – but it does not even ensure a concerted procedure. The result is a cacophony of voices, with no one knowing what to do.

Therefore, as other speakers said, we must clearly distinguish consultation in EWCs from collective bargaining. I am happy to hear that we all agree on this, because this is an extremely important point.

But we need to more specifically define the level at which the EWCs can play a role that others cannot play, especially when changes occur within a group.

EWCs are obviously a competent body. However, we must bear in mind that things have changed. In the past, decisions were made by the management and then implemented in a top-down approach. Nowadays, many of the decisions are actually made by clients, who no longer come to the office because they use a smartphone. This is not a decision of the management, but an external factor. Yet, it is something that we – both employees and managers – have to react to.

Whatever the level of consultation, we must bear in mind another important thing. The cases in which the decision is made at the highest level and implemented in a top-down approach are now limited to very few strategic and structural decisions.

The vast majority of decisions, even the most general ones, are not implemented in a top-down approach, but in a bottom-up approach, as a result of the work of employees involved in planning and HR management. The idea of a distant body that makes decisions does not help us understand where added value is generated. To come to your questions, the idea of a constant debate is another point that we must take into consideration.

We simply have to align consultation with the actual new decision-making centres. This is something we must clearly understand.

And this is why what Emanuele said about best practices is so important. We should create a sort of market where we can buy ideas on how to manage problems. This exchange will become very important within a works council, between employers and employees, but also among the various local works councils, within the EWC and among employees at all levels. It will clearly be important also in the context of collective bargaining and social dialogue.

With respect to the points raised, as I have already said, we believe that responsibility should lie with the partners who decide and promote consultation. So we need to build a context that works at the level of the company, of the EWC, etc.

This is one of the most important topics, which also plays a role at the procedural level.

We all agree that the right to information should go hand-in-hand with the right to exchange opinions – defined as the right to consultation – and that the opposite party should reflect on these opinions. This is obviously another role. Indeed, if we want our ideas to be taken into consideration, this means that the decision should not be definitive. Consultations should be taken into consideration.

Any consultation required by the Directive also requires an earlier phase. It is not just a matter of receiving information on a given problem. There is also the time dimension. This means that information should be provided before decisions are already made. Opinions must have the opportunity to influence the decision. So it is a matter of what comes before and after.

This approach should not be limited to the business plan or other plans. It becomes an actual requirement for the full implementation of the concept of consultation. It is not an issue of substance. It is about the way in which consultation should be managed and defined. This is something that concerns everything.

The last time I was in Rome we talked about the issue of confidentiality. I see that you addressed this topic also in the 4 key points which you sent me. The obligation of confidentiality should obviously be maintained. Otherwise, there could be no significant exchange. Without confidentiality, consultation cannot occur.

Building trust is a really important point. We have said that this means building rules autonomously. By building rules and by incorporating them in the procedure, we can build trust. This is why enforcing rules is essential.

I am not thinking of violations to the rules established by the legislator. Rather, the two parties should commit themselves to building the context of consultation in such a way to build trust. Without trust, consultation will never be ideal.

Because of our idea of consultation, we think that, if consultation – at any level – is predefined, it is hard to establish a method to make decisions and implement them. This is what we have clearly said about the definition of our role, whether it is in a supervisory board or in a works council. The roles are simply different and we cannot use the methods typical of corporate management when we speak of consultation.

We have to make very clear distinctions of the roles. This is our position with respect to the points raised.

In conclusion, this is the plan for the future.

We need to have a constant exchange at the various levels. As I said, and as is demonstrated by our debate, this Project is a wonderful opportunity for exchange. Of course, we can continue our discussion and get more and more into the details. We have

been talking about these issues for eight years through the various Projects. We now need to make concrete steps forward on the fundamental issues. We need to gain more freedom in relation to the decision-making procedures. And we need to discuss how we can implement these ideas through Directives, which in the future will hopefully be more consistent and contain fewer contradictions.

Thank you to the interpreters who help me understand Italian.

MARIO ONGARO

Thank you, Jens. Yours was a very structured and precise answer.

Starting from some of your considerations, I would like to say that consultation should also have the power to influence the final decision. Of course, it has its limits and its task should not be confused with others. However, it plays an important role, which must be enhanced, developed and supported also through effective and efficient legal tools.

Now I would like to ask the same question to Angelo Di Cristo.

ANGELO DI CRISTO

With regard to the elaboration of a joint document at the end of this Project, I agree with what Giancarlo said when he replied to the first question.

It is appropriate for FISAC-CGIL to draw its conclusions. But in October we said that this Project could be the starting point for a collaboration between UNI Europa Finance and employers' representatives, including the insurance sector (there are many examples of EWCs in insurance companies). The goal of this collaboration would be for UNI to organize a conference on this topic by the end of 2021.

During this conference, trade unions and employers' associations would openly discuss the strengths, weaknesses and problems which the Directive of 2009 creates in the functioning of EWCs.

For instance, I have been saying for years that involving trade unions only in the setting up of European Works Councils is a strong limitation. At present, the term "trade unions" immediately disappears after the creation of the EWC and only the general term "employees' representative" is used.

In Italy, when the European Directive was transposed into national law, the legislator established that employees are represented by the trade unions that sign national agreements. However, this is an Italian peculiarity and the situation is not the same in other European countries. In fact, the representation of employees is so diverse across EU Member States that we have to strike the right balance.

UNI Europa Finance is willing to have an open discussion with employees' representatives on how to possibly improve the Directive. We have to take other stakeholders into account, such as ETUC, Business Europe, UNI Europa and the European employers' association.

I agree with Susanna that the pandemic has led to the explosion of certain factors which we would have seen at play in a few years. For this reason, on 16 February UNI presented its principles on remote work. If you are interested in reading them, you can find them on the website of UNI Europa. You will see that they insist on one concept: collective bargaining.

Sometimes, we as trade unionists make a mistake, as we speak of remote workers as a separate entity. However, they are simply employees who work in different situations. I do not want to contradict Emanuele or start a dispute here. Dialogue is good, and sometimes

you find solutions also through the clash of differing principles between the parties. This is normal.

For us, collective bargaining is fundamental and it should cover remote workers as well. We are concerned about what I would call the "new digital relocation". In some ways, it reminds me of what happened in the early 2000s, when in our sector – like in others – there was a considerable relocation of activities to other EU Member States.

I am going to be blunt. These relocations occurred because labour costs were a lot lower and, above all, because there were no trade unions and employees were not as organized as in Western Europe.

As Emanuele and I said earlier, in Romania there has been a positive evolution. When Unicredit relocated its records centre to Romania, workers were not organized there. They later organized themselves and formed a Romanian national union federation. Nowadays, both companies and employees are happy to have an industry-wide national collective bargaining agreement in place.

This gives us reason to hope that the same can happen in other countries as well. It is something that can and must be done. I think that employees have the right to receive guarantees and protections through collective bargaining.

Emanuele mentioned that, in certain cases, other European Works Councils did not generate any added value.

At UNI Finance we have a network of EWC representatives and we meet twice a year. I must say that I have also found some good practices. Without making any ranking, I would say that each EWC has its own peculiarities. The EWC of Unicredit is certainly an active one. Other European Works Councils are "passive", while others have set some good practices.

I would like to give you one example, which surprised me a lot. The EWC of Santander signed a Joint Statement on the responsible sale of financial products already in 2006. Without blaming anyone in particular, in Italy this only occurred 10 years later, in 2016, at Unicredit.

That was a welcome development anyway!

The EWC of Crédit Agricole has made steps towards a Joint Statement on the protection of employees' data in relation to digitalization.

This shows that many different achievements are possible.

I would also like to take this opportunity to inform the EBF representatives that tripartite dialogue at the ILO has been officially postponed to 2022. This is a very important moment for our sector.

UNI has asked the ILO secretariat to invite the companies which have signed GFAs with us in order to talk about digitalization. We will certainly address the consequences of the pandemic as well, since the emergency has clearly accelerated digitalization processes and the adoption of remote work.

The future is now. We must be vigilant, because we do not want a fragmentation of employees. Collective bargaining is fundamental for us, as we want to make sure that all employees have the same rights, regardless of where they work, be it at home or in the office.

Let me now come to future steps.

To meet your expectations, Mario, I think that this Project can serve as the starting point to continue the discussion in the framework of social dialogue.

I make this commitment on behalf of UNI Finance and limitedly to our sector. After the conference we would like to organize by the end of 2021, we will see whether other UNI sectors are interested in collaborating. Then, we may have a broader discussion with the other sectors where European Works Councils are also active.

I do not deem it appropriate for now to sign joint documents. What you are working on is a document by FISAC. We will certainly read it very carefully. Since we have participated in this very interesting Project for the past two years, you can rest assured that this is not an empty promise. On behalf of UNI – and I think Jens would do the same on behalf of the EBF – I promise you to engage in a very frank discussion, outside the official European social dialogue with the European Commission. I can tell you that we are ready to very openly discuss any proposal coming from the finance industry and that we are willing to collaborate with UNI Europa on the one hand and with Business Europe, the European Banking Federation and the European Insurance Federation on the other. Thank you very much and thanks to the interpreters as well.

MARIO ONGARO

Thank you, Angelo for your second answer. I am very glad that you have made this commitment. I know that there is a major difference between a short, generic joint document that is almost bureaucratically presented to the European Commission and a joint path made of an intense and in-depth discussion.

I will get back to this later on. It will be very interesting to listen to what MEP Brando Benifei has to say about the Directives and how to possibly rewrite them.

Now I would like to ask Giancarlo Ferrara the same question I have just asked to Angelo and Jens.

GIANCARLO FERRARA

I will be brief, because much has already been said. I agree to embark on a common path. I think that the biggest merit of this Project is that it has highlighted and summarized a number of considerations on this topic. We are talking about an age-old problem we have discussed for a long time. But it is no surprise, because, as I mentioned earlier, labour relations vary considerably from one situation to the other. That is why we need to reflect very carefully and in-depth on this topic. This is all the more so in the present scenario.

I think that social dialogue in the finance industry is the most appropriate level for this discussion. Indeed, we have mentioned the quality of social dialogue and of course these issues pertain to the banking industry.

I must say that in recent years the social partners have been quite bold, as they have addressed some delicate subjects. I will not make a complete list, but in few years we have approved Joint Statements on continuing professional education, CSR and remote work. The latter is a very relevant topic today and, in the next two years, we will check if this Joint Statement is suitable for the current evolution or if it needs to be updated.

I would also like to mention the Joint Statements on digital work, on new technologies and their impact on employment, and on sales policies. The latter was a major achievement that was inspired by the national agreement signed in February 2017 by the Italian Banking Association and by the trade unions of the finance industry.

This means that best practices spread around in a virtuous circle. Angelo earlier mentioned the Joint Statement with Santander. It being understood that national collective bargaining agreements remain central, I think it demonstrates that the connection of various levels generates cultural change towards a shared European approach.

This is not a secondary topic. During this pandemic, we must assess what cultural and social model Europe promotes in the framework of global competition. This is something in which social dialogue plays an extremely important role.

There is also another factor to be taken into consideration. As a representative of the social partners of the banking industry, I would like to say that there have already been two project phases, Pillar 1 and Pillar 2, on the impact of Community rules on the sector.

The first Pillar was about the monitoring of Community rules for the financial sector to assess their impact on employment levels and the kind of new jobs and new functions they generate.

The second Pillar attempted to rationalize everything. We ask Community institutions to more regularly involve the social partners in the assessment of the impact of legislation.

We are currently experiencing a phase of radical change, but, as Mrs. Camusso said, the pandemic has only accelerated processes that had started years ago. Now we have to rationalize everything, but the process had already started. Nothing is new, except maybe the way we want to face it.

I think we must strive to create a shared culture and shared values at the European level. This is important because, in my opinion, competition will be fierce, also in our sector. So the social partners must be ready and our dialogue with Community institutions must be strengthened.

With regard to simplification, during our Pillar 1 and Pillar 2 project, we observed that there are a lot of sometimes contradictory rules that are added to national legislation and local collective bargaining. This generates some overlapping that does not help industrial relations.

In conclusion, I definitely welcome the idea of a deep dive into these topics and of a one-day event for an open and frank discussion. I am sure that the results of this Project will be very useful to this purpose.

Thank you, Mario.

MARIO ONGARO

Thank you, Giancarlo. I would like to underline your point about the importance of an effective dialogue with Community institutions in order to strengthen our work.

Now I would like to ask my second question to Susanna Camusso, which is somewhat related to this topic. Susanna, what do you think of the two proposals drawn up by FISAC-CGIL with the help of our expert in EU law, professor Filip Dorssemont, who has often collaborated with European trade unions before?

Do you think that our proposals could become an integral part of the discussion and action of the Italian trade union confederations like CGIL and of the ETUC?

SUSANNA CAMUSSO

Thank you, Mario.

As I said earlier, CGIL is already working with CISL and UIL on EWCs and on the Directive. I imagine that FISAC will participate in this activity, which involves all sectors and examines the different issues they may have.

I think it is necessary to "update" the Directive (I will use this term because it is more neutral). I think it is a logical and coherent process. Years of experimentation have demonstrated the effects of the activity, as well as the need to address the changes that have occurred in the meantime.

I believe this should be done in the framework of social dialogue. I do not think it is up to the Commission or the Parliament. I keep on believing that one of the strengths of the European Union is the idea of a supporting legislation, which does not replace nor is imposed on national legislation.

We have to bear in mind that European countries have different problems and different levels of progress and that in the European Union we should strive for convergence. We cannot simply ignore differences and continue the path of the countries which have the most relations or experience.

Otherwise, we are going to repeat the situation which was mentioned earlier, i.e. competition among European countries on the basis of the cost and rights of employees.

This is not the scenario we want. Otherwise, we would not be here to talk about the convergence of salaries, minimum wages, contract models and collective bargaining as general principles of reference.

From this point of view, I think we should all do our best to overcome the stalemate in European social dialogue I described earlier. We cannot simply ask the Commission to solve the situation for us, because I think it would not work.

I would also like to make two observations on the proposals I heard. Part of the logic behind it is that the terminology of the Directives is sometimes contradictory. There is no doubt about it.

This does not only apply to EWCs. I am thinking about all the different terms for parasubordinate and self-employed workers. But we can look at it in a different way. Language has changed over the years because we have faced problems of a different nature and quality.

Together with the legal experts who support us, we also believe that, out of the many existing terminologies, we should try to create a single one of the Commission.

We earlier mentioned that the European Directives generically speak of employee representation bodies. In the framework of European dialogue, this risks being a sort of downgrading in comparison with the role played by trade unions in collective bargaining.

There is also the issue of drawing up the definition of employees. It may sound very easy, because the European Union has traditionally decided to take ILO conventions as a point of reference. However, not all European countries have ratified the same conventions. Therefore, it is definitely necessary to adopt a uniform language. But we need this language to be in line with the changes which were already occurring and which the pandemic has certainly accelerated – also with the introduction of some new elements.

Someone said that it is necessary to work on the Joint Statement and then on the Directive on telework, because they are no longer applicable to the situation we have now. But, above all, we have to deal with new issues, because technologies keep on evolving. While it is easy to agree with employees' representatives that there needs to be a contract system, it is much more complicated to have a discussion on the definitions of artificial intelligence and learning machines. Yet, the European Union is working on relevant rules and we also need to address this issue. Trade unions need to receive information and gain a better understanding of these technologies. Otherwise, on the one hand we claim the right to information and consultation and the right to collective bargaining, but on the other hand dialogue does not occur because everything is done through technological tools.

So I believe that we must argue that Europe needs a supporting legislation, i.e. legislation that supports collective bargaining, the definition of its various levels, as well as the convergence process we need to build in Europe. We also need to spread knowledge that these issues are also influenced by technological changes and innovations.

Thank you.

MARIO ONGARO

Thank you, Susanna for your well-structured and comprehensive answer.

Now I would like to speak with MEP Brando Benifei, who is following us from Brussels.

In recent years we have already fruitfully collaborated with Brando Benifei on the issues we are addressing during this round table. In particular, we have previously talked about the limits of Directive 2009/38 on EWCs and, more in general, of the Directives on employee involvement.

Brando Benifei has voiced our concerns and launched specific initiatives at the European Parliament and with the European Commission.

This is why we have invited him to this round table. We sincerely thank him for his participation.

In my first question I would like to ask you to tell us your opinion and to update us on the most recent initiatives and on the political conditions which may have influenced the fitness check of the Directives on employee involvement previously launched by the European Commission.

Today, what are the main positions and forces in the European Parliament and in the Commission that may facilitate or block a fitness check aimed at making the Directives more effective?

BRANDO BENIFEI

First of all, let me thank you, Mario, as well as FISAC and UNI Europa for your work in this area. As you said, in recent years we have repeatedly met in person in Rome and in London to talk about these issues, and in particular about the reform of the EWC Directive.

Unfortunately, in the current situation we cannot yet speak of a full-fledged reform. We are still stuck in a preliminary analysis phase about the use, functioning and implementation of European legislation on EWCs.

Let me say it clearly. I fear there is no political will to pass a reform – not only by the Commission, but also by political representatives and employers alike.

I am sorry to say that, because during the latest parliamentary term we waited for the publication by the Commission of the Evaluation on the implementation of the EWC Directive (Recast). The Evaluation was published in 2018, two years behind schedule, under the umbrella of the fitness check of the Directives on employee involvement.

Mario certainly remembers that we submitted a written Question to urge the Commission to publish this Evaluation, which, despite being mandatory, was released very late.

Based on my experience at the European Parliament, especially in relation to many aspects of social and labour policies, I would say that the REFIT evaluation was inspired more by the willingness to reduce the administrative and bureaucratic burden, rather than by the desire to truly assess how to review, improve and strengthen the Directives.

To use some popular terms in Brussels, I would call it deregulation rather than smart regulation.

In the IMCO and JURI Committees we are working on REFIT evaluations and I can confirm you that this is the general trend. Unfortunately, the much awaited Evaluation published in 2018 is proof of that. It is a 10-page report which very briefly analyzes the benefits of

EWCs and the need to spread them across EU Member States. Even if it is very short, the evaluation clearly identifies a list of existing problems:

- Limited number of EWCs in Europe
- Limited effectiveness of the consultation procedure
- Need to strengthen the exchange of best practices
- Serious shortcomings in the implementation of the Directive

Considering all this, I would have reasonably expected a proposal for the revision of the Directive, but this was not the case.

Some suggested creating a Practical Handbook on EWCs to ensure a more effective transposition of the Directive into national law. However, this document has never been drafted and no one knows what the Commission plans to do to ensure the enforcement of commitments in the Member States and to provide additional resources to the social partners for the implementation of EWCs.

In this regard, I think it is worth saying that I successfully negotiated and fought for the inclusion of an obligation for the European Commission to develop capacity-building of social partners in the European Social Fund Plus.

Through this fund, we gave the European Commission an instrument to provide additional resources to the social partners for the implementation of EWCs, as was requested in the Evaluation. Now I truly hope that the Commission will do so and we will certainly monitor the situation.

But I think this is definitely not enough.

I think what we need is a strong political push by the European Parliament and by the national governments.

As Mario Ongaro knows well, I promoted two own-initiative reports on the topic in the EMPL Committee. One was about democracy in the workplace and the other one about the revision of the EWC Directive, for which I will be the rapporteur for the Alliance of Socialists and Democrats.

In both cases, we are still waiting. Due to COVID-19, the Parliament had to postpone part of the activities of last year, which concerned other things. However, I think that this delay is in part due to the lack of political will – something that deserves an in-depth discussion. I am insisting to break the deadlock and I will keep you informed.

MARIO ONGARO

Thank you, Brando. I not only appreciate your hard work, but also you being very straightforward. The situation you described is concerning and disappointing. You clearly said that there is no political will to reply to the questions that were raised on the topic. What you say confirms the concerns expressed by professor Dorssemont, our legal expert, when he said: *"The fitness check is seen more as a way to deregulate, simplify and eventually weaken legislation, rather than as a way to make it more effective and implement it."*

From this point of view, my second question to you becomes even more important. What do you think of our 4 key points and 13 proposals? Do you have any recommendations? Knowing that we can count on your support for our proposals – especially once we agree on some specific points with our social partners – how can we integrate them in the debate at the European Parliament?

Of course, we do not want to generate confusion between European Social Dialogue, which is run autonomously by the social partners, and the institutional tasks of democratic bodies like the European Parliament and the Commission. However, I think that the two should run in parallel in order to ensure the best functioning of procedures and practices.

BRANDO BENIFEI

With respect to your 4 key points and 13 proposals, I must say that they outline a series of measures that are truly necessary in order for EWCs to be up to current and future challenges.

To be brief, I will focus on a point that I consider truly essential, i.e. information to employees and how to make it effective.

I think we need to lobby some of the main players in the European Parliament, such as Gaby Bischoff, who is a trade unionist, but also Dennis Radtke, who will also be the coordinator for the proposal on minimum wages. In my opinion, this may distract him from his work on the own-initiative report on EWCs.

We also have to start dialogue with the European Trade Union Confederation and with Business Europe in order to avoid polarization and a face-to-face confrontation in view of the parliamentary debate.

At present, the Commission does not seem to be willing to act without a resolute initiative of the European Parliament and of some governments to change the EWC Directive.

Therefore, we need to involve a wide range of political forces and social partners already in the early stages, in order not to end up with a Parliament resolution that is not ambitious enough in asking for a reform.

I mentioned Gaby Bischoff for the report on democracy at work and Dennis Radtke for the own-initiative report because I work closely with them. I have no doubt that they will work hard. I also believe that, without a push by different political forces and without the support of some governments, we risk losing time – which would not be a good thing.

In general, I think that all of your proposals are good. We must strive to include them in the two reports I mentioned, i.e. the one on democracy at work with Gaby Bischoff as rapporteur, and the one on the revision of the EWC Directive, for which I am the rapporteur for the Socialist group. Dennis Radtke is the co-rapporteur, but he also needs to play an active role. Otherwise, this would be the initiative of only one side of the Parliament, which may lead to its failure.

I will work in this direction and I will keep you updated on future developments. I hope I can give you good news in the future.

MARIO ONGARO

Thank you, Brando. I took note of what you said. I was very happy to hear that you confirm your commitment despite the difficult and somewhat discouraging situation. However, we believe that, by bringing together different forces and by looking for the support of the social partners, we have the opportunity and the potential to continue our path and to break the deadlock.

BRANDO BENIFEI

I would like to clarify one thing.

I think we can make steps forward through lobbying and actions.

After the very significant delay in the presentation of the Evaluation, together with you, the social partners, we lobbied the Commission, we submitted an informal question and in the end the Commission was forced to act.

I do not know if they would have done it without our lobbying. This is why I was very realistic, maybe even pessimistic. We know who we are dealing with and we definitely need to make pressure.

But I firmly believe that, with our work, things can be changed.

MARIO ONGARO

Thank you, Brando for your correction. This is good to hear and it certainly motivates us to continue to work.

We will certainly stay in touch with you to work together on this issue and on other possible fields of collaboration.

Final Goal IX of this Project:

Produce a Proposal of EU Policy on 4.0 Finance aiming to:

- 1. connect effectiveness of EU law on employee involvement with the outcomes and current practices of industrial relations in the industry in terms of changing work processes;**
- 2. use part of productivity increase brought by smart working and digitalization to address resources to LLL and vocational training in order to foster employees skills and the quality and social sustainability of finance products;**
- 3. provide a relevant input to the EU Social Dialogue both at sectoral and general level**

This goal IX. has been met essentially through:

our 4 points document + the 13 points document that our external Expert wrote taking into punctual account our observations and our priorities

We have proposed both documents to:

-our social partners (BCESA-EBF + Unicredit Group Industrial Relations and EWC Management

-Uni Finance

-EU Parl. member in charge of Employment Committee

- **Our social partners** find both documents very interesting and consider them a solid basis on which a follow-up should be framed in the Banking EU Social Dialogue, in parallel with the already planned agenda for 2021-2022.
- **Uni Finance** completely share both documents and fully support the follow-up proposed by our social partners here above
- **MEP Brando Benifei** is working on the Directives on Employee Involvement (namely the 2009/38 one) together **with Dennis Radtke and Gaby Bishoff**, both MEP on the dossier concerning proposals to review the a.m. Directive
- **I, as Project Manager, am personally** in steady contact with the a.m.MEP Benifei, in order to coordinate any further outcome that our work with our social partners will produce

EMPLOYEE INVOLVEMENT IN THE CHANGING WORK
WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS

Research contributions on Digitalisation Impact and Social Dialogue

Piero
Valentini



FISAC·Cgil

ISRF·Lab



Presented on October 7h,8h

Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Aim of the research:

Understanding the impact of restructuring processes in the workplace looking at it from the perspective of social dialogue.

Methodology:

- Integration of survey and interviews

When: Between October 2019 and February 2020;

Who: 50 european trade unionists with direct experience of restructuring processes in the service industry.

Digitalisation and Sales Network Workers In Financial Sector

Aim of the research:

Understanding the impact of digitalization processes and "continuous restructuring" on the front line of the financial sector

Methodology:

- Survey

When: September 2020

Who: 18 participants (from Italy and France)

from front line of the financial sector (branch network specialist sales staff)

Average overall length of service: 16 years
2 clusters:

long-term employees (26.4 years service)
young employees (6 years service)

To be presented tomorrow

Digitalisation and involvement of Young Workers In Financial Sector

Aim of the research:

Deeper Understanding "continuous restructuring" on young employees of the financial sector

Methodology:

- Interviews

When: October 2020
february 2021

Who: 6 young employees (6 years service)

from innovative front lines of the financial sector in Italy

Self-Employment, ICT
Close contact to clients

Digitalisation of services can bring **numerous opportunities** on productivity and quality of work organisations



Effective Impact of Digitalisation is influenced by its **organisational implementation**

- Key Importance of **economic, social and institutional factors at stake** in restructuring processes.



- An **employee-centered perspective on restructuring processes** is essential to improve social dialogue and the implementation of digitalisation.

Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Aim of the research:
Understanding the impact of restructuring processes in the workplace looking at it from the perspective of social dialogue.

Methodology:

- Integration of survey and interviews

When: Between October 2019 and February 2020;

Who: 50 european trade unionists with direct experience of restructuring processes in the service industry.

- Awareness that the **pace of technological innovation** is seen to **get faster** and with **wider and faster impacts** on work and society
- Widespread perception that **restructuring processes** have achieved a **continuous character over time**, to keep the pace of **new non regulated organisations** wich integrate **latest technologies**

In organisations

- Continuous Digital Restructuring Processes **don't guarantee automatic increase** in productivity and organisational well-being
- Emerging perception that also **management is having difficulties** in navigating and implementing change, and is getting **disoriented**
- **Uncertainty of affiliates on future processes** even more than on the current ones

Beyond the idea of a temporary “delays” in the implementation of restructuring because of an old – not digital native - generation of workers. **Digital natives are not immune to (continuous) digital restructuring processes**

**Digitalisation,
Restructuring processes
and Social Dialogue
in Services Industry**

SOCIAL DIALOGUE:
From **defensive approach** to
proactive approach
to continuous change

- Contracts: anticipating new jobs needs, map new organisations and workers through SD
- Supranational Networking
Europe= progress on Social Sustainability
Social Partners Training
Common European Rights
EWC: useful if homogeneous quality of information

- Awareness that the **pace of technological innovation is seen to get faster** and with **wider and faster impacts on work and society**
- Widespread perception that **restructuring processes have achieved a continuous character over time**, to keep the pace of **new non regulated organisations** which integrate latest technologies

In organisations

- Continuous Digital Restructuring Processes **don't guarantee automatic increase** in productivity and organisational well-being
- Emerging perception that also **management is having difficulties** in navigating and implementing change, and is getting **disoriented**
- **Uncertainty of affiliates on future processes** even more than on the current ones

Beyond the idea of a temporary "delay" in the implementation of restructuring because of an old – not digital native - generation of workers.
Digital natives are not immune to (continuous) digital restructuring processes

**Digitalisation,
Restructuring processes
and Social Dialogue
in Services Industry**

- Awareness that the **pace of technological innovation is seen to get faster** and with **wider and faster impacts on work and society**
- Widespread perception that **restructuring processes have achieved a continuous character over time**, to keep the pace of **new non regulated organisations** which integrate latest technologies

In organisations

IMPACT ON WORKFORCE

Increased **stress** and **workload**
(for old workers but also for digital natives – and customers);

Work life balance is a growing issue especially for smartworking.

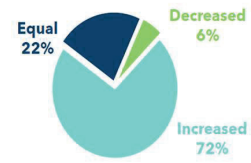
Increased monitoring of individual performance.

Few attention on values of social responsibility in training and management.

**Digitalisation,
Restructuring processes
and Social Dialogue
in Services Industry**

**Digitalisation
and
Sales Network Workers
In Financial Sector**

Following the introduction of new technologies, the workloads are:



Technological and organizational changes in recent years have positively impacted the management of working hours (greater flexibility, self-management, less overtime abuse, etc.)



Continuous organizational changes are a source of stress that affects work performance



**Digitalisation,
Restructuring processes
and Social Dialogue
in Services Industry**

**Digitalisation
and
Sales Network Workers
In Financial Sector**

The changes introduced in my company have been managed in a positive way by management at different levels



The training provided to exercise the new roles was adequate both in terms of methods and times of use and in terms of content



Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Beyond the idea of a temporary “delays” in the implementation of restructuring because of an old – not digital native - generation of workers.

Digital natives are not immune to (continuous) digital restructuring processes

Digitalisation and Sales Network Workers In Financial Sector

Young people show greater ease with digital work processes

The adoption of new technologies has made some work processes easier



The adoption of new technologies has increased productivity



Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Beyond the idea of a temporary “delays” in the implementation of restructuring because of an old – not digital native - generation of workers.

Digital natives are not immune to (continuous) digital restructuring processes

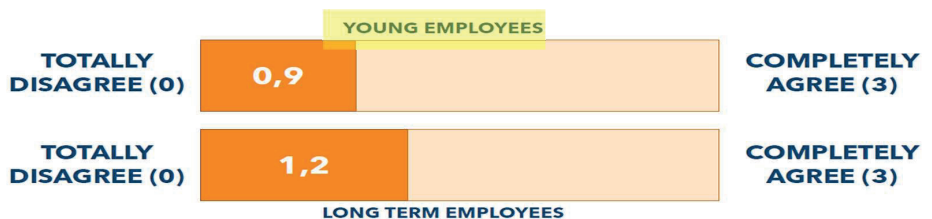
Digitalisation and Sales Network Workers In Financial Sector

Young people show greater ease to control digital work processes
BUT this alone is not enough for job satisfaction and career growth

Following the organizational/technological changes my level of professional satisfaction improved



The changes have increased opportunities for career and salary growth



Presented on October 7h,8h

To be presented tomorrow

Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Aim of the research:

Understanding the impact of restructuring processes in the workplace looking at it from the perspective of social dialogue.

Methodology:

- Integration of survey and interviews

When: Between October 2019 and February 2020;

Who: 50 european trade unionists with direct experience of restructuring processes in the service industry.

Digitalisation and Sales Network Workers In Financial Sector

Aim of the research:

Understanding the impact of digitalization processes and "continuous restructuring" on the front line of the financial sector

Methodology:

- Survey

When: September 2020

Who: 18 participants (from Italy and France)

from front line of the financial sector (branch network specialist sales staff)

Average overall length of service: 16 years
2 clusters:

long-term employees (26.4 years service)
young employees (6 years service)

Digitalisation and involvement of Young Workers In Financial Sector

Aim of the research:

Deeper Understanding "continuous restructuring" on young employees of the financial sector

Methodology:

- Interviews

When: October 2020
february 2021

Who: 6 young employees (6 years service)

from innovative front lines of the financial sector in Italy

Self-Employment, ICT
Close contact to clients

EMPLOYEE INVOLVEMENT IN THE CHANGING WORK
WITHIN THE 4.0 FINANCE INDUSTRY TRANSNATIONAL GROUPS

Digitalisation and Involvement of Young Workers in Financial Sector

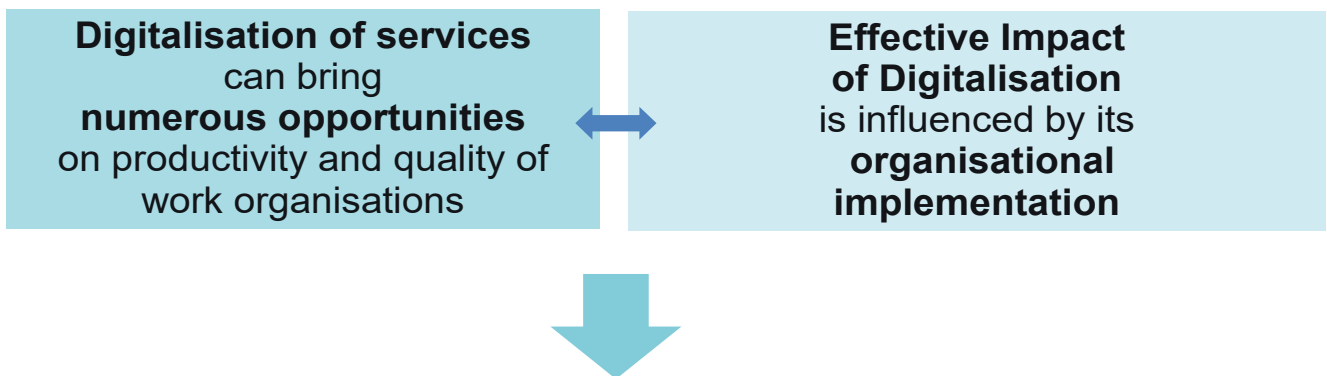
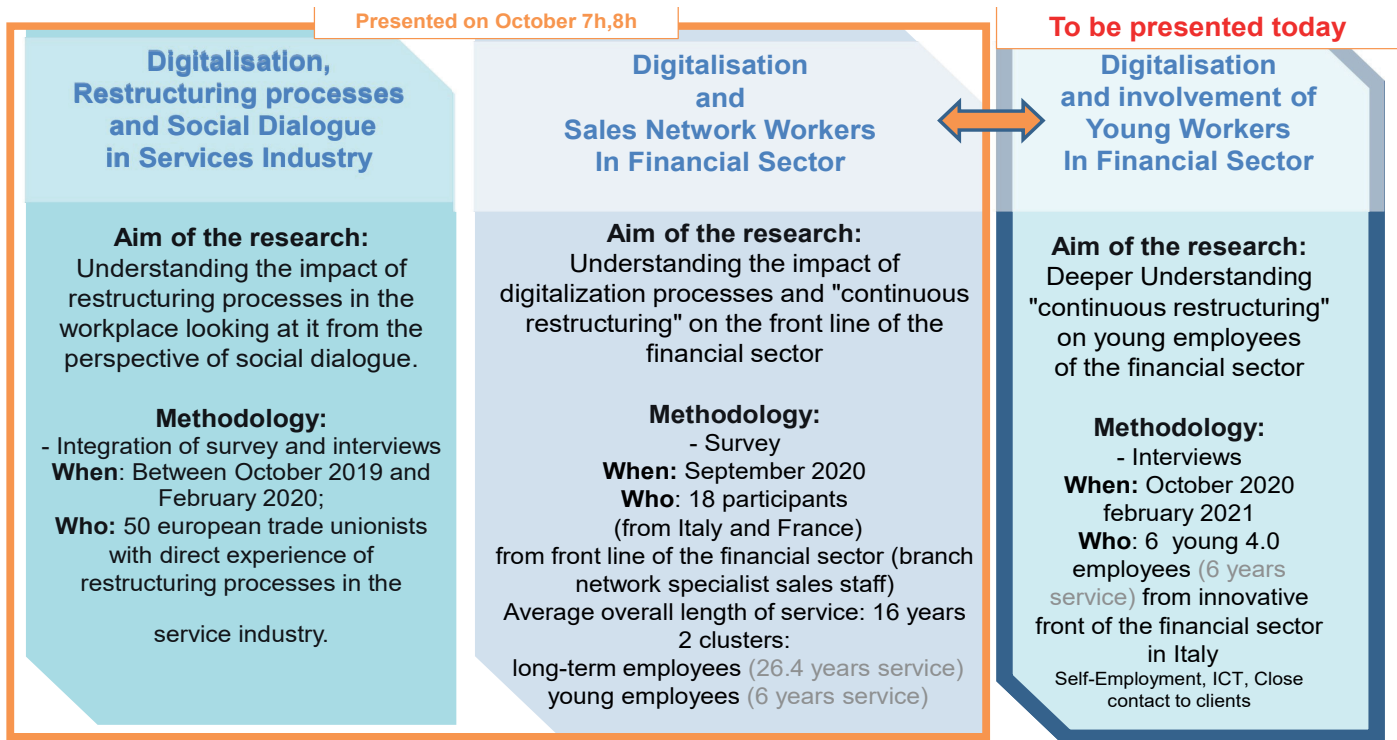
Piero
Valentini



FISAC·Cgil

ISRF·Lab





- An **employee-centered perspective on restructuring processes** is essential to improve social dialogue and the implementation of digitalisation.

**Digitalisation,
Restructuring processes
and Social Dialogue
in Services Industry**

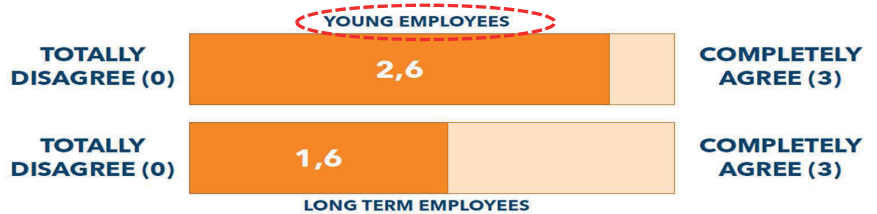
**Digitalisation
and
Sales Network Workers
In Financial Sector**

Young people show greater ease with digital work processes

The adoption of new technologies has made some work processes easier



The adoption of new technologies has increased productivity



Young workers as «Digital natives»

FROM: Digital Technologies are their «natural environment»

TO: Continuous change of digital technologies is their «natural environment»



Digital natives are deeply aware that continuous personal involvement in learning is needed.

They are more inclined to cope with the effort needed to stay updated.

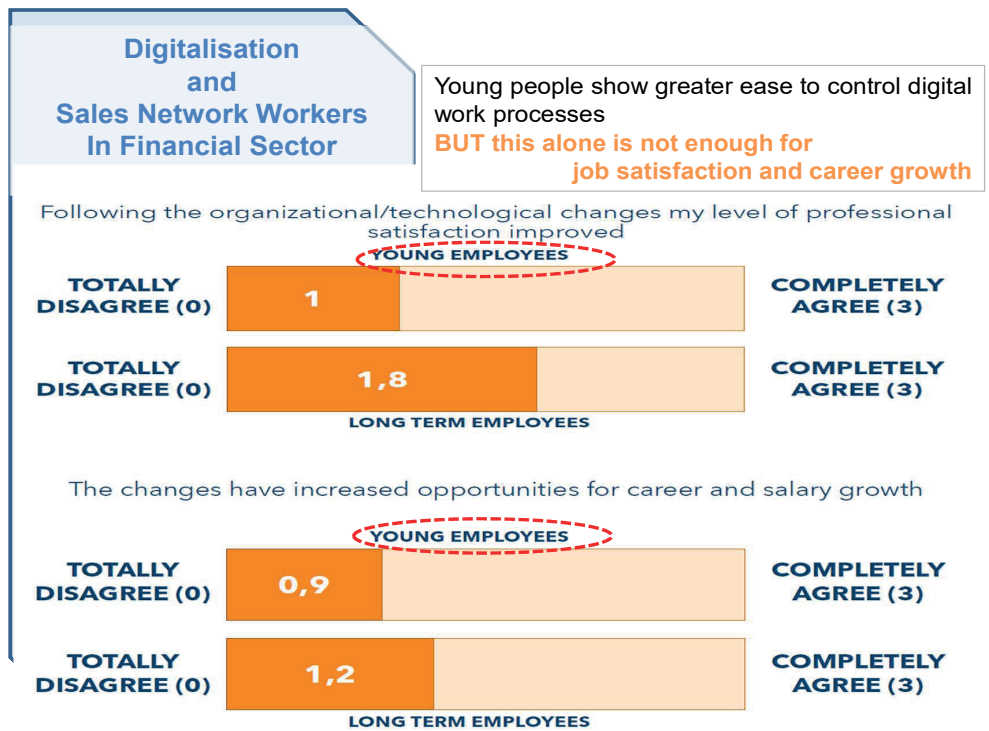
BUT ON THE OTHER HAND:

They tend to notice how organisations support their proactive involvement in change

Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Restructuring processes
 - have achieved **continuous character** over time
 - **don't guarantee automatic increase** in productivity and organisational well-being

- Beyond the idea of a temporary "delays because of an old generation of workers."
 - **Digital natives are not immune to (continuous) digital restructuring processes**



Understanding risks of decrease of involvement for young workers

Four Areas of risks
 have been explored in the interviews

- Work Life Balance
- Salary/Benefits
- Professional Growth
- Training /Learning Support

Qualitative Interviews involved a selected target of 4.0 workers:
 Young executives (less than 6 years service) from the Italian Finance Sector
 Most of them haven't experience restructurings in terms of worsening conditions

In Competitive Areas, ICT, Legal service, Proximity to Key Clients, Remote Workers,
 Highly educated, strong investment in initial training
 Traditional contracts and Hybrid Contracts (partially self-employed)

Work Life Balance Among Young Workers

Young workers in ICT Low satisfaction

- New contracts are perceived to have priority on feasibility check with workers
- Extra-Working time seems deliberately not monitored; no evidence of increase in productivity
- In remote working:
excessive increase of meetings

Growing perception that **expected increase of productivity by digital technologies is delayed** by organisational aspects

Young self-employed High satisfaction

No pressures about working times

BUT ON THE OTHER HAND:

- High expectations on increasing clients in future
- Low satisfaction in organisational support in maintaining and increasing clients

too many operations still require time for traditional support

- obligation to organize meetings at office
- Administrative part seems still too time consuming

Salary/Benefits

Professional Growth

Initial high satisfaction: Salary and social benefits are considered rare for their generation
Doubts increase considering conditions on the job

Young workers in ICT

- Salary is considered not adequate to extra working time
- Low satisfaction about monitoring contracts
- Bonus per performance are appreciated as recognition of active involvement if:
- Evaluation recognizes quantity and quality; Difference among managers and workers is reduced
- Low satisfaction about Career plans (not official, suspended during pandemic)

Young self-employed

- Salary is considered adequate when new clients will be obtained > expectations about organisational support in increasing clients > Low satisfaction on organisational conditions on favouring new clients
- Disorientation on taxation and payroll
- Low satisfaction on administrative support

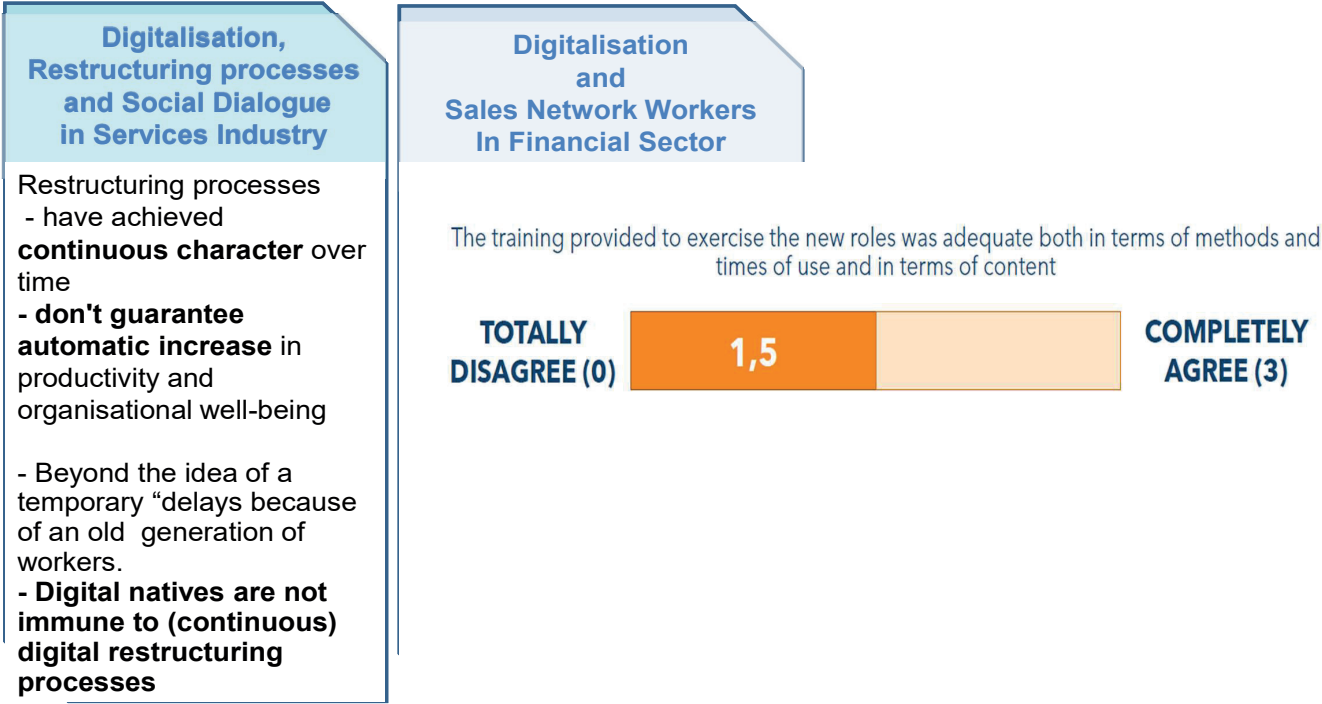
Demand for (traditional forms of) support from social partners

Training /Learning Support

Change is perceived as fast and continuous.
But this is the expected condition/challenge for young workers.
Personal involvement in keeping the pace is considered normal.
When dealing with customers, the risk is market and customers learn faster.



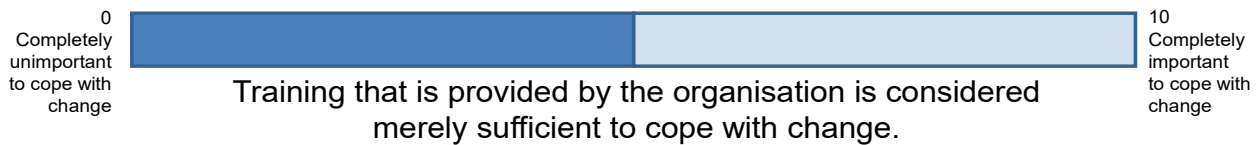
Expectations of Organisational support in learning



Training /Learning Support

Change is perceived as fast and continuous.
But this is the expected condition/challenge for young workers

Expectations of Organisational support in learning VS PERCEPTION OF TRAINING



Training is formally needed for salary bonus or enrollment in the register of consultants.

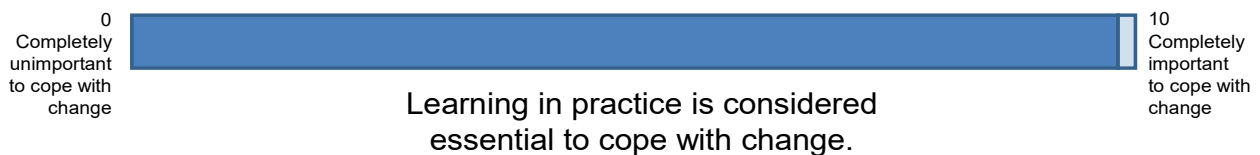
Traning opportunities are considered :

- too compressed in time
- sometimes too general
- They do not always guarantee against legal risks
- their approach is learning before the practice, not during the practice

Training /Learning Support

Change is perceived as fast and continuous.
But this is the expected condition/challenge for young workers

Expectations of Organisational support in learning VS PERCEPTION OF LEARNING IN PRACTICE



- Information is in progress: learning requires constant monitoring and interpretation of updates
 - Organisation provides tools as help desk, intranet updates
 - Specific cases from the context, clients, inspire questions.
 - Self-committment in researching solutions from many sources is essential
- Consultation with colleagues, informal experts, is an essential part of learning in practice
 - Informal tools are used to communicate with colleagues and share solutions

- Learning in practice requires a break from direct work. This break is considered by workers an essential source of value.
- Exchange with colleagues is seen to positively affect performance and team involvement at the same time

REMOTE/ON SITE:

On site knowledge sharing seems still more immediate. Coming back with colleagues is appreciated for easier knowledge sharing. Remote meetings seem an interesting option with far colleagues but they seem more time consuming.

Knowledge sharing requires :

- Solidarity (tacit agreement from common destiny in new and unstable context)
- Time
- Managers support

0
Completely unimportant to cope with change



10
Completely important to cope with change

Learning in practice is considered essential to cope with continuous change

BUT ON THE OTHER HAND:

Unsufficient organisational awareness could put each of these 3 factors at risk

The interaction of solidarity time management support seems to be excessively left to chance by organisation.

Growing perception of unrecognized and frustrated informal proactivity

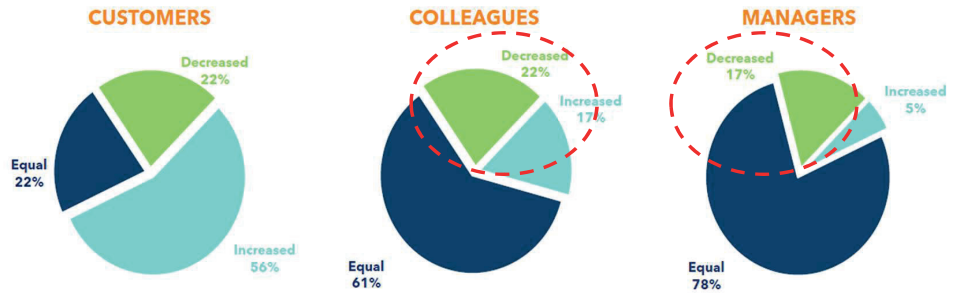
Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Restructuring processes
 - have achieved **continuous character** over time
 - **don't guarantee automatic increase** in productivity and organisational well-being

- Beyond the idea of a temporary "delays because of an old generation of workers."
 - **Digital natives are not immune to (continuous) digital restructuring processes**

Digitalisation and Sales Network Workers In Financial Sector

Change on Work Relationships



Four Areas of risks on Involvement of Young Workers have been explored in the interviews

Work Life Balance

Salary/Benefits

Professional Growth

Training /Learning Support

Young Workers start with

- high potential involvement
- awareness of the challenge of continuous change
- expectations about organisational support

• *«most of us feel even a sense of gratitude for an opportunity few of this generation have»*

During their professional path they face an expected high pace of change (and unexpected amount of work) on which they evaluate organizational support

«each two months, new releases, new regulations, new products»

«what if PC is off at 6pm?»

Possible consequences when expectations are not fulfilled:

- psychological stress
- isolation, distrust,
- decrease of organizational Involvement

«We get used to a climate of resignation more than proactive collaboration»

Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Restructuring processes
 - have achieved **continuous character** over time
 - **don't guarantee automatic increase** in productivity and organisational well-being

- Beyond the idea of a temporary "delays because of an old generation of workers."
 - **Digital natives are not immune to (continuous) digital restructuring processes**

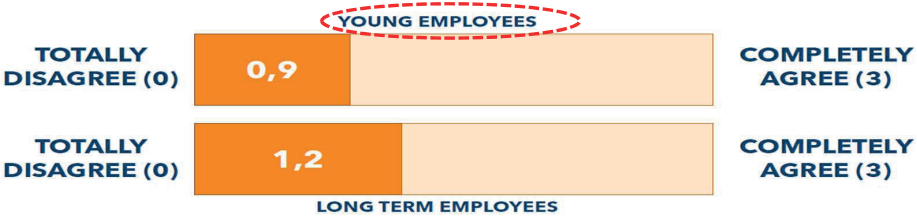
Digitalisation and Sales Network Workers In Financial Sector

Young people show greater ease to control digital work processes
BUT this alone is not enough for job satisfaction and career growth

Following the organizational/technological changes my level of professional satisfaction improved



The changes have increased opportunities for career and salary growth



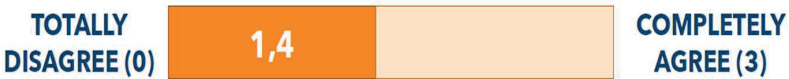
Digitalisation, Restructuring processes and Social Dialogue in Services Industry

Restructuring processes
 - have achieved **continuous character** over time
 - **don't guarantee automatic increase** in productivity and organisational well-being

- Beyond the idea of a temporary "delays because of an old generation of workers."
 - **Digital natives are not immune to (continuous) digital restructuring processes**

Digitalisation and Sales Network Workers In Financial Sector

Technological and organizational changes in recent years have positively impacted the management of working hours (greater flexibility, self-management, less overtime abuse, etc.)



Continuous organizational changes are a source of stress that affects work performance



Restructuring processes and Social Dialogue in a Digitalised Services Industry

Aim of the research:

To understand the impact of restructuring processes in the workplace looking at it from the perspective of social dialogue.

Methodology:

- Integration of survey and interviews
- Between October 2019 and February 2020;
- 50 european trade unionists with direct experience of restructuring processes in the service industry.

Restructuring processes and Social Dialogue in a Digitalised Services Industry

A look at:

- Emerging Shared Awareness
- Shared Perceived Challenges
- Promising Directions

Restructuring processes and Social Dialogue in a Digitalised Services Industry

- Digitalisation of services can bring numerous opportunities on productivity and quality of work organisations.

>>Effective Impact of Digitalisation is influenced by its organisational implementation.

Key Importance of **economic, social and institutional factors** at stake in restructuring processes.

- An employee-centered perspective on restructuring processes is essential to improve social dialogue and the implementation of digitalisation.

Restructuring processes Today

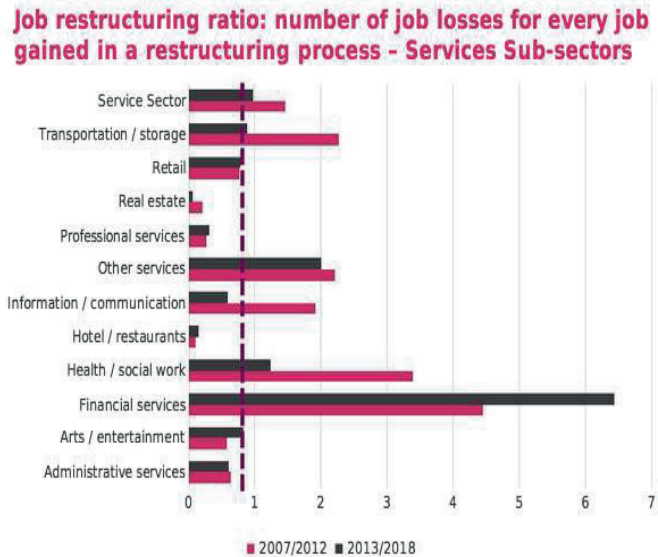
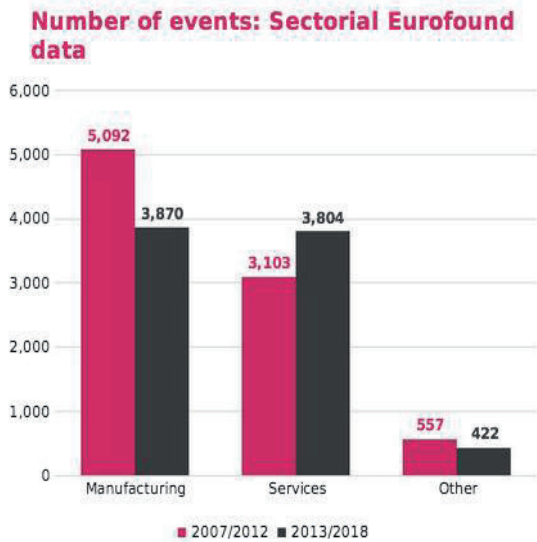
Corporate restructuring is a set of measures to increase a company's competitiveness and increase its value

(Vyas, 1997; Crum and Goldberg, 1998)

>> Restructuring is no longer associated with organizational failure, decline & job losses

>>Restructuring processes occur beyond crises and are "continuous"

Restructuring processes in the service sector: increased intensity



Source: Elaboration on Eurofound data

Emerging Shared Awareness of the workforce

Widespread perception that
restructuring processes
have a continuous character over time

The pace of technological innovation is seen to get faster
and with **wider and faster impacts on work and society**

Uncertainty of affiliates on future processes
even more than on the current ones

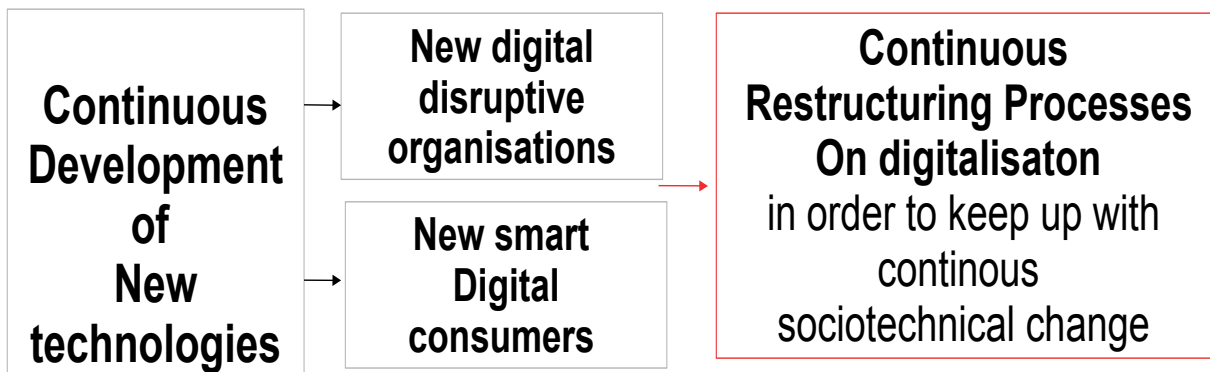
CHALLENGE >>

Is social dialogue able to keep up with with continuous change?

New digital disruptive organisations enter the market



We didn't "become" digital - We're born digital



CHALLENGE:

New **fluid boundaries** of productive processes
VS rigid sectoral boundaries

Difficulties for social dialogue to cover
new workers in new organisations in value chain

Continuous Digital Restructuring Processes don't guarantee automatic increase in productivity and organisational well-being

Beyond the idea of a temporary “delays” in the implementation of restructuring because of an old – not digital native - generation of workers.

Digital natives are not immune to (continuous) digital restructuring processes

Increased **stress** and **workload** (for old workers but also for digital natives – and customers);

Work life balance is a growing issue especially for smartworking.

Increased monitoring of individual performance.

Few attention on values of social responsibility in training and management.

Emerging perception that also **management is having difficulties** in navigating and implementing change, and is getting **disoriented**

Globalization implies globalized business and global dimension of restructuring

Delay in networking and social dialogue on social sustainability in European approach to restructuring for digitalisation
Strengthening the supranational networking is felt urgent

Social dialogue and networking at supranational european level
- is scarcely known at national level (by public opinion and unions)
- is perceived far and not reliable in defending social rights of workers

- Highest importance to networking to reach common european rights of workers: work life balance, disconnection, family leaves are key.

Promising Directions

Reinforced continuous dialogue between workers' and employers' representatives: anticipate change and needs in restructuring
Anticipating where new jobs will appear in sector (and among sectors).
Map new workers and new organisations.

Make “Europe” be associated with Social Sustainability

- **EWC are key** but it is also key to ensure homogeneous quality of the information by companies over time, between companies and between sectors.
- Reinforce links between national and international networking.
- Build on achievements of Social Dialogue at European Level.

Reinforce the culture of Social Dialogue

- Work on Social Dialogue Beyond sectoral boundaries.
- Influence public debate on new forms of working.

