

# **10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY**

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# Austria

## 10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council ?

A works council is a non mandatory institution for the representation of the personnel of a company having at least five employees. It is elected by the employees and has the right of information, consultation and consent as well as the right to control the employer in various fields such as working conditions, hours, leave, termination and data protection.

### 2. Legal foundation for involvement of works council into data processing projects

Sect. 91, 96 and 96a Austrian Labour Constitution Act (Arbeitsverfassungsgesetz - ArbVG)

### 3. Obligation to notify works council of a new data processing project ?

#### a. Who

The owners of businesses, respectively the management of corporations;

#### b. What

- Notification has to be given, in general, about all kinds of the employees' personal data, which is recorded computerized as well as about its handling and processing. Furthermore, the owner has to furnish the works council with details on the software used (Sect. 91 (2) ArbVG);

- Notification has to be given and consent of the works council is specifically needed for the introduction or implementation of the following data processing projects:

- (i) installation of any technological facilities at work, which are (potentially) likely to monitor employees and affect human dignity (Sect. 96 (1) Nr. 3 ArbVG);
- (ii) regulation of piece rate wages, if it is based on the collection of data and if there are no regulations existing in the by-laws or in collective bargaining agreements (Sect. 96 (1) Nr. 4 ArbVG);
- (iii) implementation of a system for the computerized collection, handling and processing of the employees' personal data, which exceeds the collection of the general data of the person and its qualifications. However, consent is not necessary if the use of data accomplishes legal or contractual (including collective bargaining and work agreements) duties (Sect. 96a (1) Nr. 1 ArbVG);
- (iv) implementation of a system for the evaluation of the employees, if data is collected, which is not justified by operational needs (Sect. 96a (1) Nr.2 ArbVG).

#### c. When

in any other case under lit. b.( above): before launching/introducing the system;

#### d. How

Oral notification is sufficient.

### 4. Sanctions for not involving the works council

Works council could ask the Labor Court to forbid the company a data application which has been implemented without works council agreement.

## 5. What impact can a works council have on a data processing project ?

Since new data processing systems need the works council's prior consent, it might block or postpone their implementation or might make their introduction dependent on certain changes in the system (regarding the collection, handling, processing or the security of the data).

## 6. What happens in case of conflict between a works council and the management ?

In case that the works council refuses to give consent to the introduction, the new data processing system cannot be legally implemented in the business. However, in a case governed by Sect. 96a ArbVG (last and second last case under 2.b.above) the consent of the works council can be substituted by decision of a conciliation board.

## 7. Does the Data Protection Official have a role to play in dealings with the works council ?

No. In Austria, there has not been established the institution of a "Data Protection Official" by law, yet. It was discussed to implement it with an amendment to the "Data Protection Law 2000" (DSG 2000), but has been deleted from the drafts, already.

## 8. Any interaction between the works council and the data protection Authority ?

No, not directly, but DPA requests a copy of signed works council agreement for notifications or approvals concerning data applications that require a works council agreement. If copy is not provided, case will not be finished by DPA.

## 9. Interesting case law

Courts have long discussed the issue of which monitoring measures are affecting human dignity. A ruling by the Supreme Court regarding a telephone call registering system (OGH 13.6.2002, 8 ObA 288/01p) provided a landmark decision on measures to monitor modern media. The Supreme Court found that a call registering system that records the calling extension, number dialed, date, time, duration of the call, costs accrued, etc. is a monitoring measure that affects human dignity – even if the user can mark private calls by pushing a button so that the system records only the beginning of the number dialed (with the last digits hidden). This decision was criticized, especially with regard to the aspect of affecting human dignity and the requirement of approval by the works council.

If the employer neither forbids nor allows using the internet during the working hours, employees are allowed to use the internet for private concerns on a small scale (Court of Vienna, 29.6.2005, 8 Ra 54/05b and 8 Ra 55/05z).

## 10. What else ?

- An amendment of the Austrian DP Act since January 1, 2010 explicitly requires companies to give DPA a copy of the works council agreement in approval proceeding relating to video surveillance involving employees.

- In case no works council exists, individual consent is needed by every employee.

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# Belgium

## 10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council ?

A works council is a council organized at company or group level in which both the employer and the employees are represented. The works council must be informed, consulted or approve certain employee related issues, as provided for by law.

Belgian law provides that a Belgian company must install a works council when it employs at least 100 employees on average (article 14 of the Law of September 20, 1948 on the organization of companies). Once installed, it must be renewed every four years when the average number of employees is at least fifty.

The works council is composed of representatives of the employer that are appointed by the employer and employee representatives that are elected by the work force. Such social elections are held every four years.

### 2. Legal foundation for involvement of works council into data processing projects

The Law of September 20, 1948 and Collective Bargaining Agreement (hereinafter: "CBA") No. 9 of March 9, 1972 on the organization of national and collective bargaining agreements relating to the works councils provide for general obligations to inform and consult the works council on a regular basis in relation to, amongst other things, (i) all measures that may have an impact on the organization of the company or the working conditions, and (ii) the approval of the work rules or other internal policies.

In specific circumstances the following CBA's will also apply which require works council intervention: CBA No. 39 of December 13, 1983 regarding the implementation of new technologies, CBA No. 68 of June 16, 1998 regarding camera surveillance and CBA No. 81 of April 26, 2002 regarding the control of electronic online communications.

### 3. Obligation to notify works council of a new data processing project ?

#### a. Who

The notification obligation resides with the Employer (articles 3 and 9 of the CBA No. 9 of March 9, 1972).

#### b. What

Information : The Employer must inform the works council of all regulations and policies relating to HR management in the company (article 9 of the CBA No. 9 of March 9, 1972).

The information must be elaborate and comprehensible and it must be provided in such a way that it enables the works council to review the relevant regulations and policies and, possibly, ask questions and express comments and suggestions (article 3 of the CBA No. 9 of March 9, 1972).

Consultation : In some special cases, the employer will not only have to inform the works council but actually consult it, which means that the works council should

discuss the appropriateness and impact of the proposed regulations and policies and have the possibility to formulate and discuss alternative options. This will be the case e.g. when a data privacy project involves measures that are likely to affect the employment conditions, the financial situation of the company, introduction of new technologies, camera surveillance, etc.

Request Approval : In a limited number of cases, the employer will need to obtain the approval of the work council. This is e.g. the case if a data processing project requires the amendment of the work rules. Such may be the case when implementing (i) measures aimed at controlling the working time of the employees, (ii) a new policy to monitor the use of email and internet in the company, (iii) the use of biometrics (for the purpose of access control or working time monitoring), (iv) monitoring of employees through geo-localization (GPS), etc.

**c. When**

The Employer must inform, consult or request approval from the works council of the newly introduced data project prior to its actual implementation (see e.g. article 3 of the CBA No. 9 of March 9, 1972).

**d. How**

The information can be issued orally or in writing. If the information is issued in writing, the employer must give an oral explanation and clarification (article 3 of the CBA No. 9 of March 9, 1972).

**4. Sanctions for not involving the works council**

Not involving the works council is criminally sanctioned with a fine of 550 € per employee in the company, capped at 550,000 € per employee (articles 32, 2°, 3° and 4° of the law of September 20, 1948).

**5. What impact can a works council have on a data processing project ?**

Although, as a principle, the employer is free to adopt the measures that it deems appropriate or required, it will inevitably also have to consider the position and arguments of the works council, in order to maintain good relations with the work force and thus, to avoid possible situations of concerted action, e.g. strikes, lockouts, etc.

**6. What happens in case of conflict between a works council and the management ?**

To the extent that approval by the works council is not required (i.e. in situations where the work rules need not be amended in order to implement a data processing project), the works council cannot prevent the implementation of data processing project.

However, the employees typically have the right to strike. Further, both the employer and employee representatives have the right to request the Labor Inspectorate to mediate and advise on the matter or to request the Labor Court to rule on the issue (articles 24 and 25 of the law of September 20, 1948).

**7. Does the Data Protection Official have a role to play in dealings with the works council ?**

Belgian law does not provide for the position of Data Protection Official.

## 8. Any interaction between the works council and the data protection Authority ?

There is no direct interaction between the works council and the Data Protection Authority (hereinafter: "DPA"). All interactions with the DPA are the exclusive responsibility of the employer. Employees and employee representatives that are member of the works council are, however, free to file a complaint with the DPA in their own name or to consult the DPA in relation to a the company's information practices.

## 9. Interesting case law

There is a substantial amount of Belgian case law relating to employee privacy, particularly in the context of employee monitoring, such as access to e-mail, and internet traffic and camera surveillance. Most case law relates to the question of whether evidence against an employee obtained by making use of such procedures is admissible in court or constitutes a ground for dismissal for serious cause (*i.e.* without notice period or indemnity in lieu of notice).

It should be noted that apart from assessing whether the measures implemented comply with the provisions of the Belgian Data Protection Act (such as the lawfulness of processing and the principle of proportionality) and other relevant legislation (e.g. the secrecy of communication), Belgian courts usually verify whether the measures were implemented in compliance with Belgian labor law and whether the employee concerned was sufficiently informed (through a clause in the labor agreement, the work regulations or a company policy).

## 10. What else ?

The Belgian DPA has issued several opinions relating to the implementation of measures that impact employee privacy, including e-mail monitoring and geo-localization of employees through global positioning systems. In these opinions, the DPA stresses the importance of complying with the appropriate procedures under Belgian labor law, which includes information and consultation with the works council. Although such procedures may be burdensome, once the project has been adopted by the company in compliance with such procedures, the company will have a good basis to defend its data processing project in the notification or authorization procedures, or in case of a DPA audit.

Prior to consulting the works council about a contemplated data processing project (*e.g.* e-mail monitoring or video surveillance), it is important to assess the relationship between the employer and employee representatives and the works council practices and procedures. In some companies, a history of strikes and other concerted action may have created a hostile environment, making it more difficult to push through new measures impacting the employees' privacy. Also, some works councils adopt a very formalistic approach, whereas others are more flexible.

The submission of new data processing projects to a works council usually requires thorough preparation, including an analysis of the legal grounds to justify the implementation of the project and the assessment of alternative options (so as to anticipate questions from the works council and the preparation of answers).

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# France

## 10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council ?

A works council is a body, within a corporation, whose members are elected by employees and who operates as "the ear and the voice" of employees. Companies over 50 employees are bound to have a works council. The works council is presided by the employer. It has between 3 and 15 employee representatives (+ substitutes) depending on the total number of employees. In large corporations (over 300 employees) trade unions who have an elected member can in addition appoint a representative who will sit with the works council (consultative voice only). If a corporation is divided in several sites, there can be one council per site ("comité d'établissement") and a central council at headquarters.

The corporation -the employer- must provide information to the works council on various topics such as its activities, its finances, its employment and compensation policies and statistics and its development and restructuring plans, so that the works council is properly informed of the directions the company is taking and can comment on them to make sure that the interests of employees are taken into consideration. The employer is bound to present the works council with various reports and documents such as accounting documents, reports on male/female diversity, employment status, workforce evolution including number of employees with a short term contract ...

The works council meets on a regular basis which will depend on the size of the company and the topic to be addressed (regular meetings are : monthly for companies over 150 employees, bi-monthly for smaller companies). Extraordinary meetings may be called by the employer on urgent matters.

Works council members are protected employees.

### 2. Legal foundation for involvement of works council into data processing projects

The labor code requires the employer to inform and consult the works council on several topics which may potentially involve the processing of personal data:

- introduction of new technologies if they may have an impact on employment, qualification, compensation, training or work conditions (Article L 2323-13);
- general matters relating to work conditions which may result from the organization of work, technology ... (Article L 2323-27);
- introduction of processing of personal data for HR management purposes (Article L 2323-32);
- methods and techniques used as a support to recruitment (Article L 2323-32);



- means and techniques to control the activity of employees (Article L 2323-32);
- matters relating to the organization, the management and the operation of the business, in particular measures which may impact the workforce volume or structure, working hours, employment and work conditions and professional training (Article L 2323-6).

### **3. Obligation to notify works council of a new data processing project ?**

#### **a. Who**

Meeting requests must be sent by the President of the works council, along with the agenda agreed with the works council Secretary (employee representative), at least three days before the meeting.

#### **b. What**

The works council must be provided with sufficient information to be able to provide an opinion on the adequacy and proportionality of the contemplated means/project in light of the contemplated purposes.

#### **c. When**

The works council must be informed and consulted before the employer has made a decision. As a consequence, consultation must be based on a project not on a measure about to be implemented.

#### **d. How**

As specified in section 2 above, many projects require not only an information of the works council but also a consultation, which means that an opinion of the works council is requested on the project. There isn't a mandatory format. What matters is that the works council receives clear and sufficient information in time to be able to express an opinion within the framework of the project contemplated by the employer.

### **4. Sanctions for not involving the works council**

Failure to inform and consult the works council or failure to do so properly is a criminal offence which may trigger the liability of the company's CEO or of the appointed representative (maximum one year of imprisonment and 3 750 euros of fine) as well as the liability of the legal entity itself (maximum of fine multiplied by 5 and additional sanctions such as the prohibition to use the means used to commit the offence or which result from the offence, prohibition to carry out the related activities). In addition the works council can request indemnification for the damage suffered before civil courts.

### **5. What impact can a works council have on a data processing project ?**

A works council may ask questions, make changes requests or even call an expert in some instances if it needs external advice.

Under French law, works council are merely consulted. As a consequence, even in the event of a negative opinion issued by the works council, the employer may decide to go ahead with a project. In practice, what may happen is that the works council reports its opinion on the

grounds that the employer failed to provide sufficient information, which may adversely impact the project timeframe.

## **6. What happens in case of conflict between a works council and the management ?**

In case of abusive delay by the works council, the employer may bring the matter to court to have it acknowledged that the works council has received enough information to provide an opinion. The employer can then on the basis of this decision reconvene a works council meeting and request that the works council issues its opinion.

## **7. Does the Data Protection Official have a role to play in dealings with the works council ?**

The appointment of a Data Protection Official is optional in France. If a data controller elects to appoint a DPO, the works council must be informed of this appointment. The law does not organize an interaction between the works council and the DPO. Some works council ask in practice, before providing an opinion on a project, whether the DPO has reviewed the project or they ask to hear the DPO.

## **8. Any interaction between the works council and the data protection Authority ?**

As works councils have the legal personality, they may bring claims before the data protection Authority, which happens on a regular basis.

The French data protection Authority makes a point to remind data controllers in its various guidance documents that they must inform and consult the Works council when required.

Notification of data processing to the data protection Authority is mandatory in France, unless the company has appointed a Data Protection Official. It is a regular practice of the Authority to enquire whether employee representative bodies have been consulted when required. In addition, in order to benefit from some simplification measures to the notification formalities, an employer must commit to comply with the content of DPA standards which provide that the employer has informed and consulted employee representatives.

## **9. Interesting case law**

We notice an increase in court actions brought by works councils against companies in general. Works councils may even start emergency court proceedings to block a project, as it was done by the "Comité d'établissement" of Bsn Glasspack to temporarily block the implementation of a whistleblowing line as the works council had only been informed about it without being properly consulted.

A typical case is reflected in a Supreme Court decision of April 10, 2008 where an employer had informed and consulted the works council on the implementation of a new IT commercial tool but had failed to inform and consult the works council on a specific functionality of the tool which allowed to control the activity of employees as it enabled via various indicators to evaluate employees' performance. The Court considered that that the works council should have been given sufficient information to provide an opinion on the adequacy and proportionality of the means in light of the contemplated purpose.

However, it has been judged that an employer did not have to inform and consult the works council to install video-surveillance means on premises where employees do not work, such as storage rooms (Cass Soc 31 January 2001).

Employee representatives also have an alert right when they think that civil or public liberties have been infringed. In this framework they can request before courts that an investigation be made on the conditions of an email monitoring operation, in order to verify that employee privacy had been respected (Sanofi-June 2009).

## 10. What else ?

Don't think that you are done by merely dealing with the works council. You should verify whether the data processing project falls under the scope of another internal body called the CHSCT (Committee for hygiene, safety and work conditions). The Supreme Court considered that the CHSCT had to be consulted before the implementation of a new employee performance evaluation system, as it could have an impact on the behavior of employees, their career evolution and their compensation and therefore generate psychological pressure with consequences on employee's work conditions (Cass soc. 28 Nov 2007).

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# Germany

## 10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council ?

Employee codetermination within the business is in Germany regulated – for the most part – in the Works Constitution Act (*Betriebsverfassungsgesetz*). The most important employee representative body under the Works Constitution Act is the works council. The only requirement for the establishment of a works council is a workforce of at least five employees in the business. Once established and elected a works council has its own rights and will directly deal with the management of the business or, as the case maybe, the management of the company. In particular, a works council will represent the workforce in personnel, social and economical matters vis-à-vis the management of the business and safeguard the interests of the workforce.

Codetermination rights of the works council are important in practice. A works council does not only have information and consultation rights, but also – depending on the matter in question – has compelling codetermination rights. I.e. the employer cannot act without having reached the works councils' consent, if compelling codetermination rights exist.

In practice, approval by a works council is achieved by the conclusion of a shop agreement (*Betriebsvereinbarung*) that the management will conclude with the works council on a specific issue. Where compelling codetermination rights exist and a shop agreement cannot be agreed upon with the works council, a mediation board proceeding (*Einigungsstellenverfahren*) must be initiated and completed by the employer to implement the activity in question.

### 2. Legal foundation for involvement of works council into data processing projects

The involvement of works councils in Germany into data processing projects does not result from a direct provision on responsibility for data protection.

First of all, it results from the general obligation of a works council to safeguard basic employees' rights. As data protection laws are based on constitutional/human rights of employees, data protection will be part of this obligation. Nevertheless, reliance on this ground only triggers information rights of the works council, but no consultation or codetermination rights of the works council.

Secondly, the works council's consent is required in particular in case of an introduction and/or use of an electronic data processing system that is suitable to monitor employee behaviour. It should be noted that the aforementioned term "electronic data processing system suitable to monitor employee behaviour" is construed extensively by German case law. Even if monitoring of employees is not the intention, almost every data processing system, in theory, is suitable to track employee behaviour. Likewise, the use of questionnaires (which in fact is often needed to collect personal data practice) will be subject to an approval requirement.

### 3. Obligation to notify works council of a new data processing project ?

#### a. Who

The employer (i.e. the management of the company) must notify the works council of a data processing project if the involvement of works council is required. This should be done via established routes, e.g. via the responsible in-house counsel or the HR department.

#### b. What

Even if only parts of a data processing project are subject to information, consultation or co-determination rights of a works council, the works council must in general be informed about the entire project.

#### c. When

Information of the works council must be timely. Where codetermination rights exist, the information should be given plenty in advance of the envisaged implementation deadline as the information and consultation process with the works council may take a couple of weeks up to several months.

#### d. How

Following a first information of the planned data processing project the employer will, if need be, present and offer a draft shop agreement dealing with the project.

### 4. Sanctions for not involving the works council

If the works council is not involved in a data processing project which is subject to codetermination rights, implementation and enforcement of the project is unlawful. The works council may obtain injunctive relief by a labour court stopping the respective data processing (which in fact has been done in practice). Furthermore, the data processing is non-binding for employees. I.e. employees do not need to adhere to procedures in this respect.

### 5. What impact can a works council have on a data processing project ?

Reaching a shop agreement with a works council is a negotiation process. Like in any other negotiation situation, the management might be obliged to compromise about certain aspects of the data processing projects. In fact, the works council should be given comfort that the management complies with all data protection provisions.

### 6. What happens in case of conflict between a works council and the management ?

If management and works council fail to reach a shop agreement in a particular project, the conflict may be proceeded to the mediation board (*Einigungsstelle*), a body established by both management and works council or – if both cannot agree upon its composition – by a German labour court. The mediation board is chaired by an impartial arbitrator, most frequently a labour judge. In compelling codetermination issues the mediation board can make binding decisions. In fact, if the management is able to prove to the mediation board that the

intended data processing project is in compliance with German Data Protection Law, the board shall approve the intended data processing for these reasons (not withstanding other employment related reasons).

## **7. Does the Data Protection Official have a role to play in dealings with the works council ?**

The data protection official is usually not slated to participate in the negotiations with the works council. However, depending on the circumstances of the individual case, he might be consulted by a works council. This broadly depends on the data protection official's reputation and whether or not the works council deems him to be authoritative, particularly if he confirms that an intended data processing project complies with German data protection law.

## **8. Any interaction between the works council and the data protection Authority ?**

In general, there is no statutory instrument or procedure providing for an exchange between the works council and data protection authorities. However, in practice it might occur that a works council will contact the data protection authority if they are of the impression that a particular type of data processing does not comply with data protection laws. In this case, the data protection authority is entitled to be provided with further and detailed information by the management about intended data processing. Moreover, since the revision of the German Federal Data Protection Act in 2009 the authorities have also been enabled to issue orders to stop the data processing if they are convinced that data protection laws are violated.

## **9. Interesting case law**

It should be mentioned that the German Federal Labour Court has ruled that not only the management has to comply with data protection law, but also the works council. Therefore, all data processing carried out by the works council such as collecting personal data is governed by data protection law. However, the German Federal Labour Court has also ruled that the Data Protection Official is not entitled to actually inspect whether or not the works council complies with data protection law (BAG v. 11.11.1997 – 1 ABR 21/97, NJW 1998, 2466).

## **10. What else ?**

If no works council exists, the employer is free to implement data protection projects. However, in any case the employer must comply with the statutory rules, in particular with the rules of the Federal Data Protection Act and, as the case maybe, must comply with collective labour agreements and the contractual provisions of the employment agreements.

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# Italy

## 10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council ?

The Italian Constitution, which came into force in 1946, recognises the central role of work in the social life of the country and there is a strong legal framework for working conditions, the right of association and equality of opportunity.

The Constitution contains some declarations of principles (e.g. Sect. 1 - Italy is a democratic Republic founded on labour; Sect. 4: the Republic recognises to every citizen the right to work; Sect. 35 - the Republic protects work in all its forms and applications), and some more effective rules, largely employed in case-law.

The Italian Constitution recognises the right of citizens to associate freely (Sect. 19) and the right of employers and employees to join associations or unions.

Sect. 39 of the Constitution regulates trade unions and specifies that only the *registered* ones can obtain legal status and can make collective agreements valid *erga omnes* (for all employers and employees). This provision, however, has not been enforced because a bill regulating the registration of unions has never been adopted. Therefore, in Italy unions do not need any recognition and can organize themselves without any pre-established legal model. They can conclude collective agreements, which are legally enforceable under civil law rules, i.e. on the assumption that the parties to a collective agreement have stipulated on behalf of their respective membership. Usually the employers abide by the collective agreements concluded by the most important unions and employers' associations and pay wages in accordance with them for all their employees.

The Workers' Statute adopted in 1970 recognises freedom of association and freedom of trade union activity at the workplace. The same rights are also guaranteed to public employees (except military staff, who have representatives not belonging to the unions). The law does not fix any model of union organization either for the unions or for the employers' associations.

For workers the most frequent pattern is the industry-wide union, which has local, provincial, regional and national organs (vertical organization). The national unions join together in trade union federations (horizontal organization).

For the employers there is a similar model of organization, with provincial, regional and national associations, that join to form federations. There are three employers' federations: industrial, commercial and artisan.

Recently local unions have been formed, which do not join the traditional federations, but have their own coordinating organs.

Unions are financed by the workers' dues. Sect. 26 of the Workers' Statute authorizes the unions to deduct union dues from the employee's wages (check-off).

The unions joining the biggest federations have a very important function in collective bargaining in public employment and receive protection in view of trade union activity at the plant level. The Workers' Statute of 1970, regulates plant level union activity. The Statute has been an important means of support of the unions at plant level.

The Workers' Statute (Sect. 19) specifies that workers can choose representatives, who form plant level union bodies. These representatives have particular rights fixed by the Workers' Statute, like the right to call meetings and *referendums* of workers, Sect. 20-21; protection from the relocation of their leaders, Sect. 22; permission for union activity, paid or not, Sect. 23-24; bill-posting rights (Sect. 25); right to obtain a representative's room (Sect. 27).

For public employees there is a different system of workers' representation (Act 29, 3 February 1993), but the rights are the same. Collective agreements regulate election and

duration of office of workers' representatives. A change of the representatives follows after the signing of a new collective agreement.

Collective agreements do not recognise for the workers' representatives any co-determination right, but only the right to be informed and consulted on the most important decisions of the company.

## **2. Legal foundation for involvement of works council into data processing projects**

The Italian Data Protection Code (the Legislative Decree no. 196/2003) set forth several rules which clearly refer to the Workers' Statute 1970, with specific regards to the use of technology to the data processing having an impact to person and employee rights.

Monitoring activities, video surveillance, biometrics, Internet and email remote tracking are ruled by the Italian Data Protection Code and several specific regulations issued by the Italian Data Protection Authority (the IDPA, also internationally known with the Italian name as the Garante) by means of its general resolutions.

## **3. Obligation to notify works council of a new data processing project ?**

A number of IDPA general resolutions apply to the matter and rule the interaction between works council and employees during the launch of data processing project. The Garante hold a significant role in such cases. See for reference:

- (i) the Guideline for data processing in private work places;
- (ii) the Guideline for data processing in public work places;
- (iii) the Guideline for Video Surveillance;
- (iv) the Guideline for use of Internet and Email on work places;
- (v) the General Authorisations for sensitive and judicial data processing.

All the above mentioned IDPA general resolutions are available on the Garante official web site at [www.garanteprivacy.it](http://www.garanteprivacy.it)

## **4. Sanctions for not involving the works council**

Rules on unlawful data processing – and related sanctions – contained in the Italian Data Protection Code apply.

## **5. What impact can a works council have on a data processing project ?**

The works council might have a significant impact to data processing projects within an private or public organization. By the way of example, the employer need to seek the prior approval of the works council for installation of video surveillance tools inside or outside the working premises, by respecting the Guideline on video surveillance issued by the Garante.

## **6. What happens in case of conflict between a works council and the management ?**



If the employer does not gain a green light by the relevant work council he can apply with the so called Labour Local Inspectorate.

## **7. Does the Data Protection Official have a role to play in dealings with the works council ?**

There is no legal requirement to appoint a data protection officer in Italy.

## **8. Any interaction between the works council and the data protection Authority ?**

The Garante is the main arbiter for data processing in Italy. Its regulations apply and are mandatory in many cases, including in the working place.

## **9. Interesting case law**

With respect to rules dealing with Internet and Email monitoring or defensive inspection carried out by the employer, there are various case laws which end in different ways. Regulations issued by the Garante, based on the Art. 29 WP working document are the best guidance to be followed in order to avoid confusion and expose the company to the risk of any complaints.



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# The Netherlands

## 10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council ?

According to the Dutch Works Council Act ("WCA"), an entrepreneur maintaining an enterprise in which, as a rule, at least 50 persons are employed, is obliged to establish a Works Council for the purposes of consultation with and representation of the employees of the enterprise. The members of a Works Council are elected directly by the persons employed in the enterprise from among their own ranks. The number of members will depend on the number of employees in the enterprise and will vary from three members to a maximum of 25 members.

The Works Council has four basic codetermination rights:

- (I) the right to receive information;
- (II) the right to be consulted ;
- (III) the right to render advice in respect of specific proposed decisions; and
- (IV) the right of approval in respect of specific proposed decisions concerning the introduction, modification or repeal of "social" regulations within the enterprise.

The Works Council may institute legal proceedings against the entrepreneur to enforce its rights.

### 2. Legal foundation for involvement of works council into data processing projects

According to article 27 WCA, an entrepreneur should request the prior approval of the Works Council in respect of decisions concerning the introduction, modification or repeal of (i.a.):

- i. regulations regarding the processing and protection of personal data of the persons employed by the enterprise;
- ii. regulations regarding provisions aimed at or suitable for the monitoring or inspection of the attendance, behaviour or performance of the persons employed by the enterprise.

### 3. Obligation to notify works council of a new data processing project ?

Pursuant to article 27 WCA (see above) the entrepreneur must not only notify ("inform & consult") the Works Council of a new personal data processing project, but should request the prior approval of the Works Council. The entrepreneur must submit the proposed decision in writing, presenting a summary of the reasons for the decision as well as the anticipated consequences for the employees in the enterprise. The proposed decision should also be the subject of discussion in at least one consultation meeting between the entrepreneur and the Works Council.

#### **4. Sanctions for not involving the works council**

Any decision made by the entrepreneur without the prior approval of the works council (or without the permission of the Subdistrict Court, see below) can be rendered null and void by the Works Council. The Works Council may invoke such nullity in writing within a period of one month after the entrepreneur has notified the Works Council of his decision or the works council has found that the entrepreneur has been implementing his decision. The Works Council can request the Subdistrict Court to order the entrepreneur to refrain from actions involving the implementation of a decision which is null and void. If necessary, it can also try to obtain a summary injunction within a couple of weeks.

#### **5. What impact can a works council have on a data processing project ?**

The works council has a crucial role with regard to data processing projects within an organization. As mentioned above, the entrepreneur should request the prior approval of the Works Council in respect of data processing projects. If the Works Council does not give its approval, in principle the entrepreneur cannot go ahead with the pertinent project. Any decision made by the entrepreneur without the prior approval of the works council (or without the permission of the Subdistrict Court, see below) can be rendered null and void.

#### **6. What happens in case of conflict between a works council and the management ?**

If the entrepreneur does not obtain the approval of the Works Council he can –if the mandatory mediation by a special committee (*bedrijfscommissie*) has been unsuccessful – request the “replacement approval” of the Subdistrict Court. The Subdistrict Court will give this permission only if the decision of the Works Council to refuse its approval is unreasonable or if the proposed decision of the entrepreneur is based on important organisational, economic or social reasons.

#### **7. Does the Data Protection Official have a role to play in dealings with the works council ?**

There is no legal requirement to appoint a data protection officer. If a data protection officer is appointed, this officer can advise the works council with regard to the processing and protection of personal data.

#### **8. Any interaction between the works council and the data protection Authority ?**

The works council has a crucial role with regard to data processing projects within an organization. In order to provide the works councils with a guide to carefully consider all decisions that have to be made with regard to the processing and protection of personal data, the Dutch Data Protection Authority (“DDPA”) has developed a checklist. This checklist is published on the website of the DDPA ([www.cbpreweb.nl](http://www.cbpreweb.nl)).

The DDPA may initiate an investigation at the request of a party concerned (which can also include a works council) into the manner in which the provisions laid down in the Dutch Act on the Protection of Personal Data are being applied within an organization.

## 9. Interesting case law

With regard to regulations regarding provisions aimed at the monitoring or inspection of the attendance, behaviour or performance of the persons employed by the enterprise (article 27 paragraph 1, sub I WCA), the Dutch Supreme Court (*Hoge Raad*) has ruled that these regulations do not include solely (human) supervision without the use of any technical or administrative device (Supreme Court 20 December 2002, *JAR* 2003/18).

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# Portugal

## 10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council ?

Works councils are entities that are either elected or created by employees of a company that are aimed at defending and representing employees according to the norms of the Portuguese Constitution and Portuguese law.

Given that works councils operate on a company basis, sub-committees may be created in different establishments of the same company.

The works council acquires legal personality after filing its by-laws (approved directly by the employees) with the Ministry of Labour and Social Security.

The number of members of a works council varies between 2 and 11 depending on the total number of employees hired by the employer. The term of office of members cannot exceed 4 years (which may be renewed). Portuguese labour law affords certain entitlements to members of works councils, such as credited hours for the performance of duties and statutory protection in the event of dismissal.

In general, works councils are entitled to hold meetings with the employees, be provided with employment related information from the company's management (e.g., plan of activities; budgets; sales forecasts; personnel management; accounting situation, including balance sheets; existing financing agreements; changes to the corporate purpose and to the share capital, etc.) and control the company's management (e.g., assess and submit opinions on the company's budgets; promote the adequate use of the technical, human and financial resources; present suggestions, recommendations or criticism aimed at improving the employees' professional training, etc.).

Furthermore, mandatory opinions on particular matters may have to be requested to the works councils (i.e., change in criteria regarding the professional classification and promotion of the employees; change of the premises of an establishment or company; any measure which may result in a significant reduction of the number of employees, deterioration to employment conditions or changes to the work organization; request for dissolution or insolvency of the company), who are also entitled to intervene and participate in restructuring procedures (although their role is limited to receiving information, meeting with the company's management and presenting suggestions, claims and criticisms).

In view of the above, under Portuguese law works councils are entitled to participate and intervene in multiple employment and management related issues. Nevertheless, works councils are not allowed to block or approve any decisions taken by the company's management.

### 2. Legal foundation for involvement of works council into data processing projects

Law 67/98 of 26 October ("**Data Protection Law**") governing protection of personal data does not establish any specific rules concerning the participation of works councils. The involvement of the works councils in processing projects is therefore subject to the general conditions set forth in the Data Protection Law, essentially:

- (i) compliance with the labour regulations if prior consultation with the works council is required by law;
- (ii) exercise of rights or performance of obligations established in the applicable collective bargaining agreement (which is uncommon); and
- (iii) consent of employee.

### **3. Obligation to notify works council of a new data processing project ?**

A project involving the processing of employee's data does not require the involvement of the works council unless it implies:

- (i) a deterioration of the employment conditions;
- (ii) changes to the work organization;
- (iii) the handling of biometric data of the employees; or
- (iv) the use of remote controlled means.

In such cases, the participation of the works council is ensured by means of a prior written opinion on relevant projects

The works council will have 10 calendar days following the receipt of the company's management request to provide its opinion.

The results of the consultation, and any opinion issued by the works council (if any) on any processing, must be provided to the Portuguese Data Protection Authority (*Comissão Nacional de Protecção de Dados*).

Apart from the above, the involvement of the works council must be assessed in light of the general entitlements indicated in section 1, in particular if the processing projects imply a significant worsening of the employment conditions or changes to the work organization (in which case a mandatory prior opinion must be requested by the company's management, as explained above).

### **4. Sanctions for not involving the works council**

Failure to request the mandatory prior opinion from the works council is considered a serious infraction which may trigger the application of penalties in amounts between €612 and €4,080 in the event of negligence, and between €1,326 and € 9,690 in the event of wilful misconduct, depending on the company's annual turnover.

Furthermore, the Portuguese Data Protection Authority may reject the processing project related to the handling of biometric data of the employees and the use of remote controlled means, if not submitted together with the works council opinion or proof of its request.

### **5. What impact can a works council have on a data processing project ?**

As indicated above, works councils are entitled to issue their opinion in connection with certain processing projects that have a direct employment impact labour relationships. However, this opinion is not binding and need not be taken into consideration by the employer or by the Data Protection Authority.

Notwithstanding the above, the comments and recommendations expressed by the works councils in their opinions are often taken into consideration by both the employer and the Data Protection Authority in their approval of such projects.

### **6. What happens in case of conflict between a works council and the management ?**

Given the non-binding nature of works councils opinions, the management may decide to adopt a data processing project against the opinion of such councils.

As a means to pressure the company's management into amending or abandoning the project, the works councils may try to persuade the employees by other methods (e.g.. convening a strike, boycotting the implementation of the measure).

## 7. Does the Data Protection Official have a role to play in dealings with the works council ?

Portuguese law does not require nor regulate the appointment of a “data protection officer”. The appointment of an data protection responsible is only recommended by the Portuguese Securities Commission within the scope of processing of complaints filed based on ethics.

## 8. Any interaction between the works council and the data protection Authority ?

Under Portuguese law, works councils do not have the power to represent employees before the Portuguese Data Protection Authority or to be directly involved in the decisions of the Data Protection Authority.

## 9. Interesting case law

There is no case law in Portugal regarding the interaction between works councils and the Data Protection Authority. Nevertheless, the Portuguese Data Protection Authority has issued various guidelines on the processing of personal data. According to these documents, the Data Protection Authority is increasingly interested in awarding works councils with more active roles in issues of personal data in the workplace.

The monitoring of e-mail accounts and internal use of Internet, as well as the implementation of biometric data, for instance, will likely be continuously assessed by the works councils in order for the Data Protection Authority to be provided with feedback concerning those matters. In addition, the Data Protection Authority recommends that a member of the works council should be present if a specific e-mail account is monitored.

Although these guidelines and instructions cannot be regarded as legally binding, they indicate a tendency toward a the growing importance of works councils in data protection matters.

Finally, it should be noted that the vast majority of Portuguese companies do not have a works council. Indeed, such entities usually only exist in large undertakings with a large number of employees. Trade unions continue to be far more active than works councils, which may to some extent explain the limited role of the latter.

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# Spain

## 10 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council ?

A works council is a **body that represents employees at workplaces with 50 or more employees**. In companies with less than 50 employees, they may also elect their representatives: they will be called “employee representatives” and will have the same functions, rights and protections as the members of works councils.

Works councils and employee representatives **represent employees in the collective negotiation of working conditions with employers**, in order to execute “collective bargaining agreements”. Additionally, they must be consulted in cases of collective redundancies and collective modifications of working conditions.

### 2. Legal foundation for involvement of works council into data processing projects

The legitimate grounds for the involvement of works councils in data processing projects are mainly:

- (i) the legal functions allocated to works councils in the **Spanish regulations**, which are mainly labor regulations (e.g., the Statute of Workers); and
- (ii) the exercise of rights or performance of obligations that the applicable **collective bargaining agreement** may have entrusted to works councils (even if debatable whether this legal ground may apply to the processing of sensitive data); and
- (iii) the employee’s **consent**.

### 3. Obligation to notify works council of a new data processing project ?

A project that requires the processing of employee data does not require the involvement of the works council unless it entails (i) an amendment of the working conditions; or (ii) the establishment or review of labor organization and control systems.

#### a. Who

The **company management**.

#### b. What

Personal data processing of employees is **not expressly included in the labor regulations**. Thus, the notification to works councils of a new data processing project should be construed as **mandatory if it involves other employees’ rights**. For example, if the data processing project entails the establishment or review of labor organization and control systems (e.g., systematic inspection of employees’ e-mails). In this regard, the members of the works council, and the council as a whole, will be obliged to observe professional confidentiality and no document of any kind provided by the employer to the works council may be used outside the scope of their work or for any purpose other than that for which it was furnished.



**c. When**

If the notification is necessary, **prior to the implementation**.

**d. How**

preferably in **writing**.

#### **4. Sanctions for not involving the works council**

Despite the sanctions that could be imposed by the Spanish Data Protection Authority (when the legitimate ground for the processing consists of a legal obligation which entails the need to involve the works council), any failure to comply with the obligation described in Section 3 may be considered a **serious labor infringement**, which may be sanctioned with fines ranging from **EUR 626 to EUR 6,251**. In addition, if it entails the violation of constitutional rights, it could be considered a **very serious labor infringement** and the employer could be sanctioned with fines ranging from **EUR 6,251 to EUR 187,515**.

#### **5. What impact can a works council have on a data processing project ?**

Only if the project involving the processing of employee data entails an amendment of the working conditions or is related to certain new monitoring systems at work, must the works council be consulted in advance.

#### **6. What happens in case of conflict between a works council and the management ?**

If the works council does not agree with the development of the new data processing project, the **employer is not obliged to refrain from implementing its decision** until a labor court decides otherwise (at least, from a labor law perspective). In such a case, the works council may initiate a **class action** if there is a labor-related dispute which affects a homogeneous group of employees considered as a whole and not individually.

#### **7. Does the Data Protection Official have a role to play in dealings with the works council ?**

The so-called “data protection officer” does not have any role attributed by law which relates to the works council’s functions. The legal role attributed to a “data protection officer” is restricted to ensuring compliance by the organization with the compulsory **security measures** which are listed in the Spanish regulations.

The appointment of data protection officer(s) is **only** required when **certain personal data** are **processed**:

- (*public sector specific*) files related to **criminal or administrative offences and genderbased violence**; files controlled by the tax authorities and relating to the exercise of **taxation powers**; and files controlled by the **social security management** agencies and general services, relating to the exercise of their powers, and those controlled by the **industrial accident mutual insurance societies**; files containing or referring to data collected for **security forces** without the consent of the data subjects;
- files related to the rendering of **creditworthiness services**;
- files controlled by financial institutions for purposes related to the provision of **financial services**;
- files containing a set of personal data that provide a definition of the characteristics or identity of citizens and which enable the **evaluation of specific aspects of their identity or behavior**;

- files controlled by operators providing electronic communications services to the public or who use public electronic communication networks relating to **traffic and location data**; and/or
- files containing personal data referring to **ideology, trade union membership, religion, beliefs, racial origin, health or sexual life** (however, basic-level security measures will suffice for the processing of (α) sensitive data if limited to monetary transfers to organizations to which the data subjects are associated or are members of; (β) sensitive data incidentally contained in non-automated files or processing and have no relationship with its purpose; and (γ) data exclusively referring to the level of disability or the mere declaration of the data subject's disabled status, if limited to fulfilling public duties).

## 8. Any interaction between the works council and the data protection Authority ?

The data protection right can only be exercised by the individual to whom it relates. **Works councils are not entitled to represent any data subject** regarding his/her data protection rights, unless the relevant data subject has granted them a specific power of attorney for a particular purpose.

In practice, works councils (and trade unions) have been active in lodging data protectionrelated **claims** before the Spanish Data Protection Supervisory Authority and in submitting allegations in the course of the authorization proceedings of **international transfers** relating to **outsourcing projects** (controller-to-processor) which are seen as a source of job destruction in Spain.

## 9. Interesting case law

From a data protection point of view, the published resolutions of the Spanish Data Protection Supervisory Authority where works councils have been involved only analyze (i) the eventual link between different processings of employee data by the works councils and the specific functions allocated to them by either the Spanish regulations or the collective bargaining agreement, and (ii) breaches by the work council of the duty of secrecy.

From a labor law perspective, the Spanish Constitutional Court held that the right granted to employee representatives to receive information involving employee rights is subject to professional confidentiality. In other words, the information provided by employers to employee representatives cannot be used outside the scope of their work or for any purpose other than that for which it was furnished. Therefore, the employer may sanction any employee representative which may have infringed his/her confidentiality obligation. Nevertheless, in order to consider the sanction valid, the measure must respect both legitimate interests at stake: trade union freedom and confidentiality.

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# The United Kingdom

## 6 THINGS YOU NEED TO KNOW ABOUT THE INTERACTION BETWEEN WORKS COUNCILS AND DATA PRIVACY

### 1. What is a works council?

And

### 2. Legal foundation for involvement of works council into data processing projects

In the UK works councils operate on two different levels: (1) European; and (2) Domestic. Works Councils are viewed more as a feature of the employment landscape of mainland Europe where they are much more of a part of the fabric of employment law.

In the UK there has over time been an erosion of trade union powers. Even so, traditionally trade unions have been the body with whom employers consult – if the trade union can display sufficient support within the workforce. Although there has been push towards employers and trade unions working in partnership it remains a delicate relationship.

Trade unions have regarded works councils as a potential threat to their power – an employee consultative forum which can potentially bypass the trade union and marginalise their involvement. Unions therefore have been slow to push works councils. Employers on the other hand, by and large, would prefer to limit their obligations to provide information to employees and consult with them.

It is against this backdrop which Works Councils in the UK should be regarded and reflects the lack of involvement in decisions concerning data processing projects.

**European Works Councils (EWC) :** The obligation to establish a European Works Council arose in the UK following the implementation of the Transnational Information and Consultation of Employees Regulations SI 1999/3323 (TICER) which gives effect to the European Union Directive requiring the creation of European Works Councils in undertakings with significant operations in at least two European Economic Area countries.

TICER applies to an undertaking or group of companies which has at least 1000 employees throughout the European Economic Area with 150 or more employees in two separate EEA states.

Therefore TICER covers three circumstances:-

1. Where the principal base of a company/group is located in the UK;
2. Where the principal base of the company is in another EEA state and where the company has a presence in the UK;
3. Where the principal base is elsewhere in the world but where there are at least 1000 employees in EEA and 150 or more in two or more EEA states.

Many UK multi nationals decide to enter into voluntary EWC agreements in the mid 90's because this provided them with a window of opportunity to negotiate more friendly agreements prior to the EWC Directive coming into force in continental Europe. Such agreements are known as Article 13 agreements – they are exempt from the provisions of the

EWC directive and TICER so long as they provide for the information and consultation of employees across the entire workforce within the Member States of the EEA.

Any EWC agreements negotiated and agreed after this time (i.e. from the time EWC directive and TICER came into force) are known as Article 6 agreements.

Unlike Article 13 agreements, Article 6 agreements must fall within the parameters permitted by TICER and there are longstop provisions which apply if agreement is not reached within the statutory timescale (EWC default model).

What is the EWC default model?

Important features of the default model include:

Scope – limited to information and consultation on matters which concern the undertaking as a whole or at least two of its establishments or group undertakings in at least two EEA countries – i.e. “transnational” matters. It does not include domestic matters.

Annual Meeting – must be at least one annual meeting at which EWC is informed and consulted on number of issues. Mandatory issues are:

- Structure, economic and financial situation;
- Probable development of the business and production and sales;
- Situation and trend for employment;
- Investments;
- Substantial changes concerning the organisation;
- Introduction of new working/production methods;
- Transfers of production;
- Mergers;
- Cutbacks;
- Closures of undertakings or establishments; and
- Collective redundancies.

Exceptional Meetings – these occur where there are exceptional circumstances affecting employees interests to a considerable extent – this is primarily to address redundancy situations, relocations, closure.

The default provision does not include any specific reference to data processing projects which are likely to fall outside of the scope of the fall back position. Information and consultation regarding transnational data processing projects are only likely to be a feature of negotiated article 6 agreements. It is unlikely that they would feature in Article 13 agreements.

**National works councils:** There is a separate European directive which provides for information and consultation of employees on domestic matters – i.e. those which apply to the workforce of one EEA member state only. The European directive is incorporated into UK law by the Information and Consultation of Employees Regulations 2004 (ICER).

Any undertaking with 50 or more employees in the UK is subject to ICER.

Again there is provision for pre-existing negotiated agreements which are exempt from the provisions of ICER – this represented an opportunity for employers to agree a framework for informing and consulting employees which was less strict and narrower in scope than that required by ICER. Given employer’s intention to narrow the scope for information and consultation it is unlikely that data processing projects will fall within scope of such agreements.

Likewise for information and consultation arrangements which have been entered into after ICER came into force data processing projects are likely only to fall within scope if it falls within the scope of such an agreement.

As with EWC's data processing projects per se do not feature in the default position. In a similar mechanism to TICER the default position applies in the event that the parties cannot reach agreement in a prescribed period.

The default position includes:

- A. Mandatory information regarding the following:
  - 1. Recent and probable development of the undertakings activities and economic situation:
    - a. The launch of new products or services or significant changes to, or discontinuation of, existing products or services and developments in technology, production processes or ways of working;
    - b. Takeovers and mergers and re-organisations within the undertaking;
    - c. Changes to the undertakings aims, objectives, vision, mission statement or changes in senior management;
    - d. Undertakings financial situation based on accounts and competitive environment in which the undertaking operates.
  - 2. The structure and probable development of employment and measures envisaged relating to threat of employment within the undertaking – includes future levels of employment, distribution of employees, any re-organisations or restructurings.
  - 3.
- B. Mandatory information and **consultation** in relation to decisions likely to lead to substantial changes in work organisation or in contractual relations.  
Little scope therefore of involvement of national works councils in data processing projects.

### 3. **Obligation to notify works council of a new data processing project?**

There is little scope of involvement of national works councils in data processing projects. Transnational data processing projects are only likely to be a feature of negotiated European Works Councils agreements (article 6).

What if data processing projects fall within the scope of either a EWC or National Works Council agreement?

Subject to the terms of the agreement there will be an obligation for the employer to inform and potentially consult regarding the data processing project.

### 4. **Sanctions for not involving the works council?**

If an employer fails to comply with its obligations:

- 1. The EWC can claim to the Employment Appeal Tribunal (EAT) which has power to order compliance and to issue a penalty notice of up to £75,000. Penalties are payable to the Secretary of State. In addition the EWC can seek an order for disclosure of information it believes has been withheld by management by making an application to the Central Arbitration Committee for an order that information be disclosed.
- 2. A National Works Council can apply to the CAC concerning an employer's failure to comply with a negotiated agreement or the default position. The CAC can award a penalty of up to £75,000 which are payable to the Secretary of State.

In both cases neither the CAC nor EAT has power to prevent a project from continuing where there is failure to inform and consult.

## 5. Any interaction between the works council and the data protection Authority?

The Information Commissioner does not have any formal role regarding EWC's or National Works Councils.

## 6. Summary

Under UK law there is limited scope for involvement of works councils on transnational or domestic level in data processing projects – it will only be where such a project falls within the scope of a relevant information and consultation agreement such an obligation would arise.

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